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The rise of polycentric regulation and its impacts on the governance of housing associations in England

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ABSTRACT
Since 2010 the English planning system, like others across Europe, has undergone a series of market- oriented reforms. There has been a concerted attempt to make state organisations, and those in receipt of public funds, more entrepreneurial and financially proactive and independent. This paper focuses on one manifestation of these wider trends - the regulation of English Housing Associations [HAs] as examples of organisations that are under pressure to take on more financial risks and deliver a wider range of affordable housing for communities in need. Drawing on in-depth qualitative research, the paper assesses some of the regulatory and governmental challenges that emerge in using market-led forms of coordination. It examines the role of new regulators and the ways which they seek to 'co- produce' regulations with HAs in more liquid and negotiated ways. We show that in reality decisions are taken in response to a polycentric mix of simultaneous regulatory pressures that act as gravitational pulls on the activities and decisions made by HAs, rather than enforcing a consistent and linear form of regulatory control. We conclude with wider reflections for planning theory and practice.

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Introduction

Since 2010 the English planning system, like others across Europe, has undergone a series of market-oriented reforms. There have been two elements. First, there has been a concerted attempt to make state organisations, and those in receipt of public funds, more entrepreneurial and financially proactive and independent. This has involved reducing direct grants and encouraging agencies to finance their own spending through value-capture programmes and other innovations, such as the setting up of Joint Ventures or even new property companies (Penny, 2022). As global property and real estate markets have become sites for intensive modes of asset-based speculation and financial returns (The Economist, 2020), so the temptation for public

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agencies to try and extract surpluses through financial policy innovations has grown. Locally-based deliverers of social housing, in particular, have been tasked with finding new ways to promote both market-delivered housing for sale and the provision of more affordable and accessible housing to meet growing demands for a full range of housing types and tenures. Second, as agencies are expected to be more entrepreneurial and market-like then the *regulation of their activities* becomes a more complex and fluid process. Attempts to establish regulation through (and with) the market are creating multi-directional and deeply ambiguous sets of arrangements in which local providers are required to *both* act as viable and well-governed business actors *and* demonstrate how they meet a range of social and public policy priorities.

It is within this context that this article focuses on one manifestation of these wider trends - the regulation of English Housing Associations [HAs], as examples of organisations that are under pressure to take on more financial risks *and* deliver a wider range of social and affordable housing for communities in need. A growing body of literature has looked at the ways in which the sector has become bifurcated in the 2010s in response to central government attempts to make them more business-like and entrepreneurial (Crook & Kemp, 2019). On the one hand traditional 'social' HAs, consisting of small, locally-oriented, and tenant-focused agencies still exist across England and draw most of their (modest) incomes from rents paid by their residents. On the other hand, a group of much larger financialised actors have also emerged engaging in property development projects and other forms of market activities to generate (significant) revenues to cross-subsidise their social activities. A group of the largest HAs, the G15, which has grown by way of complex mergers and acquisitions, has come to play a key role in the housing markets of multiple cities, possessing and managing over 600,000 homes across the UK. In London alone, they house 1 in 10 of the population and between 2018-2020 built more than a quarter of all new homes (Hackett 2021, p.15). These larger associations have become increasingly adept at cherry-picking lucrative areas of market expansion and building new homes (Fields & Hodkinson, 2018). Dramatic reductions in public subsidies have forced HAs to cross-subsidise their affordable units from delivering higher numbers of market units.

The article assesses some of the regulatory and governmental implications that emerge in using market-led forms of coordination in the delivery of welfare and the rise of what Black (2008) terms *polycentric regulatory regimes* in which 'the state is not the sole locus of authority' (p.137). The rise of polycentric regulation has emerged despite the ambition of governments to *de*regulate and simplify the governance process. UK governments have pioneered reforms in which regulators adopt proportionate approaches to those they regulate '[and] understand and minimise the negative economic impacts of their regulatory activities' (BIS, 2014, p. 3). In order to make public agencies more market-oriented, it is claimed, regulation needs to be more adaptable and flexible. It needs to prioritise the co-production of outcomes, with traditional forms of hierarchical co-ordination seen as outdated and restrictive. The English experience echoes those of HAs in other European countries, including Finland, France, and Italy where there has been a gradual re-shaping of social housing provision towards a market-led system through state subsidies and/or more financialised forms of third sector activity (Aalbers *et al.*, 2017; Belotti &

Arbaci, 2021; Grander, 2017; Lévy-Vroelant, 2014; Ruonavaara, 2017). But as we show, the delegation of authority for social housing delivery to intermediary Housing Associations, with the expectation that they will adopt more entrepreneurial and market-oriented approaches, only succeeds in expanding the range of polycentric regulatory demands and creates deeper problems of coordination over the delivery and governance of social housing.

Our discussion therefore sets out a more complex view of regulation than that found in more reductionist narratives that highlight the predominance of neo-liberal 'de-regulation' (Jacobs & Manzi, 2020). The governance of the social housing sector, we show, now consists of what Levi-Faur (2011) terms indirect regulation in which governments cede control to dedicated quasi-autonomous agencies and actors beyond-the-state whose remit is to co-produce regulatory outcomes with those being regulated. This in turn reflects a wider shift away from hierarchical modes of coordination towards more liquid approaches in which rules and regulations become internalised and legitimated through a 'process in constant flux' (Krisch, 2017, p. 249). Moreover, market-oriented reforms are embedding some of the core tensions and contradictions found in (unstable) markets directly into the operation of the public sector, with political questions over the provision and delivery of housing displaced from government bodies and redirected to the managers of individual agencies, especially HAs (Jessop, 2016). Whilst there has been much focus on what this means for processes of financialisation and the diversity of the sector (see Wainwright & Manville, 2017), the period of expansion in the mid-2010s has given way recently to a new era of retrenchment with a growing focus on less financially-risky and politically-significant activities, such as protecting the value of existing assets and the rights and demands of social housing tenants.

The article draws on the findings of a wider programme of research that explored the regulation and market-led delivery of residential built environments in major cities. For this article, we draw mainly on targeted interviews with leading figures within HAs and HA representative organisations, and in excess of 60 with financiers (whose institutions have lent money to HAs), regulators, government civil servants at local and national levels, and a range of private sector developers and house-builders. These agencies have been consistently described as leaders and have been especially active since the global financial crisis of 2008 (Meek, 2014). Meetings took place between March 2019 and October 2021, covering a period of extreme uncertainty in the wake of the Covid pandemic and a broader downturn in global growth. A combined method of analysis was used to examine the qualitative data and carried out through two stages. First, we undertook a soft coding analysis of the qualitative views expressed in response to the semi-structured questions addressed to all respondents (Mihas, 2019). These covered: their perspectives and understandings of regulatory pulls influencing the sector; the impacts of regulatory influences on the everyday practices of individuals and Associations; existing hierarchies of power and control; the skills and knowledge-base of key officers within Associations and the influence this has on the work they undertake; and perspectives on how private/financial regulation shapes practices and outlooks on the ground. Second, the interview data was triangulated through the systematic analysis of documentary materials especially those produced by regulators, civil servants, HAs, and private sector financiers/ratings agencies. Some of these are used in the production of figures in the article and others to inform the broader analysis of regulatory environments, especially since 2010 following the election in the UK of a Conservative-led Coalition government that set about major reforms of the sector. Collectively, the analysis is used to shed light on the sector, whilst also maintaining appropriate levels of confidentiality and ethical probity.

We use the evidence to document how the mix of simultaneous, polycentric regulatory pressures are acting as *gravitational pulls* on the activities and decisions made by HAs, rather than enforcing a consistent and linear form of regulatory control. Whilst a growing body of literature focuses on processes of deep financialisation (Aalbers, 2016; Aalbers *et al.*, 2017; Goulding, 2018), we demonstrate that polycentric regulatory arrangements have generated governance spaces in which HAs are able to do the opposite – i.e. to operate conservatively, and to undertake activities that are only contingently related to the policy instruments and programmes of other state and governmental organisations. In other words, under the influence of diverse regulatory pressures HAs actively choose how 'financialised' to be, what to prioritise, and how to manage the relationships with those who are regulating them. The findings have significance for broader debates over the direction of regulatory reforms within modern welfare states and the new modes of co-ordination that are being forged between public, private, and solidarity-based organisations. We begin with an overview of some of the writings on polycentric regulation before turning to the case of HAs and our empirical evidence to examine the role and practices of the recently founded Regulator for Social Housing and its impacts on HAs.

Polycentric regulation and new forms of co-ordination within welfare states

A growing policy orthodoxy has emerged in the Global North since the 1990s that views overly-prescriptive top-down regulations and controls as a corrosive influence on the capacity of delivery agencies to be entrepreneurial and risk-taking. For Du Gay and Lopdrup-Hjorth (2016), there has been a broader discrediting of formal mechanisms of bureaucratic accountability and control, with repeated attacks from both the neo-liberal right and the anti-governmental left (Gerber *et al.*, 2018). It is an agenda founded on the assumption that the inclusion of multiple partners beyond-the-state is 'the only governance form that is able to deal with today's complex problems, which span the established formal (hierarchic) structure of state bureaucracies and territorial boundaries' (Raab & Milward, 2003, p. 418). In the housing field this governance-focused agenda is reflected through the drive from governments at multiple scales to roll back planning regulations and embark on new agendas that promise liberalisation and flexibilization (Rodríguez-Pose & Storper, 2020). Supranational agencies such as the World Bank (2020) and the OECD (2019) also call on nation-states and cities and regions to liberalise their hierarchical regulatory systems and empower and encourage a range of institutions from the private and voluntary sectors to take more flexible and market-oriented approaches to project delivery. These messages are echoed in recent influential policy blueprints by neo-liberal think-tanks (*cf.* Airey and Doughty, 2020), that view overly restrictive planning regulation as a limit on new housing and infrastructure development and a brake on national and urban competitiveness.

The primary reason for these calls for flexibilization is a growing concern with the role that *private finance and market disciplines* can play in the delivery of public welfare. New investment landscapes are emerging within the global economy underpinned by the rise of lucrative sources of financial capital found in Sovereign Wealth Funds, institutional investors and pension funds (Alami & Dixon, 2020). Many governments have reduced their budget allocations for local and regional governments in the wake of the global financial crisis of 2008, and believed that resulting financial gaps could be filled by freeing-up delivery agencies to attract emerging sources of private capital to meet public ends. Housing, in particular, is a sector often characterised as being 'in crisis', with the supply of affordable units unable to meet growing demands (Rolnik, 2019). Housing organisations and local governments have been pushed to be more proactive in bridging finance gaps to generate more housing supply that would, in theory, be more available and affordable to a growing range of citizens. In order to implement such agendas, advocates argue that it is necessary to deconstruct the hierarchical control mechanisms that characterised post-war welfare states. In their place, there is a push to establish forms of 'co-regulation' in which the boundaries between regulators and the regulated become increasingly porous and relational. This, it is claimed, would allow housing providers to tap into new sources of finance and private expertise to boost housing production, whilst providing light-touch state oversight to ensure that there is a degree of probity and compliance with policy priorities.

However, a shift towards deregulation has not been simple to roll-out. In most planning and urban studies writings, the term regulation is 'commonly used to describe technical rules issued by government departments and agendas' in ways that 'provide clarity and guidance in their respective areas of responsibility' (Büthe & Mattli, 2013). The emphasis has been on analysing visible, formally-defined, and institutionalised modes of decision-making, accountability, and outcomes. Policy-focused research has principally looked at budgets, rules, and the power of state institutions to coerce and police the governmentalities and practices of actors (Rydin, 2020; Williams, 2015). However, with the rise of market freedoms and new financial models to fund the activities of delivery bodies, regulation becomes more networked and polycentric in structure, with agencies in receipt of public *and* private sector funds required to meet a broader range of regulatory demands than in the past. Earlier writings on governance show how delegating decision-making over social policy delivery to others creates new problems of governability or the capacity to deliver on stated policy objectives (Van Kersbergen & Van Waarden, 2009). Being given the freedom to engage in financial markets generates an ambiguous set of tensions in which institutions are imagined to benefit from the dynamism of private investment, but simultaneously become subject to what Clarke (2014) refers to as new forms of vulnerability and 'unpredictable and destabilizing failures of control and coordination' (p.101).

One way of better understanding recent trends is found in writings on the rise of polycentric regulatory regimes. For Black (2008) such regimes 'are marked by fragmentation, complexity and interdependence between actors, in which state and non-state actors are both regulators and regulated, and their boundaries are marked by the issues or problems which they are concerned with, rather than necessarily by a common solution' (p.137). Rather than seeing regulation as (principally) a monocentric field with authority derived from state institutions, the rise of governance networks creates multiple sources of regulation within and beyond the state, stretched out over space. The concept has been widely explored in writings on environmental and health policy (e.g. Miller *et al.*, 2020; Morrison, 2017) but less so in planning and housing studies. Black's earlier work predated the dominance of financialised forms of governance discussed above. In more recent contributions there has been an extension of this approach to discuss the growth of liquid regulation or the growing fluidity in relationships between public, private, and social modes of authority in contemporary governance systems. Black (2017) and Krisch (2017) have explored how polycentric regulatory codes and practices are now mobilised by a range of non-state actors, especially professional and private sector bodies and intermediaries (Abbott *et al.*, 2017; Auld & Renckens, 2017). This has the effect of creating a diversity of regulations and outcomes as 'authority is not predefined in the relationships between those regulated and those regulating, but must be built into each governing relationship' (Krisch, 2017, p. 248) and its dialogues. Such insights have been developed through the study of transnational professional and private organisations and the ways in which they legitimate their actions to gain recognition. However, they can also be applied to the analysis of regulatory environments concerning social housing and the extent which they are becoming increasingly nebulous and fluid.

Much of the work on HAs internationally has focused on the growing consensus that 'during the last three decades, a widespread challenge to social landlords in Australia, Europe and the United States has been the decrease in governmental support for them to fulfil their role in the provision of social housing, which has led to an increasing pressure that pushes them towards marketisation' (Tang *et al.*, 2017, p. 411). Research across Europe similarly shows clear trends in which a period of marketisation and deregulation has been followed by some retrenchment on the part of HAs. In the Netherlands, for instance, after a significant expansion in market activities after 2008, there has been a 'reaction to the growing importance of financial issues in the social housing sector, a countermovement in which the social values and duties of the sector play a central role' (Nieboer & Gruis, 2016, p. 2). In Finland, changes in the delivery of social housing are put down to governments' attempts to deregulate the social housing sector and allow tenants to purchase homes, leading to an erosion in the number and quality of social housing units (Ruonavaara, 2017). The same is also true in the cases of Germany, Italy, and Sweden in which the social housing sectors have been subject to growing forms of privatisation and a shift towards delivery by more independent, financially entrepreneurial agencies (Belotti & Arbaci, 2021; Scanlon *et al.*, 2015).

What such evidence demonstrates is that there is a dynamic relationship between the regulatory environments in which social housing provision operates and the activities and outcomes of providers. What remains under-discussed are the forms of re-regulation that emerge in the wake of marketizing reforms and their effects on how agencies operate. HAs and others are not simply 'deregulated' but become subject to a *growing range of regulatory demands* as they enter the sphere of market-based activities. Rather than being subject to market freedoms, forms of deregulation only encourage greater liquidity in regulatory relationships and generate new demands that have to be met. Moreover, the politics of social housing is also subject to high degrees of fluidity and subject to regulatory changes that can have profound effects on financial models and organisational capacities. Governments can change rules on tenant protections and even forms of governmental participation in ways that destabilise financial expectations relationships and agreed approaches. External events, such as economic recessions or high-profile social housing failures, can generate new regulatory demands relatively quickly, establish what some writers have termed 'political risks' (Kobrin, 2020) that come with financial costs. In the next section we turn to the regulation of HAs in England to exemplify both the growth of polycentric and increasingly liquid forms of regulation and their effects on the provision and management of social housing. Governments have sought to make the sector more entrepreneurial and 'free' from the regulatory 'constraints' of planning but have only succeeded in widening and deepening multiple forms of regulatory oversight.

The regulation of housing associations and its impacts on practices

The emergence of a polycentric regulatory environment

The position of Housing Associations as independent charitable agencies, but with growing responsibilities to deliver privately financed and state-subsidised social housing, has made them especially difficult agencies to regulate. Control is exercised through a range of polycentric fields including: financial probity and viability; corporate governance and due diligence requirements in regard to fraud; tenants' rights, engagement, and participation in the delivery and management of their housing; and the construction and financing of new housing – both social and market; and the capacity to navigate landscapes of social housing finance and policy. This polycentric landscape is not the outcome of a planned approach to the social housing sector, but the result of cumulative changes to housing policy and the role of housing actors over time. From philanthropic origins in the mid-1850s, that saw the provision of housing as a charitable activity of third sector organisations such as Peabody Trust; to a state enterprise between the 1950s and 1970s, when housing was thought of as a public good to be provided by the public sector to everyone; to a period of 'residualised' housing provision between 1970s and 2010, which saw the rise of HAs' relevance as affordable housing providers while state funded housing was reduced to a social policy objective targeted to those most in need (Boughton, 2018; Malpass & Victory, 2010).

This article focuses on the period from 2010 until now. Figure 1 summarises the key policy changes that, according to our interviews and document analysis, have shaped the regulatory landscape in which HAs currently operate. Interestingly, the accumulation of these policy changes and demands has happened in parallel with a re-thinking of the purpose and function of regulations to make them more liquid and less hierarchical. A *Regulators' Code* in 2014 stated that the aim of reforms was

YEAR	POLICY	PURPOSE
2010	Spending Review 2011-12	Housing benefits cuts; LAs budget cuts
2011	Affordable Homes Programme 2011-15	60% capital funding reduction; new Affordable Rent (AR) product; encouraged conversions of other products into AR.
2012	National Planning Policy Framework	Revision of Affordable housing definition (social rent + affordable rent + intermediate (rent and sale))
	Infrastructure (Financial Assistance) Act	Government to underwrite debt of HAs and private sector developers (for aff. housing)
2013	Housing Ombudsman scheme	LAs, and not only HAs, become part of the scheme. Local Government and Social Care Ombudsman to oversee complaints about LAs wider housing activities.
2015	Spending Review 2016-2021	Social rents reduction by 1% for 4 years.
2016	2016 Housing Planning Act	Secure tenancies replaced with fixed-term tenancies; forced sales on empty LA properties; Starter Homes prioritised over Social housing units.
	Affordable Homes Programme 2016-21	88% of new deliveries to be Shared Ownership units; Rent to Buy units also eligible for funding.
2017	Addendum to the Affordable Homes Programme 2016-21	Some funding available for delivery of Social Rent units.
2018	The Legislative Reform (Regulator of Social Housing) (England) Order 2018	Transfer of regulatory powers and responsibilities from Homes Communities Agency (HCA) to the Regulator of Social Housing (RSH). HCA re-branded as Homes England.
	Homes England Strategic Partnership Programme	Multi-year grant agreements with Homes England (GLA in London) to deliver affordable housing.
	Limits on Indebtedness (Revocation) Determination 2018	Housing Revenue Account borrowing cap removed for LAs.
2021	National Planning Policy Framework reviewed	Expansion of homeownership products in affordable housing definition; social rent becomes a subproduct of affordable housing for rent.
	Strategic Partnership Programme changes	For profit RSLs to access Homes England Strategic Partners programme
	UK's sixth Carbon Budget	UK to reach net zero carbon emissions by 2050. This requires upgrading and retrofitting existing housing stock to help eliminate greenhouse gas emissions from housing.
2022	Social Housing (Regulation) Bill	More attention to monitoring performance of RSLs and greater powers of intervention to the RSH and the Housing Ombudsman.

Figure 1. Key changes to the policy landscape of Registered Social Landlords (including HAs) since 2010.

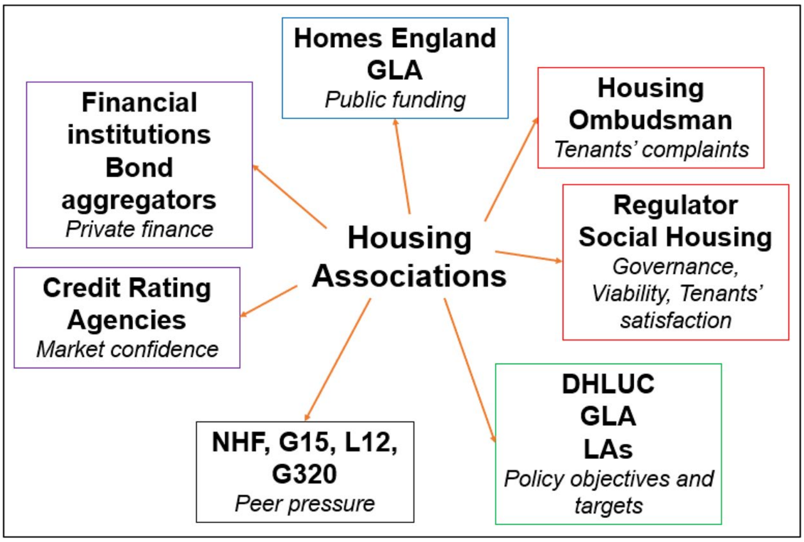

Figure 2. The polycentric regulatory environment for housing associations.

to establish: '*a flexible, principles-based framework for regulatory delivery that supports and enables regulators to design their service and enforcement policies in a manner that best suits the needs of businesses and other regulated entities*' (BIS 2014, p.2). A subsequent *Deregulation Act 2015* was also premised on the principle that all government agencies should aim for '*the reduction of burdens resulting from legislation for businesses or other organisations or for individuals; make provision for the repeal of legislation which no longer has practical use; make provision about the exercise of regulatory functions; and for connected purposes*' (Cabinet Office 2015, p. 1). Nevertheless, the apparent de-regulation of policy delivery and the policy changes introduced to enable a market-led system of social housing provision has not been able to counter an acute worsening of housing affordability, which has seen a continued growth of house prices to annual earnings ratios across England since the last years of the 20th century (ONS, 2022).

Figure 2 depicts the myriad of state bodies and market actors shaping the activities and strategies of HAs in this last period. The diagram portrays a polycentric regulatory environment that has emerged more by accident than design through a 'snowball process', as described by one interviewee, which has created 'a fragmented sector which, inevitably, leads to inefficiency'. The different actors in the diagram can be organised into five sources of regulation that act as different gravitational pulls on the activities and decisions of HAs. First, there are public bodies who provide funds directly through grants and indirectly through the payment of benefits to social housing tenants. This is the case of Homes England, which provides 'grant funding to support the capital costs of developing affordable housing for rent or sale' (Homes England, 2022a) through the Affordable Homes Programme. The purpose of this funding is to maximise and accelerate the delivery of new affordable homes across England. However, the funding is allocated through a competitive process that requires applicants (i.e. housing associations, local authorities, developers, for-profit providers, and community-led organisations) to qualify as '*investment partners*', which '*confirms that organisations have the financial and technical capacity to deliver their proposed scheme, and that they have financial and legal good standing*'. (DLUHC and Homes England, 2022, p.1). Such 'good standing' is partly demonstrated through the grading HAs receive from the Regulator of Social Housing (RSH) (Homes England, 2022b). In this sense, the RSH has only a very indirect role in the allocation process of public funding. Responsibilities over funding and enforcement have been brought together and split between regulators several times in the past. The last restructuring of such responsibilities took place in 2017, leading to the creation of the RSH and the re-branding of Homes and Communities Agency as Homes England in 2018. The move helped central government to reduce the level of public debt in the national accounting books.[1] It has also granted HAs a private sector organisation status in national accounting while retaining their charitable status from a fiscal perspective.

A second source of regulations comes from non-departmental quango government bodies that monitor and have the authority to intervene and influence the activities of HAs. The RSH undertakes economic and consumer regulation to promote '*a viable, efficient and well-governed social housing sector able to deliver and maintain homes of appropriate quality that meet a range of needs*' (RSH, n.d.). Its overarching aim is therefore to keep the risk of the whole sector in check. To achieve this, it assesses the performance of registered providers and grades their financial viability and the quality of their (corporate) governance arrangements (with V1/G1 and V4/G4 being the highest and lowest ratings for each category respectively). This grading determines whether an intervention is required and the nature of it. It also serves as a powerful signal to capital markets about the stability of the sector, a point made repeatedly across the interviews. This chimes with claims by some authors who argue that the increasing financialization of HAs has resulted in a regulator primarily concerned with minimising the perceived risks of the sector to lenders, while risks to consumers – i.e. tenants and leaseholders – have increased as a result (Goulding, 2018) The Housing Ombudsman (HO) is the public body responsible for dispute resolution and the determination of complaints against HAs from their tenants and leaseholders. Both organisations coordinate their responsibilities and actions through their own *Memorandum of Understanding*, which limits the direct intervention of HAs by the RSH to instances where '*there is both evidence of a breach of consumer standards and evidence that the breach has or could cause serious detriment*' (RSH and HO 2020, p. 4). Where they agree that an HA have failed to address tenants' needs, the RSH publishes a regulatory notice, which could eventually lead to a downgrading of their Governance rating if the issues are not duly solved (RSH 2021). These instances have been very rare. In most cases the disputes are solved on a case-by-case basis by the HO, who refer the problem to the RSH for further review when it finds a case of maladministration.

This negotiated approach to consumer regulation has been subject to enhanced political attention, especially after the Grenfell fire disaster[2] of 2017. In November 2020, the UK government published the Social Housing White Paper (MHCLG

2020) which called for the RSH to have a more proactive 'consumer regulation' remit, as well as a stronger HO that can take action against landlords where needed, and also for an increased tenant participation in the direct oversight and management of social housing stock. These changes have been incorporated to the Social Housing Bill, a proposed new law that is being debated in Parliament at the moment of writing. Once it receives Royal Assent, it will grant the RSH increased monitoring and enforcement powers over HAs that are putting the health and safety of their tenants at risk (Cuffe, 2022). It has also granted the HO more powers to refer a greater range of cases to the RSH and revisit their *Memorandum of Understanding* (ibid). In this way, the state is not acting simply '*to insulate lenders from the risk of insolvency*' (Goulding, 2018, p. 170) but to protect tenants and leaseholders as well, which challenges the linear narrative about the impacts of financialisation on the regulation of the social housing sector.

A third mode of polycentricity derives from central and local government departments that set out national and housing policy objectives and housing targets, which play crucial role in the amount, nature, and location of the housing delivered by housing providers. At national level, the Department for Housing, Levelling Up, and Communities [DHLUC] is responsible for defining what constitutes affordable housing, its different types, and the formulas that enable registered providers to work out the level of rent they can charge to their tenants. Interestingly, the regulation of housing benefits is the responsibility of the Department for Work and Pensions (DWP), not the DHLUC. This matters because any changes to these benefits have an impact on the ability of social tenants to pay their rents, which in turn affects the cash flow models of HAs. Departmental coordination should ensure that impacts of this kind are foreseen and adequate mitigation put in place, but this is not always the case. The latest alterations to the way HAs must handle housing benefit claims, introduced by the DWP earlier in 2022, illustrates the serious consequences of weak departmental coordination for social housing tenants, who found themselves in arrears as soon as changes were introduced (Heath, 2022). Finally, at local level, local authorities follow national policy requirements and guidance to turn their assessments of local housing need into local policy. In London, this process is done in coordination with the GLA, who set out housing targets for each borough as well as housing policy that prescribes the nature and amount of affordable housing that should be expected from any development in public or private land.

The regulations coming from this set of public bodies are therefore concerned with the delivery of the right amount and type of housing in the right places, at least in theory. In reality, the delivery of enough affordable housing (especially social rent) has consistently failed to meet policy targets across England, particularly in London (Edwards, 2016; Raco *et al.*, 2022). The debate about the reasons for this consistent underperformance is rich and ongoing but could be summarised in two main arguments: a) one that understands the problem as a supply side issue and mainly blames the planning system for restricting development; and b) one that sees the problem as a demand side issue where mortgages at historically low interest rates keep pushing house prices up. Housing policy has been moving continuously from one side of the argument to the other, creating an environment of political uncertainty that many of our interviewees identified as the main threat to the economic viability of their business plans.

The fourth source of regulations comes from regulators beyond-the-state, whose credit ratings and risk assessments have a growing impact on what HAs are able to do. Engagement in financial markets makes HAs subject to corporate management, governance codes, and requirements for probity set by agencies such as the Financial Conduct Authority. It also creates a role for credit ratings agencies, whose judgements impact directly on the cost of the money borrowed by HAs from capital markets (financial institutions and bond aggregators) and therefore affect what the associations can do and how (Smyth *et al.*, 2020). As of 2020, 45 HAs were rated by international agencies Moody's and/or Fitch (Brady, 2020) including eight of the twelve largest HAs operating in London, and their view of the sector was generally positive (*ibid.*) This has not changed significantly despite the huge costs that HAs will be facing when central government finally introduces its new fire safety and energy efficiency standards. Although many interviewees have recognised the negative impact these changes are already having on their business plans, they also believe that improving the quality of their housing stock will make them an even safer investment in the eyes of lenders. This view was corroborated by an HA financier, who mentioned that scaling down growth would not be '*too onerous*' for HAs' borrowing because it '*should confirm that they're doing the right things (…) looking after your custumers is good for any business.*'

A final regulatory influence is that of third sector organisations that lobby government to defend the interests of HAs and provide support and guidance to their members in their activities – i.e. the National Housing Federation (NHF) as well as the G15, the L12 and the G320 in London. Both organisations serve as a forum for their members to share experiences and best practices, but they do not monitor HAs activities and cannot enforce any particular actions against any of their members. In this sense, this fifth group provides a form of 'peer pressure' that encourages a certain set of standards and behaviour in exchange of membership of their group. Although this does not amount to real regulatory pressure, it is important to consider it as well because of the role this source plays in the reproduction of perceived successful *modus operandi* across the sector.

The complex landscape of regulatory sources we have just described poses two questions: how does this polycentric environment affect the strategies and activities of HAs?; and, what is the distribution of regulatory authority and influence between these different sources? The next section addresses both, drawing on our qualitative material. It shows that, contrary to the expectation of a linear move towards more financially entrepreneurial strategies, HAs' responses to these multiple regulatory pulls are variegated and do not always follow entrepreneurial logics. Using the lens of polycentric regulation offers a more nuanced explanation for HAs' different business models. The section shows a fluid and relational interaction between state and beyond-the-sate actors, where everyone involved is acting on the shadow of each other. It is therefore a polycentric environment where power is not distributed hierarchically between the different sources of regulation, but rather it flows between them, pulling HAs in multiple directions and eliciting varied responses from them.

Impacts of polycentric regulation: who regulates who?

HAs representatives talked about their activities very much as a 'balancing act' between their social ethos and their business nature in a context of increasing policy instability, raising maintenance costs, and dwindling public funding. What became clear in the interviews is that this idea of 'balancing act' is a shorthand for the choices HAs must make in response to the five sources of regulation described earlier. Figure 3 synthesises the choices, or tensions, that emerged from the interviews and presents them in relation to HAs' expected behaviour as both a business and a charitable organisation. The rest of the section elaborates the relevance of these tensions.

One common answer across the interviews is the fact that government cannot force HAs to deliver more housing because they are 'independent organisations', not a public body for delivering policy. Their charitable status is a legacy of their origin and they still feel very close to that social purpose, but changes in policy over time have emphasised and encouraged their business nature and as such, the government is only able to steer their behaviour through combinations of direct – i.e. monetary incentives such as grants and subsidies - and indirect means – i.e. policies and

Nature of an HA	Behaviour expected from HAs	Resulting tensions from dual nature in current context
A healthy business-focused agency	Keep a reasonable level of risk. Make an efficient use of assets and resources. Generate a profit to ensure long term sustainability. Be competitive. Managed by professionals. Comply with corporate governance and financial rules.	Invest in building new housing or invest in improving the fire safety and energy efficiency of existing stock. Become more entrepreneurial and grow housing stock or focus on management of existing stock and keep a low risk profile. Depend on S106 agreements to grow housing stock or develop their own housing stock through JVs for new developments or regeneration of existing estates.
A not-for-profit organisation with a strong social ethos	Increase delivery of affordable units to help address housing crisis. Meet different housing needs by providing a range of affordable tenures, especially social rent. Protect their tenants' quality of life. Increase tenants' participation in decision making.	Spread geographically and grow in areas with low land costs or rationalise stock in high land value areas. Increase number of commercial activities or reduce proportion of social rent units to make up for funding gap. Invest in training tenants to become board members or invest in hiring professional non- exec board members.

Figure 3. Summary table of interviewee responses.

regulations - just as it does with any other market actor. With the monetary resources dwindling, funding bodies are resorting to 'soft, political pressure' as one CEO noted. For instance, appeals to an organisation's broader position within policy networks and imagined hierarchies can be used to shift the performance of actors and institutional practices. The Development Director of another HA explained how his organisation is helping central and city-wide government agencies to deliver a special needs programme, which has a very low profit margin, but it means 'they have a positive relationship' in a way that builds trust and forms of co-working.

Just as funding bodies are employing indirect means to steer HA's behaviours, so does the RSH. Under the rubric of 'co-regulation', it does not dictate or even indicate the strategic approaches that HAs should follow or how much they can grow, but it simply checks the necessary documentation that proves their long-term sustainability. It is the responsibility of HA Boards to ensure that their organisations are complying with set standards, with the RSA lacking the resources to 'go in and check everything'.

The level of scrutiny that RSH subjects HAs to depends on the size of the organisation's housing stock and the complexity of their governance arrangements. HAs with more than 1,000 homes are subject to quarterly financial surveys, annual review of their accounts and financial returns, and an In-Depth Assessments (IDA) of their risk profile every three years. For those HAs with less than 1,000 homes (the majority) the RSH only looks at their annual accounts and perhaps their business plan if their governance structure is very complex.[3] This simple numeric threshold helps the RSH to cut through the complexity of the sector of registered providers, which HAs are part of, and establish a framework that likens regulatory compliance with low risk. The RSH describes its approach as proportionate and at a scale that reflects the size and complexity of an individual HA. Larger HAs are seen as potentially carrying more financial risk and they are therefore regulated more intensively than smaller ones.

The RSH expresses the compliance of HAs (or their perceived level of risk) in the form of Viability [V] and Governance [G] ratings. V1 and G1 represent the highest level of compliance, or the lowest risk profile. These are the ratings all HAs strive to achieve because those will help them borrow money from investors at a lower interest rate. A grading of 3 or 4 makes it very difficult for HA to borrow any money. It also triggers a more intense scrutiny of the HA's documentation by the RSH, which could eventually lead to a more direct form of intervention, such as the appointment of an interim manager or imposing economic penalties (RSH, 2019). Nevertheless, these interventions have been rare and the vast majority of HAs achieve the highest ratings. Only seven out of 490 HAs assessed in 2020-1 were given a G3 rating (all small HAs) and only two given a G4. Six were given V3 ratings, none a V4 (RSH, 2021). On the one hand, these results suggest that flexible regulation is successfully steering the sector towards a high level of compliance. On the other, the gradual intensity of RSH's scrutiny of any troubled HA illustrate the indirect role that it plays on their activities and strategies. The RSH regulates through the threat of financial and governance re-grading, an indirect way of regulating, knowing that investors will also consider these ratings to decide whether to lend money to an organisation and at what interest rate. As one member of a lending organisation explained to us, 'the regulator exists to give confidence to finance to get involved'.

Therefore, the RSH plays the role of a mediator between finance and the HAs (Goulding, 2018) but it does not determine the way HAs should deliver public policy. Some of the big HAs highlighted what they saw as a paradox in regulatory terms. If they build more houses, in line with government policy, then they run the risk of being graded to a V2 level, making their credit more expensive within financial markets. If they build fewer new houses then this can be seen in regulatory terms as being less risky and in such circumstances it often perceived that they will normally be awarded a V1 grading - in effect a reward for doing less.

Much of the literature around financialisation has focused on the type of response from the big HAs to this austerity context: a strategy based on growth that comprised a) mergers of different HAs to strengthen the capacity of the resulting organisation to access debt markets; and b) an expansion of commercial activities and the delivery of housing units for sale in the open market, to help cross-subsidise the delivery of more affordable types of housing tenures as well as their less profitable services. This growth-led strategy could easily result in a V2/G2 rating from the RSH. Nevertheless, it has been the typical behaviour of the large and medium sized HAs. Understandings of V and G ratings may appear to be categorical but in reality there is a fluidity in how they are perceived. In some instances a V2 rating was even described as 'a badge of honour' recognised as such by entrepreneurial HAs and capital markets – who use a wider set of metrics in addition to RSH gradings to form their judgement about investing in a HA. It often gave an impression that a particular HA was trying hard to both comply with policy priorities – i.e. deliver more housing – and also to maintain a reasonable level of risk to remain attractive to investors.

However growth has not been the approach followed by many smaller HAs, not just because of their lack of financial capacity to tap into capital markets, but also because they tend to have less professional, permanent executive members who understand the complexities of operating in those markets. For these HAs, the reduction in government grants has pushed them towards a strategy of minimal growth and maximum efficient use of their rental and property assets, which is dictated by the number of units they are able to obtain from value-capture agreements with housebuilders and/or developers. This low-risk approach does not contribute significantly to the generation of a new supply of housing, yet it is perfectly valid from the regulators' point of view. In addition, this conservative, low-risk approach results in a more geographically concentrated housing stock which helps these HAs to reduce their overhead costs and provide a more direct and immediate relationship with tenants.

The narrative that paints all HAs as entrepreneurial organisations who will necessarily opt for a heavily financialised growth strategy leaves out of the picture the behaviour of these small HAs. It also fails to explain why some of those large HAs have started to reduce their growth plans since 2017. Interviewees have explained how the combined effect of new fire safety requirements after the Grenfell Tower disaster, and the government's pledge to meet a net zero carbon target in 2050 have significantly increased their expected maintenance and repair costs (see RSH, 2020).

In addition, the Grenfell fire has also triggered a review of 'housing experience' for tenants, with calls for HAs to increase tenants' input into their strategic decisions. All these recent contextual changes have created 'the most challenging period in the life of a large HA' in the words of one interviewee, with some cutting their housing delivery goals by up to 40% in 2021-22.

With only so much debt available from capital markets and more of that credit needed to upgrade the safety and energy efficiency of their existing stock (some of it as old as 150 years old), many large and medium sized HAs are revising down their housing delivery targets and expectations. Nevertheless, investors did not seem too worried about these changes. As one noted:

> 'If most [HAs] stopped building now, the rent goes on coming in, with certain amount of inflation, but their interests rates are fixed, meaning that they become a cash cow…so it becomes a trade-off to build new housing or improve the quality of existing housing.'

Other large HAs are still opting for a growth strategy but they are now looking for places outside London with lower land cost while some others are doing exactly the opposite – i.e. dispose of their peripheral stock and keep concentrations of stock in high land value areas of London. In this case, HAs have said that joint ventures (JVs) are their preferred method of delivery, both for new schemes and regeneration schemes, because it allows HAs to split the risk as well as the amount of capital required. Many small and medium HAs are considering merging with other HAs of a similar size. In this context, mergers are seen as a 'defensive behaviour, rather than ambitious behaviour, rather than to target more growth', a mechanism to reduce overhead costs and rationalise services. Finally, some HAs are also reducing the proportion of social rent units in favour of tenure types like shared ownership (see Wilson & Barton, 2022) which will likely yield higher 'affordable' rents.

In all, the analysis of interviews and documents have shown that HAs operating in a polycentric environment do not always follow the growth-led strategies one could expect from financialised actors. A polycentric environment dilutes the power of regulation across multiple actors, whose agencies become intertwined with that of others. This lack of hierarchical distribution of power enables HAs to decide how to best balance the different demands from these different sources of regulation. In this polycentric environment, financial capacity is a very important factor shaping HAs strategies, but not the only one. The historical origins of their existing housing stock, the professional skills of the executive and non-executive board members, as well as the overall ambition and values of the organisation all play a part in the strategic decisions and operations of HAs. As the CEO of an HA put it:

> I'm working for an organisation that is rooted in social purpose and there's a real alignment between my own personal values and the organisations and as a result of the organisation's roots, it is really keen to ensure that it stays connected to its communities, but that it also provides more housing. (…) So, I feel it's actually the extent to which the organisation's ethos and the extent to which it sees itself as maybe a community anchor or a kind of investor in its community or whether it sees itself more as in the market of just providing new homes and growth.

Conclusions: regulating in the shadow of the market

We have argued that the example of HAs reflects and reproduces broader tensions in the regulation and planning of welfare that is now taking place in countries such as the UK. In line with global orthodoxies, there has been a systematic attempt to reconstitute hierarchical structures of governance and control and replace them with more networked and negotiated forms of regulation. There have also been moves to create greater financial independence on the part of social housing providers to enable them to act more entrepreneurially in the pursuit of public policy ends. And yet, the process of devolving powers and responsibilities from the centre to multiple agencies, raises fundamental questions over political control and the governability of social and housing policy. The position of HAs, as being both a part of the local state but also independent from it, reflects and reproduces the emergence of what Krisch (2017) and Black (2017) have termed 'liquid regulation', in which regulatory systems are becoming a more negotiated process, underpinned by shared assumptions, norms of behaviour, and codes of expectation over what is 'reasonable' and legitimate action in a particular context. Such insights go beyond reductionist views of simple 'de-regulation' or the 'rolling-back' of the state found in much of the critical writing on neo-liberal reforms (Peck, 2010). Instead, they point to a more nuanced and dynamic process in which regulatory agencies co-evolve with HAs and central government programmes of action, to generate a range of outcomes that do not reflect linear lines of action between decision-making and outcomes. Whilst a range of writers have highlighted the importance of the 'shadow state' (Hood, 2000) in influencing the actions of state institutions, the example of HAs indicates the rise of a new type of regulation taking place both in the *shadow of the market* and the shadow of the state.

We have drawn on the example of HAs to examine some of the core regulatory tensions that emerge when market-led and highly financialised systems of planning are used to shape the delivery of public policy, in this case the provision of affordable and social housing. Whilst a range of contributions on HAs have examined the tensions they face in delivering social and economic objectives (*cf.* Aalbers, Loon, and Fernandez 2017; Jacobs and Manzi, 2020), we have developed these insights to explore how these tensions intersect with formal modes of regulation. It is not true to say that HAs are simply becoming more financialised and/or that government policies are pushing them to act in a specific way. The erosion of hierarchical control of housing policy has made it increasingly difficult to direct how and what HAs do in practice. Such findings indicate that shifts towards financialisation are not a one-way process of regulatory liberalisation followed by the adoption of debt-funded, real estate focused properly speculation and cross-subsidisation.

This article has demonstrated the importance of what Black (2008) terms *polycentric regulatory regimes* in shaping the extent of autonomy and discretion that HAs are able to apply to their activities, strategies, and programmes of action. Five modes of regulatory influence, or what we term gravitational pulls, have been discussed delivered by: central government departments; quangos; local governments; financial markets; and collective representative bodies. This polycentric environment generates multiple and sometimes conflicting demands that evolve and change over time and in response to changes in government priorities and market dynamics. The HA case is used to shine a light on broader questions of governability in the wake of neo-liberal reforms. Attempts to empower actors beyond-the-state to take more responsibility for the delivery of social policy has expanded the power and influence of a range of regulators. Despite being the recipients of public funds, HAs do not necessarily act as agents of the state in the production of affordable housing. Instead, the multiple and conflicting objectives and forms of regulation create a context in which HAs are able to choose when and what policy objectives they want to comply with. In this sense, HAs varied performance and practices mirror the ambiguous policy context of affordable housing production. Using such organisations to revolutionise housing production exemplifies a wider breakdown in governability in which 'any prior impression of success has depended on displacing certain governance problems…[so that] current zones of stability imply future zones of instability' (Jessop, 2016, p. 181). This article notes that many HAs have scaled back their financial activities following the creation of the RSH and (at the time of writing) the instabilities and uncertainties created by the Covid pandemic. Many are re-assessing what moral and social purpose they should serve in a context of growing social and economic inequalities, especially in relation to the ownership of housing assets (Ryan-Collins *et al*., 2017).

Moreover, we have also shown that the growth of market-oriented planning, that to different degrees is influencing welfare reforms across Europe (Halbert & Attuyer, 2016), is resulting in reformed types of regulation that has not only become more liquid and polycentric but also more *indirect*. Regulatory approval or disapproval is concerned with the financial ratings that such organisations are given by private regulators. At the same time, unexpected policy changes such as new fire safety and energy efficiency standards are accepted by capital markets as a new 'feature' of this investment asset's nature. The implications of these trends for understanding the governance of contemporary welfare are profound. Whilst much of the writing on the housing has focused on the ways in which public policy frameworks have become more financialised and quantitative, the example of RSH indicates that regulatory processes have also changed to become more indirect and market-oriented. Regulators are therefore as much concerned with the signals and confidence it provides for market audiences as it is with legitimating the actions of organisations in receipt of public funds and fulfilling a wider social purpose. These tensions are dynamic and subject to constant evolution. New regulatory demands, over tenants' rights or environmental standards, disrupt and re-make existing relationships. Similarly, shifts in financial and/or real estate markets can transform the perceived stability of HAs and bring about new responses from regulators and capital markets to take account of changing conditions. At the time of writing [Winter 2022], HAs are operating in a turbulent environment: levels of inflation, especially in the construction sector, and surging are threatening the viability of projects and the financial models used by HAs; there are shortages of labour in the wake of Brexit and the impacts of Covid on labour markets; house prices are showing signs of weakening nationally and internationally; and there are fiercely contested and conflictual debates taking place over how social housing finance should be delivered in the wake of rising costs, along with much public criticism of HAs and the treatment of tenants (following some high profile cases of neglect).In this polycentric regulatory environment HAs find themselves choosing how to best adapt to these multiple tensions and act as agents of public policy delivery.

Notes

1. In 2016/17 the contribution of HAs to total public debt for the UK was £69.6billion. By 2017/18, with rule changes, it had fallen to £6.6billion, then to just £0.6billion the following year (ONS, 2020), even though the actual financial position of HAs showed no change.
2. The fire that destroyed the Grenfell Tower in London on 14th June 2017 killed 72 people and "was one of the UK's worst modern disasters." (BBC, 2019) Grenfell Tower was part of the Lancaster West Estate, a social housing complex of almost 1,000 homes. The tower was built in the 1970s but had been recently renovated. The new external cladding was one of the key factors for the quick spread of the fire, which had dramatic consequences.
3. RSH. 2021. *Information required from registered providers*. Available at: https://www.gov.uk/guidance/information-required-from-registered-providers [Accessed on 20th December 2021]

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