AHB Mergers

and

Stock Transfers

Advice Note

(including Case Studies & Interviews)

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Contents

Background

Mergers and Stock Transfers are becoming an increasingly common feature of the AHB sector. As we transition from voluntary to statutory regulation a significant number of AHBs (particularly smaller and voluntary AHBs) are considering their future viability in an increasing regulatory environment.

Larger AHBs are also looking at diversification of their asset base as an opportunity to increase capacity and release equity to build more homes. Ensuring more efficient service delivery through economies of scale has also been viewed as an advantage of a merger or stock transfer in assisting AHB Boards deliver on their strategic objectives.

The Regulation Office recognises that no two mergers or stock transfer will be the same, and have therefore, sought to provide some overall advice and considerations for AHB Boards. This includes some feedback from organisations who have direct experience of going through a merger or stock transfer process.

Sector context

There are currently 552 organisations with Approved Housing Body status listed on the register maintained by the Department of Housing, Local Government and Heritage, with 282 of these organisations currently signed up to voluntary regulation. The AHB sector is considered quite diverse and ranges from the large Tier 3 organisations to the smaller, volunteer led AHBs. Most housing units are held by a small number of the large Tier 3 organisations and a high volume of smaller AHBs hold just 9% of the total stock.

We recognise many AHBs may be currently experiencing the 'perfect storm' with the Covid-19 pandemic, and business continuity arrangements have been tested. The medium to long-term economic and financial impacts have yet to be fully realised and as a result many AHBs are reviewing their options including the concept of mergers and stock transfers.

The changing environment in which AHBs now operate, includes the increase in legal and regulatory requirements. The Housing (Regulation of Approved Housing Bodies) Act 2019 which was signed into law in December 2019 provides for the regulation of AHBs for the purposes of ensuring the proper governance and financial viability of the sector. This is an important milestone for the sector and <u>all</u> AHBs listed on the Department's register will be subject to statutory regulation once legislation has been commenced.

Drivers for mergers or stock transfers

There are several reasons why a merger or stock transfer may be the right option for an AHB. These include:

- To secure the future viability of an AHB and the protection of tenants and their interests
- Board renewal and succession planning
- Where the Board or Regulator has identified concerns with their ability to meet legal and regulatory requirements into the future
- To increase the borrowing power of an AHB through diversification of its asset base
- To provide tenants and service users with a greater range of supports and services
- To achieve greater value for money through economies of scale
- To generate increased income levels which can be utilised for the purpose of the delivery of the AHB's strategic objectives

Options available to AHBs when considering a merger.

Where a Board is considering building a relationship with another AHB there are several options open to the organisation. These include:

- Merging with another AHB to form a new AHB
- Merging with another AHB to become part of that AHB
- Stock Transfer of housing assets to another AHB
- Stock Transfer relating to a specific group of housing assets (e.g. units in a specific location)
- Becoming part of a Group Structure with another AHB
- Management Agreement between AHBs for the provision of services
- Other collaboration opportunities, for example, procurement groups

It is important that the Board conduct a full appraisal and evaluation of the options open to them when considering the best outcome for their organisation. The interests of tenants should be at the heart of that decision-making process.

Regulatory expectations from any merger or stock transfer process

There are several key outcomes that an AHB Board should ensure as part of any merger process. These include:

- Compliance with all statutory, regulatory, or contractual obligations
- That appropriate skills and experience are in place in the governance and management of any merger partner
- Clear outcomes for tenants are identified including the safeguarding of tenant homes
- Appropriate communication with tenants and other stakeholders throughout the process
- Compliance with the regulatory standards of Governance, Finance and Performance
- Orderly transfer of assets and associated liabilities including the appropriate approvals as required

AHBs are required to inform the Regulator of any significant changes to their balance sheet in line with our Notifiable Events policy, this includes the impact of mergers and stock transfers.

AHB Boards should be able to evidence collective decision making, robust challenge and demonstrate they fully understand the governance, financial, operational and performance impacts as a result of any proposed merger.

Ensuring a successful merger

To achieve success when entering a merger or stock transfer process, the Board need to have established a clear agreement for delivering the merger process. This can only occur where the Board has conducted a full critical appraisal of the options and made a collective decision in relation to the chosen approach.

Obtaining the buy-in of all staff, tenants and stakeholders to the change process can only be achieved when the Board communicates with a single collective voice as to the benefits and aims of the merger.

Identifying the ‘right partner’ is a crucial element of success and consideration should be given to the alignment of the values and culture of the organisations. The Irish Council for Social Housing (ICSH)[1] can assist AHBs in this process.

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[1] https://icsh.ie/our-work/governance/

Having a project manager in place to ensure the implementation of the merger project plan can greatly enhance the success of the transfer of engagements. It is vital that key activities such as liaising with Local Authorities, DHLGH, completing due diligence, and complying with all legal and statutory requirements are fully identified and managed.

Tenants should be at the heart of any merger or stock transfer process and ensuring a full consultation process is in place is crucial to ensuring that the transfer of assets can go ahead.

The co-operation and collaboration of both AHB Boards is required to ensure a unified approach is in place. A clear programme of actions must be agreed and signed off by both Boards as part of the merger action. There should also be clear protocols in place for either AHB to raise concerns where progress is not in line with expectation.

Barriers to a successful merger or stock transfer

It is anticipated that for every successful merger process, a similar number can fail. It is important to understand what the barriers to success are and how Boards should ensure that merger partners are the 'right fit' for their organisation. There are several reasons for this which include:

- Cultural differences between AHBs, where there are differences between Board expectations and approach
- Lack of organisational or strategic fit between AHBs
- Legacy concerns - where an AHB Board are concerned that their identity may be lost through a transfer process
- Funding Issues – where there is a difference in views on how future stock investment needs should be met
- Resourcing Issues – where inadequate resources committed to ensuring successful completion of the merger process
- Poor communication with stakeholders which can lead to uncertainty around the benefits of the arrangement
- Delays in the process - the transfer of assets can take a significant period and without a robust project plan this process can drift over several years

Top tips for mergers

1. Complete a full appraisal and evaluation of the options open to the Board
2. Ensure Board approval in principle to the proposed merger/stock transfer
3. Liaise with all key stakeholders e.g. DHLGH, Local Authorities, Charities Regulator & ICSH
4. Ensure a complete Asset & Liabilities Register exists, identifying any Local Authorities or Financial Institutions who may have a charge on the AHB's assets
5. Conduct a full tenant consultation
6. Complete due diligence on the merging AHB to ensure you know what you are getting
7. Ensure a full stock condition survey is conducted and future repairs liabilities have been assessed including responsibility for those costs
8. Complete a financial feasibility for the proposal
9. Implement a Memorandum of Understanding between the two entities
10. Ensure a robust project plan is in place with specific timelines to manage the merger process
11. Ensure you have identified all legal and regulatory approvals you may require
12. Consider establishing a management agreement initially to ensure the continuation of services for tenants
13. Notify the Regulation Office of any plans at the earliest opportunity

Sector experience and feedback

Several AHBs have experience of entering a stock transfer or merger process when exploring the options for the future of their organisations. The Regulation Office has circulated a survey to some of these organisations with experience in this area and their feedback is outlined in the case studies below.

Some key points raised in feedback received:

“the size of the AHB should have no bearing on its role within the transfer process”

“the engagement of professional firms to assist in the transfer process should be considered”

“important to be respectful of the significant voluntary contribution made by the other organisation”

“Service users and tenants must be considered at every step of the process and this should always form part of the rationale as to why this is being done”

“The requirements of running a company and complying with law and regulation was making it increasingly burdensome for us as volunteers”

“the legacy of those who have invested in the organisation to date should be treated with respect and dignity throughout the process”

“By making the decision to merge or transfer stock, directors are helping to ensure the sustainability of social housing units in the AHB sector”

Case Study A: Views of a Tier 3 AHB who accepted a stock transfer from a smaller Tier 1

Making the decision

This organisation was approached by a smaller AHB who identified their organisation as a suitable merger partner. The Board made the decision to enter a merger process to help the smaller AHB achieve its goal of providing an improved service to its tenants while removing the increasing burden placed upon the organisation's voluntary Board members.

At the outset

The organisation conducted its due diligence, including reviewing the financial position of the other AHB, carrying out a stock condition survey, and assessing the impact on its organisation of taking on the additional units.

Tenant input & stakeholder engagement

Tenants were contacted early in the process through a Q&A session and all tenants were visited individually in their homes. The organisation took on the management of the homes at an early stage to establish good relationships and communication links with tenants, while providing the Board with regular updates.

Timelines, problematic areas & suggestions for improvement

The process took approximately two years to complete. The delays were predominantly linked with the legal and financial aspects of the process.

It is recommended to consider the engagement of professional firms to assist in the transfer process.

Feedback for AHBs considering a merger or stock transfer

The size of the AHB should have no bearing on its role within the transfer process. The importance of engagement with the other AHB is a critical factor in the merger/stock transfer process and any merger should be a merger of equals.

The key focus should be on improving the services provided to tenants and protecting voluntary staff and Board members within the AHB sector.

The organisation in this case study would recommend considering stock transfers and/or mergers to other AHBs.

Case Study B:Views of a Tier 3 AHB accepting a stock transfer from a small Tier 1

Making the decision

This organisation was approached by a smaller organisation due to its experience of working with Parish and Church based organisations. The decision was made by the Board to proceed with the proposed stock transfer following a due diligence exercise carried out by the organisation which determined the level of risk involved.

At the outset

To begin the process, the organisation conducted a thorough due diligence exercise including a structural report carried out by a certified architect and a stock condition survey completed on all units in question. Several meetings were held between the organisations in the beginning laying out the approach to be taken.

Tenant input & stakeholder engagement

The organisation that was transferring the stock managed tenant consultation throughout in this case.

Timelines, problematic areas & suggestions for improvement

The process in this case is expected to take 6-8 months. A key area of concern for this organisation was ensuring that it could meet the long-term maintenance requirements of the stock. The merger only proceeded once this requirement was satisfied.

This organisation believes that their next stock transfer process could be more streamlined. For example, now that it has an established process in place it could reduce the number of meetings held between both parties at the outset.

Advice for AHBs considering a merger or stock transfer

This organisation highlights the importance of shared or common values between organisations considering a stock transfer or merger. It is also important to be respectful of the significant voluntary contribution made by the other organisation.

The transfer should only be made after a due diligence process has been completed. Additionally, the organisations involved in the process must ensure that all legal issues, such as clean title, are considered.

The organisation in this case study would certainly recommend mergers to other AHBs.

Case Study C: Views of a Tier 1 AHB who transferred stock to a larger Tier 3

Making the decision

This AHB identified a duplication of the services being provided in their area. The organisation also considered there was a lack of direction and expertise at their own Board and decided to embark upon a stock transfer and merger with a larger AHB with a similar objective and ethos.

At the outset

This organisation established a set of criteria they would require in the other organisation including:

- Board expertise
- Size – this organisation did not want to merge with a small AHB
- Due Diligence
- Value fit – who the service users are and that the proposed AHB would honour their transitional housing model.

Based on the above criteria, a sub-set of suitable AHBs were identified and subsequently approached by the CEO and Board members. The organisation then requested a list of documentation from these AHBs to review their adherence to their own Governance procedures.

Tenant input & stakeholder engagement

All communication was on an ad-hoc basis until an established approach had been agreed. Once an agreement had been made, communications with tenants and service users commenced in detail. During the negotiation process, a senior support worker from the proposed merger partner was seconded to liaise and build relationships with the tenants. Once a Memorandum of Understanding was signed, the CEOs of both organisations met with all tenants to discuss the merger.

Timelines, problematic areas & suggestions for improvement

The full process took approximately 12 months to complete. The initial delays were at Board level and in ensuring the Memorandum of Understanding was reflective of the wishes of both parties.

This organisation suggests the process could be enhanced with the inclusion of guidelines on stages to follow which could assist less experienced organisations.

Feedback for AHBs considering a Merger or Stock Transfer

Service users and tenants must be considered at every step of the process and this should always form part of the rationale as to why this is being done.

It is also important to ensure all stakeholders are on board throughout the process.

The organisation in this case study would recommend this approach to other AHBs if they are exploring options for the future.

Case Study D: Views of a Tier 1 AHB who transferred stock to a larger Tier 3

Making the decision

This AHB felt its voluntary directors were under increasing time pressure to fulfil their roles and the organisation had no staff. The increased regulatory environment also added to the expectations and responsibilities placed on voluntary directors.

At the outset

The AHB engaged with the relevant Local Authority who assisted the organisation and provided guidance. The Local Authority suggested AHBs that may be appropriate for their organisation to approach. The AHB contacted these and held meetings with interested bodies before deciding on their preferred partner.

Tenant input & stakeholder engagement

Public meetings were held with tenants after the decision was made to transfer the stock. The tenants understood that the organisation and themselves, would be better served through a merger into a larger AHB.

Timelines, problematic areas & suggestions for improvement

This process took just over 24 months to complete. The initial process was reasonably fast with the decision made and the management agreement signed within several months. However, the legal process was somewhat more protracted for reasons that the organisation did not fully anticipate at the outset.

This organisation suggests that a step by step procedure for everyone concerned, including solicitors and auditors, could be very useful, particularly where many people involved are not familiar with the process. Recommended timelines could be a good idea also.

Feedback for AHBs considering a merger or stock transfer

Consult with all relevant parties beforehand informally. Establishing a more defined timetable, in conjunction with legal and financial companies, would be useful.

The AHB in this case study would recommend mergers to other organisations who are exploring their options for the future.

Case Study E: The Peter McVerry Trust shares its merger experiences

In addition to the experiences outlined above, the Regulation Office conducted an interview with Pat Doyle, CEO of The Peter McVerry Trust (PMVT), to gain insight into the Trust's experiences and learnings of the stock transfer and merger process. The Peter McVerry Trust has successfully completed stock transfers and/or mergers with seven AHBs to date.

In each case, the Trust was approached by the AHB in question. In some cases, the Peter McVerry Trust was selected from a short list of potential organisations and in others, it was through the Irish Council for Social Housing (ICSH). One of the roles of the ICSH is to provide support for smaller AHBs and it also works on matching suitable organisations where stock transfers are being considered.

According to the Trust, an important factor in the success of their stock transfers has been the review and alignment of the ethos of the organisations involved at an early stage.

At the Outset

From the start of the process, there needs to be buy in from key stakeholders. The support of Board members, the CEO and former/ founding directors is critical at an early stage for the process to be successful. Ensuring that these stakeholders are not just keen to proceed but are fully committed and prepared is a necessity. Once this is the case, the Trust believes the process will be successful. Additionally, establishing a Confidentiality Agreement at the beginning, and a Memorandum of Understanding following due diligence, is important. The Trust highlighted that at an early stage both organisations nominated three members to represent their organisations throughout the process and the names of these representatives are included in the Memorandum of Understanding.

Due Diligence

The Peter McVerry Trust carry out their initial assessment of the proposed AHB at an early stage. The due diligence piece of the process is critical but takes the Trust no longer than 3 to 4 weeks to complete. The Trust carries out due diligence in multiple areas including the following:

- Review the alignment of organisational ethos
- Review of Reputational Risks
- Review of Financial Standing
- Review of Governance Standards
- Review of Health and Safety Reports
- Review of HR matters
- Review of Child Protection Issues
- Stock Condition Survey

- Review of Formal Complaints
- Review of CRO Reports
- Review of Charities Regulator Reports
- Review of Housing Regulator Reports

The Trust highlighted that there had been some cases where concerns arose during the due diligence phase which caused delays. Some of these including, governance, financial and legal issues, however, after some time investment from the Trust the process was successfully completed.

Tenant Input & Stakeholder Engagement

The Trust meets with all Board members at the beginning of the process and an EGM is held at the end to conclude the process. Additionally, agreed communications were issued to all former and founder directors and a public meeting was held to mark the journey to date, to acknowledge each phase of development and to recognise the achievements of the outgoing Board and to give reassurance as to the continuation of their work. The Trust also issued communications, including a newsletter, published in the Irish Times which had input from both PMVT and the outgoing directors. The importance of communication with former directors was highlighted as a key piece of the process in respecting this legacy.

Tenants were also considered a key stakeholder in the process. Joint communications were agreed with both organisations and communicated by way of joint visits to each household. This involved PMVT staff and outgoing staff explaining written correspondence and offering reassurance in respect of the continuation of existing commitments.

Additionally, throughout the process the Trust keeps a line of sight on communication with Local Authorities. The Trust advises to engage with relevant Local Authority as early as possible in the process.

Timelines

Due to the experiences of the Trust, the stock transfer process now generally takes 3 to 5 months to complete. Their approach is to narrow down a timeline by establishing an appropriate Board meeting date that the process could be completed by and to work back from this date with the aim of a maximum two-week gap between each part of the process. Elements such as changes in audit period or regulatory cycle should also be considered when timelines are being established.

Problematic Areas

The Trust highlighted a problematic area during the process was holding various stakeholders to a timeframe. The Trust had also experienced organisations wanting to expand the conditions at various stages in the process. A useful tool in dealing with issues that arose was utilising the signed

Memorandum of Understanding and referring to the agreed timelines and conditions set out from the beginning of the process.

Managing the personalities of different stakeholders with sensitivity to their connection to the organisation including the personal investment of outgoing directors and founder directors was also important to get right. Some parties see the need to transfer stock and are keen to proceed but were not necessarily ready to move forward and make the decision.

Additionally, the Trusts recognition and respect of the former and founder Board members' legacy was key in ensuring the process ran smoothly. The Trust regards it as a privilege to be approached by organisations to transfer stock. It is fully cognisant that directors may have invested a significant proportion of their life's work into building the organisation. The decision to transfer stock to another AHB should be celebrated as the next phase for the organisation.

Advice for AHBs considering a Merger or Stock Transfer

Where organisations are embarking on a merger or stock transfer, the Trust recommends that the preparatory work is completed with every Board member first to ensure buy in. In-depth due diligence and a comprehensive Memorandum of Understanding are also key areas of the process.

The Trust highlights that when considering a stock transfer or merger, the legacy of those who have invested in the organisation to date should be treated with respect and dignity throughout the process. It should be viewed as a duty, honour, and privilege. Stock transfers and mergers can be considered by AHBs where they are exploring options for the future. The decision made by AHBs to transfer stock is as important to the sustainability of the sector as the decision made by founding directors to set up the AHB. This decision should not be viewed as the end for the organisation but rather the next stage of development. By making the decision to merge or transfer stock directors are helping to ensure the sustainability of social housing units in the AHB sector.

Key Learnings

- Ensure there is required buy in from key stakeholders, ensuring full commitment to the process
- Alignment of ethos/values is essential
- Narrow down a timeframe i.e. September Board meeting (work back from this date)
- Complete the process before a change in audit period or regulatory cycle
- Establish MOU and Confidentiality Agreement at an early stage
- Carry out initial assessment at an early stage
- Due diligence is essential - timeframe generally 3 to 4 weeks
- Nominate 3 representatives from each organisation to oversee the process
- Recognising former/founder directors as key stakeholders and respecting their legacy is essential

- Ensure communications/engagement are issued to former/founder directors
- Issue joint communications to tenants which have been agreed by both organisations
- Ongoing engagement with Tenants – home visits and ongoing communications
- Embargo on new developments during the merger process should be part of the MOU – all decisions should be agreed mutually during the process
- Hold a public event to mark the organisation’s journey to date
- Both organisations should meet once or twice in the year after the stock transfer to review the progress made