Called to appear before Communities and Local Government Committee

Communities and Local Government Committee, the group of MPs that monitors the work of Communities and Local Government, has launched an inquiry into the regulation of social housing in England. The committee has called Julian Ashby, Chair, Regulation Committee and Board Member, Homes and Communities Agency (HCA), formerly Deputy Chair, Tenant Services Authority (TSA), to appear before the inquiry and has invited written submissions from interested parties (deadline 27 Jun 13). Ashby has more than 30 years governance, mergers and troubleshooting experience in the social housing sector.

 Tenant Services Authority (TSA) (Office for Tenants and Social Landlords) existed as the regulatory agency for registered providers of social housing in England. It acquired the regulatory function of the Housing Corporation to inspect housing associations and respond to its concerns. The remit expanded to regulate local authority housing, housing cooperatives and arm’s length management of organisations by not-for-profit companies (ALMOs) with housing stock ownership normally retained by local authorities. Set up by the Housing and Regeneration Act 2008, TSA took over regulation from the abolished Housing Corporation. On top of economic regulation it also aimed to help empower tenants and strengthen housing association boards.

After the 2010 UK general election, the government indicated its intention to close TSA. It transferred the responsibilities for governance and financial regulation of housing associations to Homes and Communities Agency (HCA) with the Housing Ombudsman as the final point of appeal for tenant complaints. HCA now holds the brief to provide investment for new affordable housing and to improve existing social housing and regenerating land use. Both agencies established by section 81 of the Housing and Regeneration Act 2008 had investment powers over the Housing Corporation. TSA closed when HCA assumed responsibility for regulation of social housing (01 Apr 12).

The inquiry will examine the work of the regulation committee since it replaced TSA and will examine current risks in the social housing sector and decide whether the regulator has the resources it needs to effectively police social landlords. The regulator published a discussion paper outlining how HCA could adapt its approach to regulation to take into account increasing commercial aspects of the sector (00 Apr 13).

[Housing association representatives have raised concerns about HCA plans. National Housing Federation warned that setting limits on non-social housing activity could be unduly restrictive, and Placeshapers group of 100 social landlords claims tougher regulation could force its]
members to cut back on mixed tenure developments. The select committee will consider the potential impact of proposed changes.

[Inside Housing]

Memorandum

Dangerous Carbon Monoxide and other Noxious Gas Emissions in Public Housing

To the Independent Regulation Committee of the Homes and Communities Agency, Communities and Local Government Committee appointed by the House of Commons to examine the administration, expenditure and policy of the Department for Communities and Local Government and associated public bodies.

Executive Summary of Principal Issues

The issues predicate upon dangerous carbon monoxide and other noxious gas emissions in public housing since 30 March 2011. The conditions result from negligence and non-compliance with current health and safety regulations by Cosmopolitan Housing Group (CHG) (now Sanctuary Housing Association) comprising Chester & District Housing Trust Ltd. (CDHT) “the Trust”.

Homes and Communities (HCA) and Health & Safety Executive (HSE) neglected to adequately regulate dangerous health and safety conditions which exacerbated during the past two years due to relaxation of on site inspection requirements resulting from delegation of regulatory responsibilities to landlords and subsequent laissez faire regulation by HCA and HSE. They used Closed Material Procedures (CMP) to sabotage investigation of public sector housing complaints and deny tenant rights under FOI/DPA/EIR.

[Data Sabotage]

The issues escalated due to a cover up of alleged misconduct in public office during proceedings related to near bankruptcy caused by lack of due diligence in an ill-considered amalgamation of the Trust with CHG. Moody’s decision to downgrade the credit ratings of 26 housing associations predicated upon the financial problems faced by CHG and the time it took to safeguard its corporate future.

The Trust and CHG have now reverted to their provenance as separate entities funded by Sanctuary Housing Association (SHA) with headquarters in Worcester. The bailout cost Cheshire West & Chester Council (CWCC) and its taxpayers a substantial loss of assets; however, the acquisition moves the overall responsibility out of the generally corrupt political arena where irresponsible public sector officials, regulators and MPs conspired in a plethora of alleged criminal offenses related to public housing repairs and maintenance.

The Trust admits that gas heating appliances in at least a thousand premises require replacement to conform with current regulations. That will cost an estimated £1,000,000.00 for the purchase of new appliances plus the cost of installation which takes two engineers at least a day for each flat or house depending upon the amount of carbonation present in the structure.
Additional expenses relate to correction of structural carbonation and installation of inspection hatches to bring buildings and flues into compliance with HSE regulations which will add £-millions to the overall cost. Hence, the reason for capping gas supplies and denying inspection of premises by independent qualified structural engineers which would have revealed the magnitude of portending financial problems and had an adverse affect on refinancing negotiations.

Current complaints to the Information Commissioner (ICO) address document withholding, contextomy and IT sabotage while handling requests under Freedom of Information Act, Environmental Information Regulations and Data Protection Act (FOIA/EIR/DPA) during the same period. That resulted in conspiracy to cover up violation of current health and safety regulations.

HCA (TSA) and HSE inspectors evaded their responsibility to inspect or consult with tenants. Consequently, the dangerous conditions still exist and elderly tenants have suffered health and safety risks for more than two years during which time some of them had no gas heating or hot water for extended periods during the two coldest winters on record.

The Trust, HCA and HSE in a consort with CWCC and Chester City MP tried to hide the facts about the gas health and safety risks. They effectively granted impunity to public sector officials by denying access to documents and information that could indict them. To that end, councillors and their lawyers held a series of secret courts and declared themselves not guilty.

Meanwhile, the health and safety risks increase due to the servicing umbrella that compounds existing negligence and grants duty-holders impunity since HCA divested itself of pragmatic regulatory responsibilities in order to prefer financial stability and economic progress to the detriment of the tenants who provide them with income.

**Introduction - Credibility Statement**

First published in 1944, the veracity of the author’s published work has never received a legal challenge. He has spent sixty years as an investigative journalist and graphic designer, including twenty years as a new media industry CEO and systems designer-consultant also thirty years as a post-graduate professor teaching computer industry executives working on post-graduate degrees or doctorates in journalism, law, and graphic design.

In 1992, he founded *Contra Cabal* (one of the first and largest non-profit electronic magazines to appear on the Internet) for which he develops the site, writes articles, designs pages and produces graphics. He has written about a thousand web articles on corporate, trade union, senior and academic abuse also institutionalized racism.

After a grammar school education, an apprenticeship in Fleet Street, London and military service in the Middle East he formed a group of four public relations companies in London which specialized exclusively in modular construction and precast building techniques. Later in US, he became chief executive of several corporations in the US communication industry and designed one of the first word processing systems in 1973.

Employed as a corporate chief executive officer for 23 years and as a senior administrator and professor at private and public sector universities in the US for 25 years, he has read UK and US law since 1947. His current research and conclusions base upon 33 years experience of UK and US Freedom of Information Acts and State laws *in pari materia*. 

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He worked as communications consultant to Wilem Frischmann, CBE, FICE, FIStructE who joined C J Pell & Partners (1958) becoming a partner (1961) and Chairman (1968). Considered as one of the foremost engineers of his generation, Frischmann gained his reputation on technically ground-breaking developments predominantly Centre Point, Tottenham Court Road/Oxford Street, London (at that time the tallest building in London and the first with precast concrete construction) and on several other notable building projects.

He also worked as communication consultant to developers, architects and engineers in the UK building industry prior to moving to US in 1962 and gained extensive experience in the building of concrete structures during the 1950s and 1960s. He acted for about fifty building developers and contractors which culminated in a modular construction exhibit at Crystal Palace in 1962 to introduce the ten centimeter (4") module into the building industry.

He organized a second modular presentation at the building exhibition in London as the result of his close working relationship with the Royal Institute of British Architects through his association with architect Mark Hartland Thomas, a member of the Festival of Britain Presentation Panel, where he introduced A4 DIN sizes into general use in the building and printing industries.

**Factual Information**

The issues do not address conditions at a single leased property in a landlord/tenant dispute as HSE would have the public believe. Instead, a fully investigated three-year case study of carbon monoxide emissions revealed a string of health and safety risks in properties within the regulatory remit of HCA and HSE that they have chosen to ignore. The study shows conditions serious enough to portend fatal consequences in hundreds of social housing premises and reveals thousands of properties that do not comply with current HSE gas regulations nationwide.

The subject properties have had no gas inspection in accordance with HSE regulations for more than two years. The Trust has sabotaged attempts by the Tenant to mitigate the damage at his own expense. That covers up HCA and HSE failure to investigate fraud and neglect attributed to the Trust which could construe as multiple misconduct in public office.

A survey among 4,300 private sector tenants (09 May 13) shows an estimated 900,000 people in England now at risk from gas safety hazards. YouGov an international, online market research agency that offers research and market intelligence reports conducted the survey for Shelter, a registered charity that campaigns to end homelessness and bad housing in England and Scotland.

The law requires landlords in both public and private sectors to carry out a gas safety check every year to identify possible problems including faulty appliances that could lead to gas leaks or carbon monoxide poisoning. One in 10 private sector tenants did not have that mandatory gas safety check during 2012 according to the survey. Independent research by British Gas found 15% of private landlords unaware of their legal responsibilities.

Landlords must maintain gas fittings and flues in good order and have gas appliances and flues checked by a registered gas engineer for safety once during each period of 12 months. They must also keep a record of all safety checks for 2 years and issue a copy to each existing tenant within 28 days of inspection and to any new tenants before they move in.
When a flue fault exists in combination with an appliance that does not operate correctly and has improperly placed vents to the outside of the building or vents in need of repair or replacement, dangerous levels of carbon monoxide release into living accommodation. When breathed by tenants, those emissions stop the blood from bringing oxygen to cells, tissues, and organs.

When a fire or heater burns gas in an enclosed space, it gradually uses oxygen and replaces it with carbon dioxide (CO2). If the amount of carbon dioxide in the air increases, then it prevents the fuel from burning properly and the appliance emits poisonous carbon monoxide. Inhaling those emissions can cause loss of consciousness and death in a short time.

In extreme cases, large volumes of noxious gases (which includes second-hand tobacco smoke) breathed by tenants with existing respiratory or other medical conditions can kill them within minutes without warning. This situation particularly applies to elderly tenants especially when harassed and bullied into withdrawing complaints that cannot proceed because of the use of closed material procedures (CMP).

Although both HCA and HSE claim openness in their investigations and decisions, they sabotage FOIA/EIR requests using CMP whenever they deem that disclosure “would not serve the public interest” which effectively translates into “when not politically or financially expedient”. Executives maliciously corrupted files to prevent legitimate access to information and used Intranet URLs to give the impression of openness when those files remain inaccessible.

**Recommendations for Action**

HCA regulatory judgments indicated misconduct in public office among CHG, HCA and HSE public officials. HCA holds the responsibility for the regulation of registered providers of social housing in England. It sets standards and regulatory functions within which housing trusts must operate under the provisions of Localism Act 2011. The first HCA regulatory judgments placed CHG and the Trust at the bottom of the list. HCA found that the Trust did not meet governance and financial viability standards. It had serious regulatory concerns which made it subject to intervention or enforcement action.

HCA focuses on governance, financial viability and value for money as a basis for robust economic regulation to maintain lender confidence and protect taxpayers. It sets consumer standards but leaves the primary responsibility for resolving issues between landlords and tenants at the local level. That has resulted in *laissez faire* policies and misuse of CMP to thwart openness required by FOIA/EIR/. 

The Tenant reported dangerous gas conditions and made multiple official complaints to the Trust also to HCA and HSE about carbon monoxide and other noxious emissions through faulty installation of gas fired back boilers and structural carbonation. Both the duty-holder and the regulators ignored the complaints and painted over evidence including cracks in ceilings and voids that showed carbon monoxide stains which construes as misconduct in public office.

The Trust caused the Tenant to encounter near-death experiences through neglect of their duty of care. Trust employees harassed and bullied him when he complained to HSE about violation of health and safety regulations. HSE inspectors made no attempt to contact the Tenant or visit the property to investigate the situation in accordance with HSE regulations or attempt to mitigate the damage although given several opportunities.
HSE effectively granted the Trust impunity to permanently leave the Tenant (an octogenarian) without heat and hot water in a flat riddled with carbon monoxide and other noxious gases. That period included two of the coldest winters on record with below zero temperatures: a condition which still exists. The Trust maliciously capped the gas supply with the sole purpose of preventing inspection by a structural engineer. An independent inspection would have revealed dangerous carbon monoxide emissions and defective structural carbonation. HSE Regulation 36(2) states that every landlord maintain in a safe condition: (a) any relevant gas fitting; and (b) any flue which serves that gas fitting, so as to prevent the risk of injury to any person in lawful occupation of premises.

HCA, HSE and the Trust (jointly and severally) evaded responsibility to prevent possible carbon monoxide emissions in approximately 1,000 Trust flats and to maintain appliances and flues in a safe condition in accordance with The Gas Safety (Installation and Use) Regulations. Complaints essentially asked that the Trust rectify dangerous health and safety conditions existing in several flats in a particular building and by extension other flats built during the same period (circa 1960).

Carbon monoxide, difficult to detect and easy to inhale without realizing it, has no smell, taste or color and results from inefficient burning of fuels such as gas, oil, coal and wood. When a fire burns in an enclosed space, it gradually uses oxygen and replaces it with carbon dioxide. If the amount of carbon dioxide in the air increases, then it prevents the fuel from burning fully which releases carbon monoxide, a poisonous gas. Inhaling carbon monoxide can cause a loss of consciousness and death.

Gas boilers located away from external walls have flues that run through ceiling (or wall) voids. In such cases, when engineers service or maintain a gas appliance they find it difficult, or impossible, to determine correct flue installation and to define the existing condition. In this case, the Trust has evaded its responsibility and duty of care to address that dilemma by updating appliances and structural appurtenances.

HSE requires that the original installer and every subsequent servicing or maintenance engineer must visibly check continuity of flues in chimneys to ensure installation to manufacturer’s and HSE specifications. Flues must have support throughout their entire length with all joints correctly assembled and appropriately sealed. Those requirements remain impossible without updating the premises to comply with current HSE regulations.

The Trust took no action to bring the premises into compliance with health and safety regulations for two years then used a quick and dirty installation of new back boilers in some flats contrary to manufacturer’s instructions. The Trust gave the impression that they had brought them into compliance with revised HSE regulations before the HSE deadline for completion (31 Dec 12).

Bizarrely, they swapped new non-conforming boilers (which cost half the price of replacements that meet regulatory requirements) for old without addressing structural deficiencies. That compounded existing emission problems by venting laterally to the exterior of the building instead of correcting or sealing carbonated chimneys or voids and installing hatches. The fumes now reenter living accommodation through open windows and vents.

Neglect and misconduct by public officials to follow their own procedures in a timely fashion have allowed the Trust and HSE employees (also PH Jones as subcontractors) to collude in creating the dangerous practice of using horizontal air ventilation conduits for carbon monoxide.
emission contrary to manufacturer’s instructions. Neither the Trust nor HSE has acted upon complaints in accordance with published protocols; instead, they both used evasive tactics.

An inquiry to the manufacturer as part of an information verification process contained this question: Where can I find the external/exterior flue component description and installation instructions for the latest back boilers? The manager replied that: The only flue option for that back boiler is a chimney liner in a 9 x 9 chimney or similar. There never has been an option for anything else and no plans for alternatives exist at present. The published instructions state: No horizontal runs or flues attached to the outside of the building are permitted. The Trust, HCA and HSE have ignored those admonitions.

Most investigations occur under section 447 of the Companies Act 1985. Investigations remain confidential and allow suspicion of misconduct without risk of harming the business. Should those investigations prove misconduct in public office, it is possible to file applications to wind up the business and/or disqualify the directors. The Trust has shown no willingness to mitigate or any intent to comply with regulations, now or in the future.

Precedents show definitions of a public officer as one who holds an office of trust concerning the public, especially if attended with profit by whomever and in whatever way the officer accepted appointment. The person concerned need not hold an office in a narrow or technical sense. Relevance rests in the nature of the duties and the level of public trust involved rather than the manner or nature of appointment. Public office holders discharge any duty in which the public has an interest especially if they receive a salary or other payment funded by the public and have an obligation to perform a public duty.

Stonewalling denies appeals and abrogates tenant rights by allowing public sector officials to indulge in contempt prior to investigation. Neglect to investigate promptly, or substantiate a denial with particularity, construes as silent withholding to evade acting upon lawful requests. Moreover, laws require public sector employees to document any issue in which they officially participate. (2962 words)

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CONTRA CABAL FOUNDATION LIMITED
A Private Limited Company Incorporated under the Companies Act 2006
Registrar of Companies England/Wales #7290470
**nota bene** (15 Jul 13)

Communities and Local Government Committee accepted two Background Papers

This submission and another from the Police Crime Prevention Initiative.

HCA Background 01 - Contra Cabal Foundation Limited.

HCA Background 02 - Police Crime Prevention Initiative.

Full text at:

[Regulation Committee of the Homes and Communities Agency]

[Communities and Local Government Committee - Minutes of Evidence - HC 310]

[Written Evidence]

**nota bene** (19 Jul 13)

**MPs attack Regulator over Viability Ratings**

The chair of a prominent committee of MPs has raised concerns with Eric Pickles about the transparency of financial viability ratings published by the social housing regulator.

Clive Betts MP, chair of the communities and local government select committee, has written to the communities secretary to highlight evidence MPs heard this week from Julian Ashby, the chair of the regulation committee of the Homes and Communities Agency.

The MPs were alarmed the regulator is not recording its concerns about financial viability by downgrading housing associations because it fears this would cause the landlords to breach loan covenants, giving banks the opportunity to reprice debt.

The committee will publish a formal report with recommendations in the autumn. But Mr Betts said members were so concerned by what they heard it was decided he should write to the secretary of state in his role as chair of the committee, although not formally on its behalf. . . .

[Lloyd - Inside Housing]

**nota bene** (11 Sep 13)

**Committee Raises Serious Concerns about Regulation of Social Housing**

In a Report published today, the Communities and Local Government Committee criticises the financial viability ratings of social housing providers published by the sector's Regulator, Julian Ashby.

Despite acknowledging that a "handful" of providers gives him concern, the Regulator is reluctant to give them lower financial viability ratings, fearing that doing so might trigger an upward re-pricing of their debt. Instead, the Regulator uses governance ratings to signal concerns about financial viability. This practice lacks openness and should stop, says the Report, and the Regulator should publish accurate financial viability ratings.
The fear of triggering a re-pricing also prevents the Regulator from using many of his statutory powers, preferring to adopt informal approaches instead. This lacks transparency and risks too close a relationship developing between the Regulator and providers, says the Report.

The Committee urges the Regulator to examine how other regulators have addressed his concerns that the use of statutory powers may be counter-productive.

Commenting on the Report, Clive Betts MP, Chair of the Communities and Local Government Committee, said:

The Committee was surprised to find that what purported to be an assessment of the financial viability of housing associations was no such thing. As it stands, if a housing association was in serious financial difficulty, nobody would have a clue.

The current approach of using governance ratings to signal concerns about financial viability lacks openness and is confusing. It is unfair to expect tenants, taxpayers and lenders to understand and decipher the Regulator's coded messages.

Serious questions must be asked of a Regulator unable to use his statutory powers or provide a frank assessment of providers' financial viability. If the sector knows he will not use his formal powers the Regulator's position and effectiveness are undermined. The Regulator must find answers, and he must do so quickly.

I fail to believe that the situation faced by the Regulator is unique to the HCA regime. The devolved administrations' housing regulators, not to mention regulators in other sectors, must encounter similar dilemmas. The Regulator should work with them to see how they have addressed his concern that the use of statutory powers could prove counter-productive.

The Cosmopolitan Case comprising Chester & District Housing Trust

The Committee's concerns are underlined by the case of Cosmopolitan Housing Group, which came close to insolvency in 2012. The Regulator only lowered its financial viability rating for Cosmopolitan in December 2012, despite the fact that he had been monitoring the situation for months and the possibility of insolvency had been raised in the media two months previously.

Betts said:

The eventual downgrading of Cosmopolitan amounted to a futile exercise in locking the stable door long after the horse had bolted. It exposed the serious shortcomings of the system. It comes as no surprise to the Committee that Moody's cited the episode when downgrading all but one of the English housing associations in May this year.

The Report also raises concerns about how effectively the Regulator is discharging his remit for consumer regulation. Noting that of 111 complaints related to consumer standards referred to the Regulator no case of serious consumer detriment was found, the Report calls for an annual external check to be carried out to provide assurance that the Regulator is discharging his duties effectively. The first evaluation should be published no later than Easter 2014, says the Report.
Betts said:

The Regulator has a key role to play in regulating consumer standards in the social housing sector. He appears, however, to have interpreted his remit in this area as narrowly as possible and we were left with the impression that he saw it as a distraction from his main job of economic regulation.

It is not for us to judge individual cases. It is for us, however, to consider whether the Regulator has systems in place that allow him to discharge his duties effectively. We are not convinced this is the case. "An annual evaluation of the Regulator's handling of consumer complaints should be carried out by an external, independent reviewer to ensure that it meets the criteria of independence, fairness, effectiveness, openness and accountability."