

# **Report of the Ujima Inquiry**

28 July 2008

## The Inquiry

This independent Inquiry was set up by the Housing Corporation (the Corporation) following the collapse of Ujima Housing Association (Ujima) because of the severity of the issues raised for the sector as whole – associations, regulators, lenders, tenants and government.

The use of receivership distinguishes Ujima from other associations that have experienced serious financial difficulties. This has brought into question widely held assumptions about the sector's financial standing, which may have consequences for its continued long-term success.

Not least among the wider implications for the social housing sector is that the timing of Ujima's demise, coming as it did during difficult market conditions, could exacerbate any hardening in the attitude of lenders, who have historically lent at advantageous rates because they saw the sector as effectively risk-free thanks to the strength of the Corporation's regulation and its due diligence.

It has also brought into question the adequacy of the Corporation's approach to regulation, the nature and extent of its powers to intervene in a failing registered social landlord and its approach to the adequacy of development funding.

The members of the Inquiry Team were:

- Simon Braid (Chair), Head of KPMG's UK charity practice.
- Jas Bains, Chief Executive, Ashram Housing Association.
- Donald Hoodless, Corporation Board Member and its Audit and Risk Committee Chair.

The terms of reference, which are set out in full in Appendix 1, are summarised below:

1. Assess the extent to which Ujima's Board and senior management had access to accurate and timely information on its performance and whether that information was shared with its auditors, lenders and the Corporation in an open and accountable manner.

2. Assess the application of the Corporation's risk-based approach to regulation, including its investment decisions, and to determine whether there were any deficiencies in the approach and/or its application.
3. Assess the effectiveness of the Corporation's insolvency powers, and how they were employed in ensuring:
  - (a) the protection of Ujima tenants' interests.
  - (b) the protection of the public purse and publicly funded assets.
  - (c) the safeguarding of lenders' interests.
  - (d) consideration of other Corporation objectives, e.g. sustaining a vibrant independent black and minority ethnic (BME) sector.
4. Make recommendations as to whether, and if so, how, regulation policy and/or operational systems may be improved in preparation for the establishment of the new social housing Regulator.
5. Recommend any amendments to the Housing and Regeneration Bill<sup>1</sup> that would improve the new Regulator's ability to identify and respond to the potential failures of a registered provider to meet regulatory requirements.
6. Review the adequacy of other legislation (such as that governing industrial and provident societies and the role and responsibilities of shareholders) that impacted on the operation of Ujima over this period.

This report sets out a narrative of what happened from 2005 until Ujima's demise in 2008. It is structured in three phases, for the convenience of the reader, although we realise that there were no such easy demarcations in engagement at the time, and that this was a continuous process.

The team is indebted to its consultants, PricewaterhouseCoopers, for their detailed investigative work, for their consultations on our behalf with a wide range of stakeholders and for the expert technical advice regarding insolvency and other matters, which underlies this report.

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<sup>1</sup> The Housing and Regeneration Bill received Royal Assent on 22 July 2008 and became The Housing and Regeneration Act.

We also thank the many stakeholders involved with the Ujima case who have given their time and assisted us in drawing together the evidence in the report. A list of interviewees and contributors is included in Appendix 3.

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## Executive summary

1. Ujima Housing Association was one of the largest BME-led registered social landlords (RSLs)<sup>2</sup>. It had about 4,600 homes and received over £300 million of public sector funding and had borrowings of nearly £200 million. It operated in London and in the Reading and Slough areas.
2. In 2004 it was well enough regarded to be chosen for Development Partner status by the Housing Corporation, which allowed it to become part of a select group of housing associations that received substantial public funds to build homes.
3. Over most of its history Ujima did much good. The contribution and legacy of Ujima as an RSL as both a catalyst for developing black talent, and as provider of housing and support services to socially excluded and vulnerable people from ethnic minorities must not be underestimated. In the case of the majority of BME RSLs, that good work continues. However Ujima will, sadly, be remembered more for the way that it ended.
4. Ujima was brought under Corporation regulatory supervision in October 2007, after which significant mismanagement came to light. It became clear that Ujima was in serious financial difficulty and in December 2007 the association petitioned the Court to wind up and their secured creditors appointed receivers. Ujima was the first registered social landlord to suffer this fate.
5. Following acceptance of the Corporation's proposals by creditors, on 16 January 2008, Ujima's assets and liabilities were transferred to another housing association, London & Quadrant (L&Q). For the two years ended 31 March 2008, losses attributable to Ujima totalled £28 million, which included a write down of £12.5 million on four Ujima development projects.
6. If the Corporation had intervened more effectively during 2006, or even earlier in 2007, it is possible that Ujima might have been able to avoid insolvency, or at least have had more time in which to exercise

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<sup>2</sup> RSLs are independent housing organisations registered with the Housing Corporation under the Housing Act 1996 and liable to its regulation. They may be Industrial and Provident Societies, registered charities or companies.

choice and consult with its tenants and stakeholders in reaching a solution to its problems.

7. These events raise questions about how Ujima was run, how well the Corporation's regulation system worked and how the full scale of its problems remained undetected until too late by those who could have acted to turn them round. Ujima's fate has starkly highlighted issues of governance and regulation that should be salutary for the Board of every registered social landlord, and for the Corporation and its successor bodies, and also contains important issues for the sector's lenders and for government to consider.
8. It is not the objective of the Inquiry to seek to attribute blame. But, in our opinion, Ujima's collapse was the result of bad management and an ineffective Board. Whilst Ujima did much that was very good, it had had a chequered history, having been placed in supervision in the early 1990s and the subject of two inspection reports in 2002 and 2004. Ujima let down its tenants and service users, with poor performance indicators and problems with the poor quality of its services persisting over a number of years.
9. The Inquiry revealed that a number of problems existed in 2005, but things appear to have gone seriously wrong following the launch of an excessively ambitious business plan in 2006.
10. From the end of 2006, Ujima embarked on an ambitious site acquisition approach in response to its failure to deliver its development programme. The commitments arising from this overstretched its available resources and precipitated its financial collapse.
11. The extent of Ujima's problems and poor management during 2006 and 2007 were partially obscured through the failure of its executive team to provide adequate information to both its own Board and the Corporation coupled with its attitude to the Regulator which varied widely between apparent helpfulness and a lack of cooperation.
12. Ujima's governance was weak. Its Board was weakened by the loss of three experienced Board members in 2006. The remaining Board members provided insufficient challenge to management and did not insist on the provision of proper information sufficient to fulfil their responsibilities.

13. The Corporation, therefore, faced an increasingly uncooperative RSL. In such circumstances the Corporation's approach to regulation, which depended on the provision of information from the association, was not fit for that purpose, with an insufficiently strong process for dealing with non-compliance. The practice of amending traffic lights only as a last resort effectively tolerated non-cooperation and the Corporation's Assessments, which are public documents, provided misplaced comfort to Ujima's various stakeholders.
14. The Corporation faced considerable difficulties in regulating Ujima. It was hampered in the lack of an intermediate form of statutory intervention between formal requests for information under Section 30 of the Housing Act 1996 and launching a formal inquiry or placing Ujima into supervision. The provisions of the Housing and Regeneration Act will provide, for example, the broadening of the power to conduct a short notice inspection. This should address cases like Ujima's, where the Regulator needs information to act upon. Had such powers existed, the Corporation might have felt able to intervene sooner and obtain more timely information, which could have provided the evidence for further statutory action.
15. It has been suggested to the Inquiry Team that the failure of the Corporation to intervene sufficiently early was linked to Ujima being a BME association. We have found no evidence of this and members of the Corporation have denied it strongly.
16. Throughout 2006 and 2007 Ujima's approach to the Corporation included repeated threats of legal action. We consider that the Corporation's desire to avoid the delays that it associated with judicial review, which had occurred in the case of Clays Lane and Black Roof Housing Associations, may have encouraged it to focus on procedure and process, rather than taking statutory action.
17. A contributory factor to the demise of Ujima was its failure to control its development programme. The report also shows that the approach to development monitoring of Ujima by the investment side of the Corporation was focused on delivery, with insufficient consideration of the governance implications of a failing development programme. When development status was finally withdrawn in May 2007, the Corporation commissioned a development governance review. But there was a period after Ujima's development 'traffic light' went red

when the other traffic lights, including governance, remained green. This put very confusing messages into the public domain.

18. In light of these issues it has been suggested that the rigour of the Corporation's regulation was compromised by it being responsible for both regulation and investment, and that the splitting of these functions between the Tenant Services Agency (TSA) and Homes and Communities Agency (HCA) will avoid this problem in future. As the flipside of this, we consider that effective arrangements are needed to put into practice the statutory requirement in the Housing and Regeneration Act on the agencies to cooperate and ensure effective communication between them.
19. Finally, it has been suggested that the Corporation failed to address the various serious allegations received during 2006 and 2007 and that, together with other available information, the Corporation was hesitant in securing sight of Board papers that would have thrown light on the deteriorating situation. It is clear that the Corporation followed its own internal procedures in dealing with the various regulations carefully. But the sheer number of the allegations, when coupled with the lack of cooperation by Ujima, should have provoked a more active response by the Corporation at the highest level.
20. Historically, the Corporation has exercised its regulatory role through huge influence but with limited powers. This has meant that it has exercised considerable discretion and judgement within this role and this report addresses how it exercised that discretion and judgement.
21. With the benefit of hindsight, the Corporation adopted an over-cautious approach and should have intervened earlier as a series of signals indicated mounting problems. There were examples of possible breaches of the Regulatory Code<sup>3</sup>, such as the breach of loan covenants, late submission of accounts and a weak Board, which did not receive regular reports. This, coupled with the number of allegations and the severity of the matters raised in the 2006 Audit Management letter, should have provoked statutory action. There is evidence that senior regulation and headquarter staff at the Corporation were seriously concerned with Ujima and had taken an overall view of events. As a result, there was significant regulatory activity, but there was an

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<sup>3</sup> The Housing Corporation Regulatory Code and Guidance, August 2005

unwillingness to take decisive action, as the Corporation waited for 'sufficient evidence' to trigger intervention.

22. Once the Corporation intervened and placed statutory nominees on Ujima's Board in November 2007, its role was successful in that the funders and creditors did not lose any money and the tenants kept their homes and now appear satisfied with their new landlord, L&Q.
23. But this success was dependent on two fortuitous events that cannot be relied upon to recur in any similar situation in the future.
24. These were that:
  - Ujima had omitted to implement a rule change, which meant that most of its Board members were not properly elected. Thus the statutory appointees and remaining legally appointed Board members were able to work together to find a solution in the end.
  - L&Q was willing to take on Ujima and invest significant funds.
25. Had the original Board and/or management remained in post, or had there been no other RSL willing to effect a rescue, it is likely that Ujima's problems would not have been resolved so expeditiously.
26. The Inquiry has revealed that the insolvency laws insofar as they relate to RSLs and particularly those which are constituted as Industrial and Provident Societies, are in need of amendment. The process placed the new Board of Ujima under extreme pressure and the lack of sufficient time resulted in there being insufficient choice in the transfer of Ujima's assets and liabilities to L&Q. Two other RSLs were contacted, but they were unable or unwilling to respond in the timeframe. There were then three further unsolicited approaches which were evaluated by the Corporation and the Ujima Board. This lack of time meant that it was necessarily not an open and transparent process.
27. We have discussed various alternatives with the Council of Mortgage Lenders and Communities and Local Government (CLG) and have made recommendations as to how the law can be amended to allow time for a more competitive and open process, and for meaningful engagement with tenants, should the need for such an eventuality arise in future.

28. Housing associations are and should remain independent organisations and we can only re-emphasise the need for effective management and good governance, the lack of which was fundamental to the failure of Ujima. We do not believe there is a need for heavier regulation but rather better and more proportionate regulation. We welcome the new powers provided in the Housing and Regeneration Act, as we believe these will provide the TSA with a more flexible armoury, particularly in responding to an uncooperative RSL. It is crucial that the detailed regulatory practices to be put in place by the TSA are such that any failure to provide information or cooperate in the appropriate way immediately triggers heightened risk and an appropriate response.
29. Our report therefore sets out a number of recommendations to put this into effect.

## Ujima's history

1. The relationship between race equality and housing has been inextricably linked since the first waves of immigration of the 1950s. The first BME associations were formed against a backdrop of racial discrimination in housing prior to legislation that made these practices unlawful.
2. Ujima Housing Association was founded in 1977 and registered with the Corporation on 28 January 1980. It quickly established itself as a provider of housing that met the needs of vulnerable people. Importantly, it became a specialist provider of support services, in particular to older people and those with mental health problems and vulnerabilities.
3. For 20 years the Corporation has provided explicit support for BME housing associations as part of its wider focus on promoting equality of opportunity. In view of this, the Inquiry Team was asked to give consideration of how the Corporation's powers were employed in ensuring its objective of sustaining a vibrant, independent BME sector. We have therefore considered how Ujima's BME status affected the Corporation's regulatory approach and, in Appendix 2, we highlight the various policy and financial commitments made in support of BME associations and communities by the Corporation since 1985.
4. A five-year plan adopted in 1986 by the Corporation saw its first strategic focus on support for BME associations and this later developed further. In 1998, the Corporation published its BME housing policy, which extended race equality expectations across the sector. This was followed in 2005 by a BME action plan. In this climate Ujima, together with other BME associations, enjoyed a period of sustained growth. By 2006, Ujima was the largest BME association and was operating across 19 London boroughs – managing around 4,500 homes, of which 400 were provided for vulnerable people.
5. Today there are almost 50 BME associations, which have been supported through more than £750 million of capital funding, enabling them to develop alongside the changing dynamics of the communities they serve.

6. The impact of the Corporation's support over 25 years for BME associations was summed up by an independent evaluation in 2004, which concluded: "*The BME association initiative was seen as a powerful one, and overall it is a success story.*"<sup>4</sup>
7. Increasingly today the sector recognises that alleviating social disadvantage requires more than housing alone. Many have made this shift and are now operating as social enterprises that address community cohesion, vulnerable people, worklessness, education and health.
8. Although Ujima had not been without its problems even before the period covered in this report, its contribution to the movement and its legacy as both a catalyst for developing black talent, and as the provider of housing and support services to socially excluded and vulnerable people from ethnic minorities, should not be underestimated.

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<sup>4</sup> The Housing Corporation's BME Housing Policy: Assessing its Impact – Evaluation Report, MDA, 2005

## Ujima's problems develop, 2005-07

This section analyses the key events chronologically from April 2005 through to the end of 2007 and refers to earlier events where appropriate.

### Phase 1 – 2005

- 1 This is the start of the period covered, although some earlier events that are relevant are described briefly.
- 2 Risk-based regulation was formally introduced in 2005. The model published in 2005<sup>5</sup> provided a methodology for the risk-based approach. Risk management advice was taken from risk management consultants in developing the model and other regulatory regimes, including the Financial Standards Authority, were considered as part of this process.
- 3 The approach placed reliance on RSLs providing prompt and reliable information as an objective basis for regulation.
- 4 In the case of Ujima, under risk-based regulation, its size coupled with the data available to the Corporation pointed to a medium-risk association. Engagement with the association intensified subsequently as matters developed.

### Housing Corporation Assessment March 2005

- 5 This set out the Corporation's overall assessment of the association's compliance with the Regulatory Code and its development performance. The Housing Corporation Assessment (HCA) has two primary functions – it is the Corporation's published judgement of an association that can be used and referenced by the association and other bodies/persons as well as informing the association's Board of the Corporation's view of the association.
- 6 The overall conclusion was:

*“The association's performance is satisfactory. It delivers housing that meets our standards, but has not met all of its targets over the past*

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<sup>5</sup> Housing Corporation – How We Regulate – Our Overall Approach, August 2005

*year. However the shortfall was relatively small and was caused by circumstances outside its control. The association kept the Corporation fully informed of problems and keeps its in-year forecasting up to date.”*

- 7 The supporting detail included this statement under the assessment of viability:

*“The association achieves good operating margins and has spare balance sheet capacity to secure more loans. However the servicing of loans is stretching finances and Ujima is marginally below our financial benchmarks in some areas. We take comfort from the fact that Ujima could improve its financial performance relatively quickly if required by scaling back on future development.”*

- 8 Under the assessment of governance it commented:

*“Ujima’s Board members have a range and experience which are appropriate for a medium-sized and growing association”, and that “information is readily shared with us”.*

- 9 Under the assessment of development performance it commented:

*“Currently the association is forecasting to achieve cash spend well in excess of its cash planning target<sup>6</sup> however it is forecasting a slight shortfall in relation to completions by the end of the current financial year. We expect Ujima to continue to generate the volume of programme in the future in order for it to maintain its preferred status with the Corporation.”*

- 10 The analysis was generally positive but does point out that *“the association’s financial condition is presently acceptable but exposures exist which make it vulnerable to deterioration”.*

- 11 This assessment in fact showed Ujima as performing better than had been the case in the preceding period, as the diagram below shows that only in 2004 did it received all ‘green’ assessments.

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<sup>6</sup> Prior to 2006-08 the Corporation always had Cash Planning Targets (CPTs) and these were set annually. There were also completions targets. The NAHP 06-08 (see para 25) brought some changes in approach. CPTs were replaced by trajectory targets although completions remained as a target.

Date	Finance	Management	Development	Governance
Jan-02			Not included in the HCA at this date	
Aug-03				
Jan-04				
Mar-05				

- 12 The Corporation had made a pathfinder inspection in May 2002 and the subsequent improvements, which were validated<sup>7</sup> by the results of the Corporation's reviews of governance and performance management, were reflected in the change of the 'amber' ratings to 'green' by 2004. The revised assessments were based on a wide range of inquiry lines and took account of performance improvements on repairs, rent collection and re-letting void properties. These reviews were important to Ujima, as without four green 'lights' it would not have been able to become a partner eligible for development funding under the arrangements introduced for the 2004-06 programme.
- 13 However, Ujima also had low tenant satisfaction survey scores, which could have merited more robust challenge, though this may have been difficult in the absence of a more detailed audit of reported performance.
- 14 In overall terms, the evidence supporting the review indicated that the expected arrangements to promote improvements in governance and performance management were in place, had resulted in some improvements and were capable of sustaining further improvement.
- 15 The Audit Commission undertook a further inspection of Ujima's services in September 2004 and reported in January 2005. Its findings were consistent with those of the Corporation's December 2004 review.

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<sup>7</sup> The review relied on documentation produced by Ujima, but there was an ongoing performance indicator validation pilot exercise at that time in which Ujima participated and there is a note provided by the Corporation detailing correspondence between the association and the independent validator, which indicates that issues identified as part of that review were being addressed.

- 16 The Commission rated Ujima's services overall as fair (1 star) with promising prospects for improvement, although it also commented critically on a number of areas of poor performance such as tenant satisfaction, re-lets and rent arrears.
- 17 This rating would have been consistent with a green light for management in the HCA assessment ratings. Ujima prepared an action plan to respond to the inspection, which was due for completion by March 2006, but was not signed off by the Corporation until March 2007.

#### Housing Corporation 'Traffic Light' System

In the HCA, the Corporation uses a 'traffic light' system to measure each RSL's governance, management, viability and development against the requirements in its Regulatory Code.

Before the risk-based approach was introduced there were eight bandings for the AVR classifications – four under the green light, two for amber and two for red. In 2006, under the revised system this was reduced to four bandings – two for green and one each for amber and red.

#### Development funding

- 18 The Preferred Development Partner programme was introduced in 2004.
- 19 Partners were required to have four green lights, which Ujima gained in January 2004, to bid for at least a £10 million programme.
- 20 The Corporation had a national target to allocate 9% of its development funding to BME associations either directly or indirectly. The target varied regionally and in London was 15%. There were three London BME associations with Development Partner status who bid for development programmes (the others were ASRA and Presentation).
- 21 Ujima was awarded £45.4 million for 2004-06 to develop 400 homes, but this was phased over three years, with a number of completions due in 2006-07. Further allocations the next year took the total awarded to £66 million for 613 homes.

- 22 Ujima changed its approach in the 2004-06 programme by undertaking more of its own development. Prior to 2004, Ujima had, in some years, contracted with other housing associations to deliver a significant element of its development programme (e.g. 27% of the 2003-04 programme). Using this method, development costs were more predictable as they were often at a fixed price.
- 23 Corporation investment field staff were aware of this change, but felt it reasonable and that the risks would have been taken into account before the funding allocation was confirmed.
- 24 Set out below is Ujima's development performance over the period 2000-01 to 2007-08:

Year	CPT target £m	CPT spend (%) £m	Completions target	Completions actual (%)
2000-01	6.78	7.8 (115%)	174	119 (68%)
2001-02	15.5	22.9 (148%)	216	239 (111%)
2002-03	13.6	20.2 (149%)	148	171 (116%)
2003-04	18.9	25.2 (133%)	235	217 (92%)
2004-05	16.2	11.9 (73%)	169	166 (98%)
2005-06	21.4	28.8 (135%)	166	150 + 4 kw (93%)
2006-07	43.9	13.4 (31%)	495	58 (12%)
2007-08	26.7	3.23 (12.1%) to date.	405	158 (forecast) (39%) 132 as at 19/2/08

*CPT = Cash Planning Target (see footnote2 p13) KW = Key Worker Living*

- 25 During 2005 Ujima also had to apply to the Corporation for pre-qualification for the 2006-08 development programme (called the National Affordable Housing Programme – NAHP). Bids were placed after qualification and Ujima bid for £100 million, though it was assessed to have a capacity limit of £90 million for funding in July 2005.
- 26 The March 2005 HCA indicates that the association was, at that stage, forecasting to achieve a cash spend well in excess of its cash planning target of £16.2 million (the Corporation's records indicate that the eligible spend was £20.9 million) and had completed 166 homes against a target of 169 homes. However, due to changes in the submission of forecasts and applications by Ujima, the amount actually paid to it in

2004-05 was restricted to £11.9 million and the remaining payments were made in the following year 2005-06.

- 27 Ujima had relationship problems with some local authorities, which may have caused difficulties in achieving development objectives. A briefing note for the Corporation Chief Executive, Jon Rouse, in June 2005 noted: *“Relationships with some local authorities have been strained. Lambeth did not select Ujima as a Preferred Development Partner and there have been development issues with Brent and Haringey which caused friction but these have been resolved.”*
- 28 A file note prepared for the Chief Executive in April 2006 indicated that relationships improved significantly after the arrival of the new Ujima Group Chief Executive, Keith Kerr, in January 2006.

### Financial performance

- 29 Ujima recorded a surplus on ordinary activities of £0.8 million for 2004-05. This was after achieving a surplus of £1.6 million on the sale of fixed assets.
- 30 Dependence on the sale of fixed assets to achieve an overall surplus was not uncommon, but it does support the note of caution on viability in the Corporation's 2005 assessment. There was no breach in loan covenants at 31 March 2005.

### Governance

- 31 The Ujima Board completed a self-assessment of its compliance with the Regulatory Code in July 2005. This was assessed by the Corporation's Regulation team as inadequate and unsatisfactory and it provided feedback on its expectations and the areas for improvement in the 2006 assessment. However the Corporation noted: *“Ujima has an open relationship with the Corporation and information is readily shared with us.”*
- 32 The Corporation became aware that Robson Rhodes had been appointed by Ujima to undertake a governance review during 2005 and in October the Corporation received a copy of the recommendations and action plan from the association.

- 33 Priority issues raised included succession plans for the Chair, Adonis Daniel, who was nearing the ten-year term limit for an association Chair, and a need to update the documentation on the Chair's and committee Chairs' powers at Ujima. The Corporation did not know the context for the recommendations and asked for a copy of the report, but was told that there was none, only an action plan. This concerned the Corporation sufficiently to hold an internal 'round table' meeting of regulation field staff, following which Ujima was put on the London region's 'Watch List', to ensure that all the recommendations were implemented.
- 34 At that point there were no national guidelines on the operation of the Watch List within the London Field office and there were no set criteria for being placed on it. However, the London Field office felt that the governance issues were sufficient to put Ujima on the Watch List. The day-to-day management of Watch List cases remained with the Lead Regulator but these cases were discussed on at least a quarterly basis by more senior Field staff members.
- 35 Day-to-day case management remained with the Regulation Account Manager (see below) but cases were discussed at least quarterly by more senior Field staff.
- 36 The frequency of changes in the post of Group Chief Executive at Ujima was also a cause for concern. There were three postholders between the departure of Aman Dalvi in July 2002 and the arrival of Keith Kerr in January 2006:
- Hassett August, Sep 2002 - May 2003.
  - Ponniah Rasanesan, May 2003 - Feb 2005.
  - Qadeer Kiani (Acting CEO), Feb 2005 - Dec 2005.

### Conclusions in respect of 2005

- 37 No significant concerns were flagged during 2005. Based on the evidence reviewed, it appears that the Corporation applied its risk-based approach appropriately.
- 38 The main concerns identified were the potential weaknesses noted in the Robson Rhodes governance review and some poor relationships

with Development Partners. These were carried forward into the regulatory engagement plan for 2006.

- 39 The frequent changes in leadership through the years reflected a degree of turmoil within Ujima.

## Phase 2 – 2006

### Changes in the way regulation operated in 2006

- 40 There were a number of changes in structure and Corporation personnel dealing with Ujima early in 2006. A new Field Director for London was appointed in March 2006. In common with all Field Directors, she had overall responsibility for both investment and regulation within her region. The Corporation draws together all the information on an RSL at Field level, while Supervision and Regulation Policy were central functions.
- 41 Until March 2006 each RSL had a Lead Regulator in the Field who was responsible for the management of regulation of individual housing associations. The Lead Regulator would have led on all issues, bar finance and was expected to be conversant with all areas of the Regulatory Code. From 1 April 2006, the Corporation abandoned the practice of having a Lead Regulator and adopted a three-pronged approach. This had a Regulation Account Manager, who had the lead relationship with the RSL, a Regulation Analyst who carried out specific pieces of regulation related work, and a Financial Analyst who took responsibility for a portfolio of cases from a financial analysis perspective. Regulation Account Managers had more cases to manage than previous Lead Regulators but had more support in carrying out a range of tasks from specialist colleagues.
- 42 There was a new Regulation Account Manager for Ujima and a new Investment Lead Manager.
- 43 The Financial Analyst had taken over responsibility for Ujima in late 2005, and the London region was under strength in financial analysts with two posts vacant, with cover partially provided by another region.

## Housing Corporation Assessment March 2006

- 44 This was similar in content and tone to that of the previous year. Indeed, the overall conclusions are repeated word for word from the previous version. Some of the commentary does differ and is relevant.
- 45 Under the assessment of viability it said:
- 46 *“Interest cover remains susceptible to deterioration if it does not adhere to the forecast levels of loan debt and social housing grant. We will therefore continue to monitor the association’s performance closely over the forthcoming period, to ensure there is no adverse deviation from its prescribed level of activity.”*
- 47 Under the assessment of governance it said:
- 48 *“To coincide with the new appointment (of the Group Chief Executive), the Board is reviewing the strategic direction for Ujima and its executive and governance arrangements. We see this as an important opportunity to strengthen the association’s governance arrangements.”*
- 49 *“Ujima continues to maintain and update its scheme and allocation forecasts on a regular basis and communications between the association and the Corporation are open, transparent and frequent.”*

## Plan for regulation in 2006

- 50 Ujima was again classified as medium risk. A round table meeting on 4 May 2006 planned regulatory engagement with Ujima. The briefing note for the meeting raised issues including:
- Absence of process for the Chair’s succession due in 2006.
  - Low turnover of Board members.
  - Response to the governance review.
  - Absence of effective senior management team.
  - Response to Audit Commission inspection plan.
  - Allegations about the Group Chief Executive’s appointment.
- 51 As a result, the regulatory strategy, in addition to the standard one for medium-risk associations, involved a significantly higher level of regulatory engagement and included plans for:

- A meeting with the Chair on business strategy and Board succession planning.
- Attendance at a Board meeting in the second quarter.
- Monitoring responses to governance and feedback.
- Follow up of inspection action plan in June 2006.
- In addition, a written request was made on 13 April for papers for all future Board meetings.

## Allegations

- 52 From April 2006, the Corporation started to get allegations of various kinds from a number of credible sources. These covered:
- Development deliverability.
  - Dismissal of the Development Director, Kye Gbangbola.
  - The Chair's involvement in development negotiations.
  - Procurement of legal and other professional services.
  - The process of the Group Chief Executive's appointment.
  - Nepotism in other appointments.
- 53 At the end of May, the Corporation advised Ujima that allegations had been received, but there were delays in providing details, whilst the Corporation consulted internally and obtained legal advice on protecting the identity of some of those making allegations. As a result, the Corporation did not write to Ujima until 7 July. Ujima did not respond positively and complained to the Corporation about the way the Corporation had dealt with the matter.
- 54 Further allegations followed relating to various expenses incurred including a possible breach of Schedule 1 connected with the Board away day in Brussels. The Chair of the Ujima audit committee, Sam Williams, who was involved in the process for commissioning the independent investigations, resigned at this time and this caused further delay.
- 55 The work commenced in September 2006 and a draft report was sent to the Corporation in November, which commented on some areas that needed further work. The final report did not come out until March 2007.

- 56 Broadly, the final summary report, which brought together the various strands of work, concluded that none of the allegations could be upheld, with the exception of spouses' expenses being paid for the trip to Brussels. It was proposed that these sums be repaid to the association and, although this amounted to a breach of Schedule 1, the amounts involved were small.
- 57 However, there were a number of internal control and procedural weaknesses and approximately 20 recommendations were made. In April 2007, an action plan to address these was finalised by Ujima.
- 58 In the Corporation's opinion, none of the allegations concerned fundamental issues. However, the sheer number of allegations should have alerted the Corporation to a troubled organisation. A number of factors did not assist effective regulation during 2006. For example, it took almost 11 months from receipt of the initial allegations until the Corporation received the final report.
- 59 Ujima made several challenges to the process. This delayed the investigation and diverted the focus away from some of the planned regulatory engagement. For example, the planned attendance at the Board in the second quarter did not happen, although the Corporation did meet with five Board members, including the Chair, on 21 July to discuss the regulatory relationship with the association and the Corporation's expectation of the association in respect of its treatment of the allegations referred to it for investigation.

### Development funding

- 60 The 2006-08 NAHP allocations were announced in March 2006. Ujima was awarded £48.4 million. As stated earlier, the London region still had a target of allocating 15% of the total funding to BME associations and Ujima accounted for more than one-third of the allocations made.
- 61 One change was the introduction of milestones for allocating funding. Whereas in the previous round, funding had been allocated at site acquisition, start on site and practical completion stages in a 40:40:20 ratio, this was changed to 50:50 at start on site and practical completion stage. This could result in associations being at more risk in bearing scheme investment costs at acquisition stage.

- 62 It is notable that the majority of the 2006-07 target for Ujima related to committed schemes from the 2004-06 allocation (£30.6 million and 400 completions). The scale of expenditure expected from Ujima in 2006-07 was more than double any of its targets in any previous year and 50% higher than the highest level of spending achieved in any of them.
- 63 Although still within its calculated financial capacity of £90 million, taking into account the committed expenditure of £30.6 million, Ujima's funded investment target for 2006-08 was £79 million and so was at 88% of that capacity.
- 64 Given the size of the programme in relation to the past experience and size of Ujima, close monitoring could have been expected so that any indications of significant slippage would be investigated at quarterly strategic meetings with investment staff (Partnering Programme Approach – PPA meetings), which finance and regulation staff would usually also attend.
- 65 For 2004-05 and 2005-06, the overall assessment was that by the year's end Ujima met its commitments but had played catch up throughout the period.
- 66 The notes of the April 2006 PPA meeting indicate that Ujima had not prepared for it, as the development director, Kye Gbangbola, had been suspended. In 2006-07 there was a delay nationally in sending all Partners their 2006-07 programme delivery targets and these were not confirmed until August. Close monitoring of 2006-07 performance did not start before that for Ujima and other Partners. It is not until October 2006 that Ujima provided sufficient information for the Corporation to be able to conclude that many completions were slipping into 2007-08 and that the 2006-07 target would not be met.
- 67 However, in October 2006, the Corporation's conclusion was not that Ujima couldn't deliver, but that they were missing milestones and although there were reasons for this, they needed to take firm action to manage the risk of failing against their completions target. The Corporation had received information from a variety of sources in April and May 2006, which raised concerns about Ujima's ability to deliver its development programme following its decision to end consultant contracts and suspend the Development Director. It had raised these concerns with Ujima in meetings and in writing and had received

assurances from the Group Chief Executive that alternative arrangements were in hand and that targets would be met. The Corporation was reassured when Ujima appointed an experienced Interim Development Director, Mike Nestor, to fill the vacancy.

- 68 Interviews with Corporation staff indicate that, during 2006, its investment concerns were about delivery of the development programme against the targets. This failure to meet targets was treated as a contractual issue, not a regulatory one. The Corporation might eventually have withdrawn programme Partner status, which would have triggered regulatory follow up, but there were no direct consequences of the failing delivery performance in terms of regulatory action.
- 69 Ujima was not the only association in London experiencing delays in delivering the programme.
- 70 What was apparent though, and caused concerns, was the poor quality and inconsistent information provided by Ujima on the development programme.
- 71 Ujima's attempts to renegotiate targets and references to off-the-shelf acquisitions at the meeting in August 2006, indicated that it was struggling to cope and that should have prompted a more investigative approach to determine the scale of the problem.

**Issues at Ujima of which the Corporation was unaware at that time, but which would have added to its concern**

These included:

- 72 The Chair of the development sub-committee, Nathan Gravesande, had resigned and no development committee meetings took place after July 2006.
- 73 The interim Development Director had reviewed the development programme and calculated that there were overspends of £7 million.
- 74 Ujima did not have a formal land bank or a site acquisition strategy agreed by the Board that would enable it to meet targets in 2006-07.

The subsequent land banking was a reactive response to the pressure to meet its development programme.

- 75 These issues were not raised in PPA meetings and the Corporation had no access to the Board papers nor had attended Board meetings.
- 76 Although these papers had been formally requested, the matter was not pressed. At the October PPA meeting, Ujima was advised that its performance was at 'amber' level, which if applied would have resulted in suspension of Development Partner status, but instead it was "*asked to produce a plan of action indicating how they were expecting to rescue/recover their programme with a further review taking place on 1 December*".
- 77 These issues continued into 2007 and are covered later in this report. However, what is already apparent is that the information that Ujima provided during 2006 was incomplete and Ujima's own Board papers indicated that the association was experiencing difficulty in meeting its target in 2006-07.
- 78 The Corporation allowed Ujima to retain its Development Partner status to maximise the completions in 2006-07 and to retain its 2006-08 programme.
- 79 This encouraged Ujima to believe that it could retain its Development Partner status if it could improve its delivery pipeline through purchase of properties 'off the shelf'. Ujima also embarked on a significantly riskier approach to site acquisition.

## Management

- 80 The Audit Commission inspection plan was agreed in January 2005. By June 2006, Ujima should have completed the action plan, but there were still a number of points outstanding at this date. A follow-up review was carried out by the Regulation Analyst in July 2006 which concluded that inadequate progress had been made. The inspection plan had distinct timescales and target dates, and significant failure in completing the action plan by the date specified could have resulted in an 'amber light'.
- 81 Feedback was given to the association at the September meeting between Corporation staff and Ujima that the Corporation was minded

to change its management traffic light<sup>8</sup> to amber and the Ujima Board minutes for the September 2006 meeting record that: *“Regulatory action may occur which could impact on our traffic light rating, and that our development programme could be suspended in this case. Officers were to provide as much evidence as possible to try and avoid our rating being affected.”* The Board noted this risk.

- 82 At the same meeting the Board noted its concern over rent collection and voids, which one longstanding Board member said were the worst they had seen.
- 83 The action plan was discussed at a meeting attended by the Regulation Account Manager and the Group Chief Executive, indicating that this could result in an amber light for management. The Group Chief Executive immediately requested a meeting with the Corporation Chief Executive on regulation and development performance, and questioned the motivation of the Corporation in seeking to downgrade its traffic light assessment. The Corporation’s Chief Executive met Ujima’s Chair, Adonis Daniel, on 2 November and decided to allow Ujima until the end of December to address remaining points on the Audit Commission inspection plan.

## Governance

- 84 The new Regulation Account Manager attended the March 2006 Board meeting. This was the first such Board meeting she had attended. This did not follow the expected format as it was dominated by a presentation on the new business strategy for Ujima, named Project Jerusalem.
- 85 From attending the Board meeting, the Regulation Account Manager was reassured by the level of challenge from Board members on several points of the presentation and felt this showed that a strong Board would provide effective oversight.
- 86 However, three experienced Board members had resigned during the summer of 2006<sup>9</sup>. All three had relevant financial and housing experience and they included the Chairs of the audit and development committees.

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<sup>8</sup> See table on page 17 for explanation of the traffic light system.

<sup>9</sup> Sam Williams, Nathan Gravesande, Andy Jennings

## **Project Jerusalem**

Project Jerusalem was a ten-year strategy adopted by Ujima's Board in March 2006. The project had four phases. Phase 1 was for a period of consolidation over the course of 2006-07 in which Ujima would 'get its house in order' and 'focus its resources in six priority London boroughs'. Phases 2-4 provided for a series of geographical expansions into other areas of the country: Phase 2 over 2007-09 into East London/Thames Gateway and Watford/Slough; Phase 3 over 2009-12 into the West Midlands and Phase 4 over 2012-16 into the North West. The expansion strategy assumed the winning of local authority stock transfers, a development pipeline rising to 500 homes per annum within five years and a substantial number of mergers and acquisitions, primarily of smaller BME housing associations.

The project had the overall vision of Ujima becoming the 'gold standard for the RSL market' and the key objective of being in the top five housing associations within five years. The specific targets for this were to be one of the five largest RSLs in London and in the top five RSLs nationally in terms of number of persons from BME communities housed, levels of customer satisfaction and number of homes in development.

- 87 Apart from the resignation of the audit committee Chair, the association did not draw these resignations to the attention of the Corporation.
- 88 The Chair was due to step down in 2006, as he was approaching the ten-year term limit for Chairs. He told the Corporation he wanted to wait for the new Group Chief Executive to settle in first. There were no clear succession plans at this stage.
- 89 The Corporation's continuing concerns on governance and Ujima's actions were being logged and monitored through the London Watch List monitoring process.
- 90 The loss of the three experienced Board members significantly reduced the breadth and depth of skills. It is arguable that from September 2006 onwards it would be difficult for the Board to demonstrate that it had a sufficient range of expertise supported by appropriate governance and

executive arrangements in line with the Corporation's Regulatory Code and guidance.

- 91 However, the Corporation was satisfied that Ujima was taking steps to address these weaknesses. The association had commissioned a wider review of governance at the association to strengthen the Board and comply with the National Housing Federation (NHF) Code of Governance: Competence and Accountability 2004. The review was to be undertaken by consultants, The Wayside Network, and was to take into account the recommendations of the earlier Robson Rhodes review.
- 92 The association had also completed the recruitment process for its new executive management team.
- 93 A review of the Board papers during 2006 indicates that no risk map was presented to the Board. It is not clear what risk management strategy was in place during 2006 and whether Board members had any involvement in understanding and approving the way that risks were identified and managed. Nonetheless, Ujima had completed a self assessment compliance statement for the year ended 31 March 2006 which stated that the association had a risk management strategy.
- 94 The Corporation commented on the need for Ujima to strengthen its governance arrangements in the HCA report in March 2006 but argued that it was difficult for them to reach a view on the effectiveness of Ujima's approach in 2006 whilst the governance review was still in process.

### Business plan

- 95 The new business plan (Project Jerusalem) was presented at a high level to the Ujima Board in March 2006 and to the Corporation's Chief Executive, Jon Rouse, in April 2006 and to a wider group of the London region staff at the Corporation in June 2006. Jon Rouse described it as "*aspirational and lacking substance*" and the Corporation felt that the longer-term goals of Project Jerusalem were so ambitious as to warrant concern. The stated intention to take over BME associations to achieve the stated goals was considered unrealistic. A three-year implementation plan was presented to the Board at the May meeting.

- 96 Although the plan was clearly aspirational in its medium and long-term goals, it included a balanced budget excluding disposals, detailed stock condition survey, more efficient spending plans expenditure, improved customer satisfaction, building relationships with key boroughs and stock rationalisation.
- 97 The London Field Director discussed with Ujima the danger of taking on this level of change while needing to “*look after the knitting*”. But the Corporation took the view that it is not the role of the Regulator to approve associations’ business plans, while recognising that it did have a responsibility to make sure it understood the impact the plan would have on its financial viability.
- 98 The financial elements of the plan were extremely ambitious and lacked sufficient detail on implementation. Revenue growth of more than 40% was projected for both 2007-08 and 2008-09. More immediately, implementation costs were forecast at £2.5 million over three years, but first-year costs of £500,000 did not appear to have been built into the 2006-07 budget. The phasing of implementation costs over three years did not appear to be in line with the planned pace of implementation in 2006 and 2007. The balanced budget assumed only £200,000 disposal proceeds in 2006-07 and none in the succeeding years.
- 99 Perhaps the most significant impact of the business plan in 2006 was to change the style and governance of the organisation. For example, the Group Chief Executive adopted a ‘commercial in confidence’ approach and required Board members to sign confidentiality agreements before releasing documents such as business plans. One member refused to sign and was not given business plan information to retain. Again, the Corporation was not informed of this.
- 100 Up until 2006, Ujima’s business model, plans and structure were in line with many similar associations and, therefore, the Corporation could draw on historic as well as comparative information to inform their risk assessment. The appointment of a Group Chief Executive with no prior experience of the social housing sector, its regulatory framework and an aspirational expansionist business plan such as Project Jerusalem were bound to pose a difficult challenge for the Corporation's categorisation of risk. The Corporation felt that they treated Ujima as if it were a high-risk association, due to the history of their engagement with the association.

## Financial performance

- 101 Ujima recorded a surplus on ordinary activities of just over £500,000 for 2005-06 in its draft accounts. This was after achieving a surplus of £1 million on the sale of fixed assets. This included an element of unbudgeted sales to offset higher operating costs. The auditors identified a material adjustment to the accounts of about £500,000 due to an incorrect treatment of capitalised interest. This would reduce the net surplus for the association to just £66,000, reflecting additional operating costs and interest payments of more than £1.1 million compared to the original budget. The reduction in surplus brought the association close to breaching its covenants with lenders at March 2006 with the interest cover calculated at 114% compared with the minimum requirement of 110%.
- 102 This led to the Group Chief Executive and Acting Finance Director challenging the auditors' interpretation of the accounting treatment.
- 103 The auditors' position was supported by the Chair of the audit committee and by the Chair, and the adjusted accounts were agreed at the July Board meeting. However, as a result of the continuing allegations and questions on potential impairment on capital schemes, the auditors delayed signing their audit report on the accounts. The accounts should have been lodged by 30 September 2006 at the latest. This was discussed at a meeting between the auditors and the Corporation at the beginning of September. The Corporation accepted the reason for the delay, which was subsequently confirmed with Ujima. Meetings between the Corporation and auditors are rare. The meeting focused narrowly on the allegations and their possible impact on the audit rather than on Ujima's financial position.
- 104 The delays resulted in the accounts not being signed off until 12 December 2006 once the auditors had gained comfort that the allegations did not have any implications for the accounts. This delay required the auditors to update their view on Ujima's current financial position by reviewing the six-month (September) management accounts. These indicated that Ujima would need to make profits of £1.5 million on sales to stay within covenants. Ujima expected to meet this target as they had earmarked four or five properties for sale and had Section 9 consent from the Corporation. Nevertheless BDO Stoy Hayward's management letter was heavily focused on the risks and

issues on the development side so that Ujima were clearly warned of the issues.

- 105 The auditors' management letter was not received by the Corporation until January 2007 and the Corporation's response is considered in the analysis of events in 2007 at paragraphs 145 and 146.
- 106 Having signed off the audit, BDO Stoy Hayward became aware in February 2007 that Ujima wished to retender the audit. We understand that the Group Chief Executive put them under pressure such that they were minded to resign. But they were persuaded to remain in post by the audit committee, supported by the Chair.
- 107 Given the pressures being placed on the auditors, their position might have been strengthened had they been under an obligation to report matters of material significance to the Corporation as exists in certain other sectors, for example pension funds and charities.

### Conclusions in respect of 2006

- 108 The Corporation had concluded in October 2006 that Ujima's management and development performance both potentially merited amber lights. It also had continuing concerns about Ujima's governance and there was no conclusion in sight on significant issues such as the Chair's succession. The loss of the three experienced Board members in the summer seriously weakened the skills base of the Board to a level arguably in breach of the Regulatory Code. However, the Corporation was satisfied that Ujima was taking steps to address these weaknesses.
- 109 The handling of the response to the allegations and the persistent refusal to supply information including Board papers indicated that Ujima was resistant to cooperation with regulation. Allegations received were not dealt with in a timely and decisive manner by Ujima, and the Corporation did not push them sufficiently to do so.
- 110 Financial performance in 2005-06 was significantly worse than budget and only marginally above covenant breach levels. Project Jerusalem had stirred concerns at the highest level in the Corporation (Jon Rouse) that the Group Chief Executive, as someone new to the sector, might be "*out of his depth*".

- 111 Further issues were raised at the Ujima Board during 2006, of which the Corporation remained unaware, such as the projected overspending on the capital programme, concerns raised by the auditors on potential impairment costs and the risk of loan covenant breaches in 2006-07 because of overspending indicated by the management accounts. The Board of Ujima continued to receive management accounts up until January 2007. From that point the quality of reporting to the Board worsened considerably with many papers being tabled only at the meetings.
- 112 The London Field office view was that it was important to take each one of these factors and determine how serious each was and what was being done about it:
- Development – due to the contractual nature of investment, the Corporation's view was that it was necessary to let development run its course until the end of the financial year. It was possible that Ujima could have reversed its poor performance.
  - Management performance – an extended timetable had been agreed for the association to respond to the remaining issues.
  - Governance – this was being monitored through the Watch List process. The Corporation had been informed about the process and expected timing to review governance procedures, and that Ujima was taking action to assess skills and fill skills gaps.
  - Resignations of Board members – there were suspicions that one departure related to the allegations. It was not clear why the other two resigned. While their departure left a gap that Ujima did not seek to address, the Corporation was not fully aware of all of these resignations and, in themselves, they were not necessarily so severe as to warrant invoking statutory powers.
  - Allegations – the Corporation almost never acts until reports into allegations have been finalised, since it requires evidence that allegations are substantiated before any statutory action can be taken. The exception to this is where the allegations may be material enough to justify launching a statutory inquiry. This work was continuing and its eventual conclusions did not uphold most of the allegations.

- Board papers – the Corporation would not have received these routinely, but had requested them without using their Section 30 powers. If had they been used, the Corporation's view on risk and governance might have been stronger.
- Project Jerusalem – this was Ujima’s business strategy. The Corporation would not normally regulate at that level unless it affected the association’s ability to conduct its core business and there was no such indication at that point.
- Development overspend – individual overspends are a matter for associations, and not a regulatory issue, unless they have a material impact on overall performance.
- Audit management letter – the Corporation was awaiting a management response to the issues raised before considering the need for action.

113 All of these issues were in play, and there had been regular discussion with the Corporation's Chief Executive and his Deputy during the year, but there was no collective view that the level of engagement needed to change. A plan of action and a review timetable for each issue was put in place.

114 There was concern within the Corporation that had it acted then Ujima would have sought judicial review. There are frequent references in correspondence between the Corporation and the Chair and the Group Chief Executive to “legal challenge” and “taking legal advice”. This may account for the Corporation's reluctance to act further and would not have helped its regulatory aims.

115 Supervision is taken to address significant under performance against the Regulatory Code. At this point the Corporation did not consider it appropriate because there was not enough hard evidence and there was still scope for things to improve without supervision. There was a process in place to consider the need for supervision and the decisions reached in respect of each issue were based on the processes and guidance available.

116 The Corporation had agreed the late submission of accounts following its meeting with the auditors, and was aware of an under-strength

Board, the delay in completing the Audit Commission inspection action plan, a wide range of allegations and failing development performance. What was required was an exercise of judgement on all these issues taken together.

- 117 It is at least arguable that there was enough evidence or reasonable suspicion to take firmer action to ensure that the Corporation had access to available information such as Board papers and business plans to reach a more soundly based conclusion on whether supervision or other statutory action was appropriate.
- 118 The Corporation's powers under Section 30 to demand information have been seldom used as the Corporation's preferred approach was to obtain information by consent but, in the situation where Ujima was uncooperative, this option deserved more serious consideration. We note that, though it is a far from routine procedure, Section 30 powers have been invoked before when the Corporation's regulatory relationship with an RSL has been poor. Had the Corporation obtained Board papers at that stage, it would have uncovered a number of concerns on governance, development, financial and management performance, which would have supported the need for an earlier case conference.
- 119 The case conference is the first point at which supervision is formally considered and is a prerequisite to any association being placed into supervision. In our view, a case conference at the end of 2006 would have introduced more rigorous challenge to the position adopted by the Corporation across the whole range of issues and would have strengthened the overall approach to the regulation of Ujima.

## Phase 3 – 2007

### Plan for regulation in 2007

- 120 At the start of 2007, the clearest summary of the Corporation's approach to regulation in respect of Ujima in 2007 is the briefing and

case notes prepared for the first of four case conferences, held on 20 April 2007<sup>10</sup>.

121 The major concerns noted in order are:

- Inadequate investment programme performance.
- Inaccuracy of investment programme forecasting.
- Poor quality investment programme information.
- The apparent inadequacy of review procedures dealing with scheme appraisals.
- Small and potentially under-skilled Board.
- New executive team (all eight members of the executive team were appointed from outside Ujima – some from outside the sector – since January 2006) noted as a risk of business failure.
- Aspirational and innovative business strategy, which has significant unknowns and risks associated with it.
- Various policy and procedural weaknesses, particularly in development.
- Withdrawal by Pathway Housing Association from partnership discussions.
- Below average performance indicators and slow progress in implementing the inspection action plan.

122 In view of subsequent events, it is relevant to note some of the key decisions taken:

- Ujima's HCA grade for development to be changed to amber (later downgraded to red – see para 127 below), loss of Partner status, withdrawal of non-grant confirmed schemes, inability to bid for 2008-11 (except for indirect allocations through a development agent).
- HCA grade for governance to be reviewed in the light of Corporation review of provision of, and use of, information to Ujima's Board on development issues during 2006-07 and in the light of Ujima's own governance review.

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<sup>10</sup> Case conferences were internal Corporation meetings of regulation and supervision staff at which regulatory concerns were discussed.

- Supervision status not to be imposed at this time, but this decision to be kept under review as part of performance monitoring.
  - Ujima to be classified internally as an Iceberg case (see para 130 below) and ongoing monitoring to be taken forward under that process.
- 123 The detailed notes reveal that at this stage the Corporation had no concerns on the financial viability of Ujima based on the results of its Annual Viability Review concluded in January 2007 together with the audited accounts and audit management letter for 2005-06, despite the serious issues raised there.
- 124 Concerns over potential breaches in loan covenants were discounted, based on assurances from the Ujima Finance Director, George Avwunu, and confirmed in Ujima's response to the 2005-06 management letter.
- 125 Part of the Corporation's strategy for dealing with Ujima after the withdrawal of Lead Partner status in May 2007 was to try and clarify the extent of their development pipeline, however this was hampered by poor information from Ujima. So when the Corporation suspended Ujima's Development Partner status and ceased grant funding, it was assumed the financial impact would be neutral at worst, based on the fact that they could work through other partners. The extent of the financial impact of commitments arising from land banking of sites was not appreciated.
- 126 There was an action plan agreed on the process for final review of Development Partner status before confirming the decisions. This led to a decision in May 2007 to downgrade this assessment from amber to red.
- 127 It was decided that this would have no additional consequences in terms of potential supervision action. That would depend on the Corporation's planned review of governance in respect of development performance due to be completed by the end of July.
- 128 Project Jerusalem was still a concern but as a business rather than a regulatory issue for Ujima.
- 129 There were continuing concerns on governance but these would be reassessed later in the year in the light of a review by Ujima due to be

completed in June and the Corporation's own governance review on development due to be completed in July.

- 130 It was intended that the Corporation would continue to have a watching brief on these issues through the Corporation's 'Iceberg' monitoring process. This was a formal monitoring process which meant that from May 2007 onwards, the position and developments on the Ujima case were reported upwards through to the Corporation's Regulation and Supervision Committee.
- 131 The Corporation had signed off Ujima's response to the Audit Commission inspection plan by March 2007 and, although performance indicators were below national averages in all areas and had declined in 2005-06, this was considered a matter for ongoing monitoring rather than any regulatory action.
- 132 Ujima's continuing resistance to providing Board papers was discussed within the Corporation and statutory action to compel the association to provide papers was considered, but this was not pursued. This was to be a continuing problem in 2007 and the only record of Board papers being received was for the July 2007 meeting
- 133 The action agreed at the April case conference set the approach for regulatory action. Having agreed this action, the Corporation considered that it was required to complete the key processes before deciding on supervision. The Corporation intended to complete the governance review by July but it was delayed by Ujima's reluctance to provide information. The review was not completed until September 2007.
- 134 The Corporation considered that if it made statutory appointments to Ujima's Board without sufficient evidence it would have been open to judicial review, which would have slowed down the process considerably. The Corporation judged that a governance review was a more effective way of providing evidence for regulatory action, although we note that it was already aware of the key issues of concern.
- 135 Most of the evidence required should have been discoverable from Board papers, to which the Corporation at that point still did not have access as Ujima declined to provide them. The lack of these papers undermined the Corporation's risk-based approach to regulation.

- 136 Based on decisions reached at a case conference, Ujima was placed into supervision on 25 October 2007 as a direct result of the governance review that was carried out by the London office, the association's reaction to that review and its failure to cooperate with the Corporation in responding to allegations and providing Board papers.
- 137 The Corporation's approach to regulation was based on experience of working with largely cooperative associations, which provided information requested by the Corporation without compulsion. We note that the Corporation found that Ujima's behaviour varied widely between helpfulness and a lack of cooperation. But the delays by Ujima in providing information, and the often poor quality of the information that was provided should have been flagged as a higher risk than it was at that time. A more proportionate course of action should have been implemented to obtain the information necessary for effective regulation. The lack of information affected a number of key decisions and engagements throughout 2007.

### Annual Viability Review 2006

- 138 The Annual Viability Review (AVR) is published by the Corporation annually, and aims to give individual housing associations' executive team and Board an indication of the Corporation's view of their viability, and alert them to any risks or concerns identified. It is also an important determining factor in the HCA assessment of viability. In its AVR for 2006 Ujima was rated in the top green banding.
- 139 The Corporation advised the Inquiry that each Financial Analyst had about eight or nine associations of various sizes in their portfolio at this stage. Under the previous structure, there was a Head of Financial Appraisal, and Financial Appraisal Managers who would review reports produced by Financial Analysts.
- 140 In 2006 a flatter structure was adopted with peer review for draft reports to check for inconsistencies, make sure the conclusions were consistent with the grading given and to ensure that the grading was consistent with others. The draft AVR was then signed off in accordance with the Corporation's National Management Scheme<sup>11</sup>.

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<sup>11</sup> The National Management Scheme is a standard framework of delegations, supplemented by agreed local delegations where identified for each Field.

- 141 The AVR is based on information supplied by associations on their financial capacity projected over a 30-year period. The capacity model is primarily an investment tool and is used by the Corporation to undertake financial analysis on an association's development funding bid. Land banking policy (i.e. acquiring land in advance of development bids) is not a feature of the capacity model.
- 142 Development Partners were expected to have the financial awareness to recognise whether they had the financial capacity for land banking. This is not easy to capture in the capacity model. The Corporation would need to request that information specifically and this was not done as a standard process and not in Ujima's case.
- 143 The Corporation had the high level summary of Project Jerusalem but Ujima had advised the Corporation that the detail was not yet available to update its capacity model and therefore the existing model was used as the basis for the AVR. The high level financial forecast information for Project Jerusalem, which indicated increased expenditure of £500,000 in the first year of the plan, was included in an appendix to the AVR and compared to the capacity model. The AVR commentary noted the growth levels assumed in Project Jerusalem were significantly above the norm and would require careful strategic management and strong financial planning. The poor development performance was also highlighted in bold in the AVR.
- 144 A draft report was sent to Ujima on 18 November 2006 for comment. The final AVR was delayed until the audited accounts were received and agreed to the base data. The original deadline for issuing AVRs was 31 December 2006. Due to more widespread problems with late submissions of capacity models that were not fit for purpose and delays in finalising the analysis tools, the deadline was eventually pushed back until 31 March 2007. However, there were regional operational targets and for London associations the London Field office was hoping to get all AVRs issued before the March deadline.
- 145 The financial statements were not approved by Ujima's Board until 12 December 2006 and were submitted to the Corporation on 3 January 2007 (the normal deadline would have been 30 September 2006). The auditors' management letter raised unusually strong concerns including:
- Fundamental errors in scheme appraisal calculations.

- Exposure to significant abortive costs and cost over runs on three schemes.
  - Issues concerning the policy of carrying costs in the balance sheet ahead of Ujima obtaining ownership of properties.
  - Over-capitalisation of development department costs.
  - The significant risks of failing to meet loan covenants owing to reliance on sales and potential development write-offs.
- 146 It was stamped as received by the Corporation Registry in Leicester on 3 January 2007. However, the Financial Analyst in London did not have sight of a copy until the end of January 2007, after the AVR report had been issued in final form to Ujima on 24 January.
- 147 The final AVR report was sent to Ujima's Chair, Group Chief Executive and Finance Director. The covering letter stated that the Chair was expected to share the report with the Board, though there was no check that this happened, nor does any minute record the AVR ever being discussed at the Board.
- 148 Based on the evidence of a protracted audit and a significant audit adjustment to the accounts, it is unfortunate that Ujima's AVR was issued before the audit management letter had been received and considered, and a response required from the association. It was by no means the last AVR to be sent out.
- 149 The reasons given were the need to achieve target timetables for issue of AVRs and that because of the corporate timetable it was not possible to adopt different approaches for an individual AVR in isolation.
- 150 That aside, it is also unclear why Ujima was given the highest of four gradings when the 2005-06 financial results were far from satisfactory and there was significant doubt about the achievability and risks involved in implementing Project Jerusalem.
- 151 Based on these flaws, it was unwise to discount financial viability as a potential concern in April 2007. The Corporation expected that Ujima would update its business capacity model for submission in the next round in June 2007 (the revised capacity model was received in July 2007) which would be assessed as part of the 2007 AVR in September.

As such there was no updated AVR to inform the case conferences in April and May 2007.

- 152 We note that a new Corporation procedure is now in place to update the AVR when withdrawing development funding but this was not considered necessary at the time and this contributed to the Corporation's view to discount financial viability as a potential concern in April 2007.
- 153 This points to a lack of sufficient understanding in analysing the risks and lack of sufficient senior review and assessment of the process before issue of the AVR to an association.
- 154 This weakened the Corporation's overall regulation. A different approach should be required for exceptional circumstances and Ujima at that stage was recognised by the Corporation as an exception.

#### Potential loan covenant breaches

- 155 The potential for loan covenant breaches was highlighted in the management letter. The Financial Analyst had an initial conversation with the acting Finance Director about Ujima's response to the management letter. A written request for a response was sent to the new Finance Director in March 2007. A draft response was sent to the Corporation in April and a final version was sent in May, which Ujima implied had been agreed by the auditors, and which stated that the issues were being addressed.
- 156 Ujima's response to the potential covenant breach was that this was a planned position and that they had planned to ensure that the covenants were not breached through disposals.
- 157 Further allegations were received by the Corporation in June 2007 that there had been a breach, which were contradicted by Ujima's Finance Director. In these circumstances, particularly where it was implied that the auditors had approved the response, his response was not challenged by the Corporation and no further evidence was requested.
- 158 A review of Ujima's Board papers and management accounts indicate that the Finance Director should have been aware of the potential for a breach in loan covenants early in 2007. It appears from issues raised at the subsequent audit that he intended to address potential breaches by

adopting changes to the accounting treatment for certain types of expenditure and accounting provisions. He also had not addressed the impact of impairments on capital schemes in preparing the draft accounts. These issues were identified by the auditors who took the view that the proposed changes to the accounting treatment were not supportable and, as a result, Ujima was in breach of its loan covenants at 31 March 2007.

- 159 In the case of an actual loan covenant breach, under the relevant loan agreements, the association should make the Corporation aware immediately and contact its lenders. Although the audit issues were raised in June, the Finance Director did not disclose the issue to Ujima's Board and did not discuss the issue with the Corporation until August. We have also seen no evidence to indicate that lenders were advised before Ujima was placed in supervision in October 2007. Failure to fulfil loan agreement covenants is a clear breach of the Regulatory Code but, until August 2007, the Corporation was unaware of this issue.
- 160 In August 2007, the Finance Director contacted the Corporation and said that if the audit amendments were processed, then the loan covenants would be breached. The Corporation decided to arrange a meeting with the auditors to discuss this issue, but this did not take place until November 2007 after Ujima was placed in supervision.
- 161 It is our view that, although there is a documented trail on the actions taken by the Corporation and the assurances sought, the lack of consideration of further evidence to support the assurances received is a major concern. The management letter should have prompted the Corporation to consider independent verification or confirmation from the auditors at an earlier stage.

### Loan applications

- 162 On 1 May 2007, the Corporation considered an application for Section 9 consent from Ujima for a £76 million loan facility with Abbey. The Corporation's policy is that consent will not be unreasonably withheld. Concerns about viability or if an association was in supervision or if the supporting paperwork was suspect would prevent this being processed. The Field Director's letter to Ujima on 8 May requested further details on the purpose of the loan in view of the decision to suspend

Investment Partner status. The Financial Analyst also contacted the Finance Director to find out the purpose of the Section 9 application.

- 163 The Finance Director responded by email stating that £43 million was for refinancing existing loans and £30 million was new finance to meet commitments under the 2006-08 NAHP, which the Corporation had agreed could be continued. Further it was urgent as funding was needed to meet £4 million payments to contractors in the following week. The Ujima Group Chief Executive then sent a letter to the Corporation confirming this. On this basis, the Corporation considered it would be unreasonable to withhold consent and the decision was taken to grant consent on 17 May 2007.
- 164 The Corporation would usually expect this funding to have been organised further in advance and this should have raised its concerns about Ujima's poor financial planning. Cross checks would have indicated that Ujima was already £10 million above its expected borrowing requirements at the end of March 2007, as confirmed by the Finance Director in December 2006 as part of the AVR process.
- 165 This lack of forward planning together with all the other ongoing issues should have raised further concerns and merited further investigation at the Corporation.
- 166 The Financial Analyst would not have expected to cross check the funding request to the investment requirements and he was aware that there was a residual programme from the 2006-08 NAHP still in place.
- 167 Although it may have been disproportionate to deny funding in view of the assurances received from both the Finance Director and Group Chief Executive, and the Corporation felt it did not have grounds to do so, the warning signs should have indicated the need for further investigation. If this had been followed through it would have been noted that the majority of the funding was required for the acquisition of two major sites (£14 million for Sam Jones, a former industrial site in Peckham, in December 2006, and £5.8 million for a South Bank University site in May 2007).
- 168 Neither of these sites were part of Ujima's approved development programme to be funded by the Housing Corporation. There was continuing spending on approved projects but there was also

considerable and unsustainable spending on non-approved sites, of which the Corporation was unaware.

## Governance

- 169 A review of Ujima Board minutes indicates significant concerns in 2007 over governance and information not shared with the Corporation.
- 170 At the January Board meeting a detailed analysis of the failings in development was presented as an information item, which included the extent to which Ujima was likely to miss development targets, and the existence of a £10 million overspend on the current schemes. Development project overspends and the plan to manage overspends were discussed at the Board but there was no detailed discussion or financial analysis of the overall development programme. There is evidence of some Board challenge on scheme overspends but not on the programme as a whole and this appears weak.
- 171 The last set of management accounts reported to the Board was in January 2007. Thereafter the financial information is limited and of poor quality until supervision began. There is no evidence the management accounts were presented to the Board between April 2007 and October 2007.
- 172 This would not have allowed the Board to understand the accurate financial position in respect of 2006-07 or performance against budget in 2007-08. The failure to supply such information should have been challenged by the Board.
- 173 A treasury management strategy was reported to the Board in March 2007 based on a new loan facility with Barclays for up to £150 million. Thereafter problems in securing the loan and failure to secure adequate borrowing facilities were not reported to the Board.
- 174 A risk management strategy was presented to the Board in March 2007 but the high level risk map was not presented until August – when a member pointed out that it had omitted a key risk on delivery of development performance. Ujima was required to complete a self assessment compliance statement for the year which stated that the association had a risk management strategy, but it appears that the Board were not provided with meaningful information to understand

the risks facing the organisation and how these were being managed. Again this should have been challenged more vigorously by the Board.

- 175 When a potential problem on the draft accounts for 2006-07 was raised in June 2007, discussions with the then Chair of Ujima's audit committee, Marta Phillips, indicated that she was advised by the Finance Director that the breaches of loan covenants were technical rather than substantive. Regardless of the precise nature of reasons for the breach, any breach is significant and the Board should have sought assurance that a waiver was in place from the lenders.
- 176 The Chair of the audit committee discussed the need to raise any issues with lenders with the Finance Director but later understood that the banks were not informed of the situation and arrangements for a waiver were not made.
- 177 The acquisition of the Sam Jones site for £14 million was reported to the Board in January 2007 after the heads of agreement had been signed. It was described as intended to meet the Development Partnership agreement with the Corporation and the Board was assured that the finance was in place. This was the first time that the Board were aware of the site and it was reported as Chair's action as a matter of urgency. It was not clear to Board members what the limits were surrounding Chair's action and again this should have been challenged by the Board.
- 178 Much of the Board's agendas were concerned with the implementation of Project Jerusalem. Increasingly, the Board were not consulted on major decisions such as Project Cana, a proposal to buy a majority stake in Hudson, a convenience store business described by the Group Chief Executive as having "over-extended itself". This proposal was promoted strongly by the Group Chief Executive. The Chair of the audit committee took the lead on challenging aspects of the proposal and was supported by other Board members in calling to defer approval until key concerns were met. The project was delayed and failed to materialise, but it consumed significant time and resources of the association.
- 179 The Board minutes indicate that when members were presented with appropriate information there was a level of challenge, particularly from the Chair of the audit committee. However, it is clear that the

level and quality of information presented to the Board was not sufficient to allow them to meet their responsibilities for effective oversight. The loss of the three experienced members in summer 2006, who were not replaced, seriously undermined the subsequent effectiveness of the Board.

- 180 Many of the failures of governance were subsequently uncovered by the Corporation's development governance review reported in October 2007, which was the trigger to supervision.

### Allegations

- 181 As in 2006, there were a series of complaints and allegations passed to the Corporation in 2007. Most were received in June and July and concerned payments to consultants and the award of and control over contracts. Those judged of substance and which would have resulted in Schedule 1 breaches were referred to Ujima's Chief Executive to commission an independent investigation and to report the results to the Corporation by dates in September. He delayed the investigations and the matters remained unresolved.
- 182 A similar but less specific allegation concerning the relationship between a Director of Ujima and a related company (FWA) was received on 9 March, but the Corporation concluded that there was not sufficient information to proceed.
- 183 There was also information provided by a whistleblower on the Group Chief Executive's remuneration which appeared to be inconsistent with the results of the earlier investigation into his appointment in 2006. The Corporation did not consider that this was a matter which it should pursue.
- 184 Following the transfer of engagements to L&Q, a review of the allegation was conducted by Devonshires solicitors and they concluded that there was no evidence of a breach of Schedule 1.
- 185 In retrospect, this may have been anticipated given the delays in investigating the allegations in 2006. This reinforces the conclusion that where there are allegations about a Chair and/or Chief Executive of an organisation, investigation of such matters needs to be commissioned and reported independently of those concerned.

## Housing Corporation Assessment June 2007

- 186 The HCA was re-issued on 5 June 2007 following the decision to amend the assessment of Ujima's development performance to a red traffic light.
- 187 The text of the other three categories was updated but the traffic lights and 'strap lines' were not changed. As a result the Corporation published its view at June 2007 as follows:
- Viable
    - *The association meets the expectations set out in the Regulatory Code in terms of financial viability.*
  - Properly governed
    - *The governing body, supported by appropriate governance and executive arrangements maintains satisfactory control of the organisation. (The HCA noted that a governance review was being undertaken.)*
  - Properly managed
    - *The association generally meets the standard expected given the context in which it works and the available resources.*
- 188 The green traffic lights at June 2007 are difficult to reconcile with the evidence available at that time to support the judgements on compliance with the Regulatory Code particularly in respect of viability and governance. This suggests that the wider implications of the failure of a development programme were not sufficiently reflected in the Corporation's assessment procedures.
- 189 Viability requirements include a coherent and robust business plan and the fulfilling of loan covenants, timely submission of accounts and having sufficient and timely financial information to inform decision making.
- 190 Governance requirements include an effective Board with a sufficient range of expertise supported by appropriate governance and executive arrangements, acting to maintain the good reputation of the sector, fostering positive relations with stakeholders, conducting business in an accountable and transparent manner, entering relationships with other organisations only when all rights and obligations are clear and operating a framework that effectively identifies and manages risk.

191 There were, therefore, sufficient concerns and evidence to suggest that amber light ratings were appropriate. The Corporation assert that they seriously considered giving such ratings, but in the end they decided there was not enough evidence to change them, and the lights stayed green.

192 Given the information and the evidence available by the end of May 2007, the assessment that was issued by the Corporation to Ujima's Board and made public through the Corporation's website, would have given a misleading impression based on the traffic lights alone.

### Conclusions in respect of 2007

193 Neither the Ujima Board nor the Corporation were provided with sufficient and reliable information to understand the scale of the financial problems.

194 The Board appear to have been under-informed, uninformed or misinformed on key issues throughout 2007 such as on the nature of the Housing Corporation's concerns, development performance, in-year management accounts, treasury management, risk management and unfunded land banking activity.

195 The loss of three experienced Board members was critical and led to a lack of experience and challenge on the Ujima Board.

196 The Corporation had identified significant concerns early in 2007 and had a strong belief that firm action would be required to resolve these. A strategy and approach was agreed at the April case conference and by and large that strategy was progressed and achieved, but over a longer period due to the delays in finalising the Corporation's Governance Review.

197 The Corporation was reluctant to risk judicial challenge by Ujima and as a result followed a process-based course of action that outweighed the need for quick and decisive action to protect the interests of Ujima's tenants and the reputation of the sector.

198 The case conferences focused on development performance and governance and did not consider their impact on financial viability in sufficient detail. A new procedure has since been put in place to update

the AVR when withdrawing development funding, but this was not considered necessary at the time.

- 199 Ujima should have been considered a high risk association when compiling the AVR due to the uncertainty and risk associated with the new business plan, Project Jerusalem.
- 200 There was insufficient analysis in the 2006 AVR of the risks associated with declining financial performance, the costs of pursuing Project Jerusalem and the risk of loan covenant breaches.
- 201 After recognising risks, the Corporation pressed for, but did not compel, Ujima to provide access to Board papers on a timely basis and so was not fully aware of governance concerns, financial failures and the speculative land banking strategy.
- 202 When key decisions needed to be taken, the Corporation relied on assurances from Ujima, regarding such issues as the application for loan consent or the serious audit concerns expressed in the 2005-06 management letter. This approach was in line with the Corporation's regulation procedures, set out in the How We Regulate series, but we consider there was inadequate consideration of the need to validate information from independent sources or to verify it directly given the concerns surrounding Ujima.
- 203 It is our opinion that the June 2007 assessment should not have had green lights for viability and governance in view of the red light for development.
- 204 Ujima embarked on an unwise and unfunded land banking strategy at the end of 2006 and into 2007 in the hope that it could maintain or regain its status as a Preferred Development Partner. The commitments arising proved disastrous from a financial point of view and ultimately led to Ujima's serious financial difficulties.

## Ujima enters supervision

- 205 The Corporation put Ujima into supervision on 25 October 2007 following the outcome of the development governance review. The following week it made three statutory appointments to its Board, Tony Shoults, Dorian Leatham and Arvinda Gohil. Legal advice from Devonshires to the Ujima Board, subsequently confirmed by legal advice from Trowers and Hamlins to the Corporation, had indicated that, due to a rule change in 2004, of the existing Board, only Marta Phillips and the two tenant members were validly appointed, so the Board was reconstituted with these three continuing Board members and the three statutory appointees. It soon became clear that Ujima was in serious financial difficulty.
- 206 On 30 November the Board unanimously agreed to enter into a rescue arrangement with L&Q. As part of those arrangements, Julian Ashby and Ainsley Forbes were nominated to the Board of Ujima HA in December 2007 by L&Q, making a total of eight Board members. The insolvency process had placed the new Board of Ujima under extreme pressure. Two other RSLs besides L&Q had been contacted, but they were unable or unwilling to respond in the timeframe. There were then three further unsolicited approaches which were evaluated by the Corporation and the Ujima Board, but the lack of time meant that the transfer of Ujima's assets and liabilities to L&Q was necessarily not an entirely open and transparent process.
- 207 The proposal was narrowly defeated by Ujima's shareholding members on 17 December. As a result, the stakeholders had no choice but to seek to invoke insolvency powers contained in the Housing Act 1996 for the first time.
- 208 On 19 December the Board issued a winding up petition, a pre-requisite on the part of the lenders if they were to call default on the loan and appoint a receiver, thereby triggering the moratorium<sup>12</sup> which had the effect of preventing any receiver from selling land without the Corporation's consent.

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<sup>12</sup> This was a statutory moratorium, declared under the Corporation's powers contained in Section 42 of the Housing Act 1996, during which time the Housing Corporation was able to put proposals to lenders to safeguard the interests of tenants, the taxpayer and the lenders.

- 209 The filing of the winding up petition alone was not sufficient to trigger the moratorium. But, at a meeting the following day, the lenders proved reluctant to ‘pull the trigger’ appearing to fear that they would suffer reputational damage by doing so.
- 210 Ujima continued to operate as rental income was still being received and payments were being made. Given that the winding up petition had entered the court system, there was a risk that the bank would freeze the current account to prevent any transactions being processed. A Validation Order was obtained from the court, which allowed these transactions to continue to be processed.
- 211 Four lenders called default on Ujima’s borrowings on 21 December and appointed receivers. It was not sufficient to call default on the loan. Receivers had to be appointed if the moratorium was to be triggered.
- 212 Draft proposals were agreed the same day by the Corporation’s Chair and Chief Executive.
- 213 Work to identify all the secured creditors began on Christmas Eve since the proposals needed to be approved by 100% of them to allow a manager to be appointed and implement the plan.
- 214 On 10 January 2008 negotiations with secured creditors on draft proposals began and the transfer of engagement was registered by the Financial Services Authority on 16 January 2008.

### Shortcomings identified with the insolvency process

- 215 A number of shortcomings in the current legislation had to be overcome to achieve a solution once it became apparent that Ujima was subject to a cash crisis.
- 216 The question of control is the single most important issue. The Board members remained in control of Ujima throughout this process until the very last moment, when the Corporation appointed Grant Thornton as manager simply to effect the agreed transfer to L&Q.
- 217 In the case of Ujima, following the statutory appointments and the subsequent changes to its composition, the Board members in place were competent and willing to do what was required of them.

- 218 However, in our view, there was a real risk that the Board might not have conducted itself in this way.
- 219 By November 2007, the only Board members that remained in post were the statutory appointees, the two tenant members and Marta Phillips. The Board would have looked very different if the original members had remained in place and it was only their fortuitous omission of the implementation of a rule governing election that meant they were not.
- 220 The Corporation's power to remove Board members is very specific, and, for example, concerns over mismanagement can only be acted on after a statutory inquiry. The current legislation is designed to allow the Corporation to remove inactive Board members, rather than those that have taken inappropriate actions.
- 221 Furthermore, it was perhaps fortunate that the post-November 2007 Board members were sufficiently committed to the cause to remain in office. It was quite possible that they could have chosen to resign, particularly once they received advice as to the personal risks to them in relation to the insolvent position.
- 222 When the lenders requested that the Board file a winding up petition, the Board was effectively confirming that the entity was insolvent.
- 223 However, it continued to trade, since rents were being collected, which would have caused Board members anxiety in case it was held that they were trading while insolvent.
- 224 If all of the Board members had resigned, a vacuum in the decision-making process would have been created and it is unclear who would have been in effective control of the organisation during this period of crisis.
- 225 Furthermore, Board members and management who remained may not necessarily have had the skills and experience to manage an organisation during a cash crisis.
- 226 At Ujima, the lenders' appointment of a receiver was eventually only a technicality required to trigger the moratorium.
- 227 However, it is possible that a lender may take action on its own to

recover its assets if it felt exposed. It might seek, for example, to use the threat of appointment as a negotiating tactic to gain repayment.

- 228 If a lender had instead decided to appoint a receiver at Ujima to try to realise an asset the impact might have been significant. Other lenders may have followed suit, the Board may have considered its position untenable and other stakeholders might have become concerned as to the situation.
- 229 Furthermore, it seems unclear how the powers and duties of a receiver would sit with the obligations of an RSL. There would be a risk that a receiver would seek to realise value from its assets in a way detrimental to the objectives of social housing.
- 230 We are also concerned that one lender might have broken ranks, raising a real possibility of a domino effect and other lenders seeking to exercise their charges.
- 231 The fundamental limitation of the receivership process is that there is no legal requirement to balance the interests of the lenders against other stakeholders. The primary duty of the receiver is to realise the lender's asset, and this takes precedence over the interests of tenants or, indeed, anyone else.
- 232 There is no requirement for a receiver to ensure that the housing association continues to be operational.
- 233 If multiple receivers had been appointed, and the Board members or management were unwilling to continue, there is the risk is that no-one would have overall control of the association and there would be no clear route to maintain the RSL's infrastructure so that it could continue to collect rent and carry out maintenance.

## The use of the administration process

- 234 The use of the available insolvency powers in the case of Ujima should be seen as a 'wake-up call' to many stakeholders in the sector.
- 235 The previously unblemished, default-free status of housing associations was called into question by Ujima's demise and, given the current credit climate, may exacerbate the hardening in the perception of the sector as relatively risk free by lenders. The use of the insolvency

powers at Ujima revealed that they were not ideally suited to the situation.

236 Furthermore, most RSLs are Industrial & Provident (I&P) Societies and that status has hitherto precluded certain insolvency processes, most notably administration.

237 It has long been the view of the lenders that their low pricing reflected in part the unavailability of administration in these cases, which allowed them to retain a greater degree of control in the enforcement of their security through the appointment of receivers.

238 The availability of insolvency powers and the identity of those parties able to use them needs to reflect the necessary balance between:

- The independence of the RSL's Board.
- The independence of the Corporation.
- The reliance of stakeholders (in particular the lenders) on the Corporation's regulatory powers.
- The ability of the lenders to realise their security as a last resort.

239 The most crucial issue is who is in control during a crisis, in particular where money is rapidly running out.

240 It is perfectly possible in such a situation for Board members to resign, in the absence of a full indemnity, and for a control vacuum to develop at the very moment when skilled and competent management is vital.

241 In the Ujima case, stakeholders could rely upon a competent and committed Board willing to remain in control throughout, possibly comforted by the fact that a workable solution remained likely. As we have noted, this arose only because of the fortuitous failure of the previous Board to enact election rules correctly.

242 In other cases, this may not be true. This may be an extreme – and we hope, rare – situation but it must be addressed to minimise the risk of any future uncontrolled insolvency.

243 The use of receivership will in many cases not provide the control required, as a receiver will not have all of the necessary powers and

obligations and will only operate in the interests of his/her secured appointer, not, in particular, that of the tenants and leaseholders.

## Interim management, a potential solution

- 244 A potential solution in the Housing and Regeneration Act extends the role of the manager to include insolvency. This now means that the Corporation could appoint an interim manager at the start of a moratorium.
- 245 This will address the issue of control in some cases. However, it may not be the solution in cash crises.
- 246 There is still a risk of inadequate protection against unsecured and dissentient minority secured creditors while the interim manager is in post. Furthermore, detailed supporting legislation might be necessary to allow the manager to understand the extent of his role and his powers and obligations.
- 247 A manager would most likely seek a full indemnity from the Corporation for all costs and liabilities incurred, in the same way as the statutory appointees.

## How administration could work

- 248 We have considered how the administration process could provide the necessary competent control, while maximising available funding until an acceptable solution is found.
- 249 The use of administration could potentially address many of the issues raised above. However, lenders are very concerned that during an administration process they would lose the ability to realise their security.
- 250 Lenders have considered that receivership provided them with a means to security in the event of insolvency and that, were they to agree to administration, this solution might cease to be available.
- 251 Rather, an administrator appointed by the Corporation, the courts or a housing association itself would have the power to sell their assets without their consent.

- 252 Our view is that there are shortcomings in the way in which receivership would work in such circumstances.
- 253 In most cases, there is only fixed charge security and the role of receivers would be to realise that security for the benefit of the secured lender. Such a receiver (or multiple receivers, in some cases) would have no ability to manage the RSL as a whole, including any other activities not covered by security.
- 254 That creates the risk that the RSLs would have no management, other creditors would take matters into their own hands and eventually it could be placed into liquidation.
- 255 If a suitable modification to the usual terms of administration could be incorporated, it should be possible to maintain the lenders' ability to appoint receivers, while allowing an administrator to take temporary control to maximise the potential for a coordinated solution.
- 256 We understand that the lenders might be concerned as to the priorities and obligations of an administrator, and these would need to be considered very carefully. However we think it would be possible to enable lenders to retain an ability to appoint receivers, which would ensure that administrators do not act unfairly against lenders.
- 257 It is useful to note examples where a modified process has been used where a balance had to be struck between maintaining public services and dealing with administration at entities charged with providing those services.
- 258 Two recent cases are the use of the special administration process with Railtrack and the 'PPP Administration' used for Metronet.
- 259 In these cases, competent control and protection from creditors were also key priorities and the purposes of the administration process (and hence, the obligations and priorities of the administrator) were drafted to seek to balance the commercial realities against the need to continue to deliver public services. These two processes also sought to balance the delivery of public services against the commercial considerations.
- 260 Several lenders suggested to us that they saw administration as a potentially useful tool for situations where an interim manager appointment is not possible because of the severity or uncertainty of the

insolvent position.

- 261 The impact of such an amendment on lenders' willingness to lend to the sector and their pricing will need to be considered carefully.
- 262 We met with the CLG on 31 March 2008 and put this suggestion to them as something they should consider. They did not feel it could be incorporated into the Housing and Regeneration Bill, but it could be a matter for future legislation.

## Roles, responsibilities and processes

### The Board

- 263 The Board continued to control the operations of the organisation throughout the negotiations on how to trigger the moratorium and throughout the moratorium itself.
- 264 Boards are independent of the Corporation and lenders, but members are either unpaid or at most paid only a modest amount. In simple terms, it is arguably unfair that Board members should be in such a position at a time when the financial situation is such that huge demands of time and responsibility are placed upon them.
- 265 While the statutory appointees receive a broad indemnity from the Corporation, there is no similar arrangement for other Board members under the insolvency legislation.
- 266 This could potentially leave them exposed at a time of crisis. Furthermore, even if the wording of the indemnity were amended to cover all financial liabilities incurred during an insolvency process, there remains the risk of reputational damage, possible disqualification as a Company Director, and even prosecution.
- 267 The Board's role at Ujima was critical because if it had been unwilling to file a winding up petition, the lenders might have been unwilling to call default on Ujima's borrowings. The Board only relinquished its obligations once the manager was appointed at the very end of the process. It is to their credit that the three remaining legally appointed Board members were willing to remain in position and see this process through.

## The Regulator

- 268 The Corporation regulates the social housing sector and is responsible for protecting the interests of tenants, the public purse and stakeholders. It is also an investor, and so has an investment to protect.
- 269 This is, of course, will change under the Housing and Regeneration Act, with the separation of investing and regulatory powers.
- 270 The Corporation's insolvency powers are limited. As was shown at Ujima, it was reliant on other parties triggering the moratorium, which provided that the Corporation's consent was needed for any land disposals. It did not though provide protection against secured and unsecured creditors.
- 271 With this exception, the moratorium does not create protection against receivers exercising their powers, for example over collection of rental income.
- 272 The Corporation was reliant on the approval of all of the secured creditors before its proposals for Ujima's future could be implemented.
- 273 Although it has the power to appoint a manager to replace staff who have been removed following the conclusion of an inquiry, no inquiry had been launched in this case so the Corporation could appoint a manager only once the secured creditors had approved the proposals.

## The lenders

- 274 Lenders have to date taken the view that the social housing sector is extremely low risk, and so have been willing to provide relatively low-cost finance to the sector.
- 275 They rely on the Corporation, as Regulator, to mitigate the risks so that borrowing costs remain this low. Finance costs would in all likelihood be higher were lenders to carry out their own due diligence rather than rely on the Regulator.
- 276 Furthermore, the Ujima case demonstrated that the reputational risk associated with the lenders being seen to 'pull the trigger' is a significant consideration for them, and this appears to have led to their reluctance to act to trigger the moratorium. However, without the

comfort of knowing that L&Q were present as a suitor they might have been more willing to act decisively to protect their loans.

- 277 In the event, they took the required action only once the Board had agreed to file a winding up petition: effectively a formal confirmation of their view that Ujima was insolvent.
- 278 This proved, in our view, to be a cumbersome way to trigger the moratorium.
- 279 It is worth noting that the lenders were only moved to act when their own security was at risk. The protection afforded to them in the form of the fixed charge means that the secured lenders would not necessarily be motivated to act if their borrowing was safe, even if the position for unsecured creditors was worsening.

### The role of members in an industrial and provident society

- 280 Ujima is constituted as an I&P society, in common with the majority of RSLs. Under this structure, members' approval must be obtained before a transfer of engagements can be processed.
- 281 This may be appropriate in a solvent society but there appears to be a disparity between the level of power that sits with the members and their economic interest in the organisation when it is insolvent.
- 282 Insolvency legislation recognises that conventional shareholders have little say in insolvency processes when it is clear that they no longer have an economic interest in the outcome. This appears not to be the case in an I&P society, where the 'shareholders' retain their influence while having no economic interest in the entity.

### Issues around the moratorium

- 283 A moratorium can currently only be triggered in response either to a winding up order or the lenders taking steps to enforce any security over land held by the association.
- 284 There is a real risk that if this situation was to arise in the future, the lenders would again be unwilling to 'pull the trigger' at an early enough stage. Similarly, the passage of a winding up order is potentially a lengthy process and almost inevitably too late to allow for an effective

and controlled solution.

- 285 The moratorium is limited to Corporation consent being required for any land disposal and does not provide protection against charge holders seeking to exercise their rights of possession or unsecured creditors seeking to bring legal action for recovery.
- 286 The moratorium only lasts for 28 days. In the case of Ujima, a plan had effectively been established prior to the moratorium. In many other cases, 28 days may be insufficient to achieve a successful outcome, if the moratorium were triggered while a plan was still being formulated.

### The manager

- 287 In the absence of an inquiry, the role of the manager is limited to implementing proposals that have already been developed and approved by all of the secured creditors.
- 288 Grant Thornton was appointed manager on 14 January 2008 and two days later the transfer to L&Q had been implemented.
- 289 An amendment to the Bill has provided for the introduction of an interim manager who may be appointed by the regulator once a moratorium has been triggered. The exact powers, rights and obligations of the interim manager will be set out in an order determined by the Regulator upon appointing the interim manager. See section on interim manager below at paragraph 296 below.

### Secured creditors

- 290 A moratorium must be approved by 100% of the secured creditors. In the case of Ujima, there were various practical issues in terms of identifying all of them as a result of inadequate record keeping. This position is, we fear, likely to be repeated in any similar situation.

### The tenants

- 291 The Corporation is legally required to use its best endeavours to consult with tenants. Again, this raises practical questions around how this is achieved. The timing in the Ujima case was particularly problematic as the moratorium was triggered a few days before Christmas.

292 These time pressures meant that there was little opportunity to consult tenants or to solicit and consider more than one proposal properly. This is a shortcoming of the existing insolvency process.

## The Housing and Regeneration Bill

293 Various amendments arising from events at Ujima were made to the Bill during its progress through Parliament, which we welcome.

294 A summary of the changes contained in the Act is set out in the following paragraphs.

### Moratorium trigger

295 A moratorium may be triggered under the Act after a Board decision to file a winding up petition. Had this power existed last winter it would have removed the requirement for Ujima's lenders to appoint a receiver and the validation order would not have been needed. Nor would a petition have had to be filed with the courts.

### Interim manager

296 An interim manager may be appointed by the regulator at the start of the moratorium. Under current legislation, this could only be done following the moratorium being triggered and all the secured creditors having approved the proposals.

297 The exact powers, rights and obligations of the interim manager have not been covered in the Act and will be set out in an order determined by the Regulator when it appoints an interim manager.

### Length of moratorium

298 The length of the moratorium has been extended to 28 business days, rather than 28 days under the current legislation. This amendment is designed to address the timing issues that arose from the Ujima crisis occurring around the Christmas period.

### Secured creditor approval of proposals

299 The requirement for all secured creditors to approve proposals has been amended marginally. The Act requires the approval of all identified

secured creditors where reasonable inquiries to identify them have been carried out.

- 300 Effectively, this addresses the situation where an unknown secured creditor emerges after proposals have been approved or implemented.
- 301 However, this does not incorporate the notion of majority voting, which would limit the power of minor secured creditors to block the proposals.
- 302 Nor does it deal with situations where the secured creditors have been identified but they will not respond. We understand the government has considered these issues but could not agree upon what would be an appropriate percentage of creditors required to approve the proposals.
- 303 There was felt to be a risk that, given the absolute levels of lending, minor secured lenders could still have lent significant amounts to an individual RSL and their views would be disregarded under majority voting.

#### Appointment of new officers

- 304 The Regulator's ability to appoint new officers has been restricted.
- 305 Statutory appointees must be in the minority on any given Board, other than where there is an unconstitutional number of members in post. Previously, there were no such restrictions on the number of Board members appointed by the Regulator.
- 306 We welcome the efforts of the Corporation and the National Housing Federation to strengthen the pool of statutory appointees, through their current initiative which takes in both people who have acted successfully as appointees in the last five years, and a programme to attract and assess potential new candidates.

#### Consultation with tenants

- 307 Under the existing legislation, the Corporation, in developing a set of proposals during the moratorium, is required to its best endeavours to consult with tenants.
- 308 In the case of Ujima, this was very difficult as it happened to cover the Christmas period. Notwithstanding this, it is unclear what, in practice,

the Regulator is expected to do in this respect during the 28 days of the moratorium.

309 We understand that these issues have been considered by the government but have not been included in the Act.

### Further changes to be considered

310 The sector is searching for a solution where there is as much certainty as possible about the process in should follow in a cash crisis.

311 Certainty of outcome is key to all regimes designed to deal with business failure. In particular, a solution is needed which:

- Continues to protect the interests of tenants where possible.
- Is controlled by competent managers trusted by all stakeholders.
- Provides lenders with an ability to realise their security if necessary, to keep lending costs low.
- Maintains the infrastructure of the housing association for as long as necessary to collect rents, effect maintenance etc.
- Provides adequate protection against unsecured creditors' or minority secured creditors' action.
- Ensures that the Regulator maintains a level of independence and distance.
- Maximises the prospects of cash being available for as long as possible during the process.
- Maximises the options for stakeholders in the event that a solution cannot be found which provides for the activities of the association to be transferred to another along with *all* liabilities (a 'solvent transfer').

312 Historically, we understand that the lenders have been unwilling to see an administration process available to I&P Societies (the majority of associations) because they desire to retain control over the process and to keep the ultimate option of appointing receivers to realise their security. However, the experience of Ujima's insolvency shows that

there would be advantages to the process, and that the respective rights of tenants, stakeholders, lenders and the Regulator could be fairly and properly considered.

313 Furthermore, as described above, there will be changes to the circumstance in which an interim manager may be appointed.

### **Scenarios in which further consideration is needed**

314 These comprise:

- Status quo: no change to the existing regime where receivership is the only last resort process in worst cases.
- The role of the interim manager.
- The use of the administration process (contained within existing insolvency legislation), with appropriate modifications to ensure a balance between the social need to protect the welfare of tenants and the commercial need to allow lenders the ability to realise their security in the last resort.

315 It is important to understand that the position being addressed is one in which a cash crisis means the association is either insolvent or where its solvency remains uncertain.

316 In many respects, the latter position of uncertainty may be more concerning and may result for example from a fraud or severe mismanagement. In this case, funding any potential deficit may be more difficult as potential funders may be unaware of the extent of future cash needs.

## Conclusions

### Ujima's failure

- 1.1 Ujima let down its tenants and service users over a long period with poor performance and problems with the quality of its services persisting over a number of years.
- 1.2 The collapse of Ujima was due to a failure of business management, leadership and governance.
- 1.3 There were problems in service management and in Ujima's capacity to plan and manage a large and complex development programme even at the start of the period covered by this review, but these were largely manageable. Ujima was destabilised by pursuing aspirational growth plans without the resources or experience to manage existing services and deliver an ambitious development programme.
- 1.4 One crucial issue in Ujima's demise was the size of its development programme in relation to its technical capacity as a developer. London was the only region in the country to have a firm target for allocations to BME associations for the NAHP 2006-08. The target was that 15% of all rented homes allocations should be to BME associations – either directly through those who were Investment Partners (of which there were three) or indirectly to other BME associations who were not Partners but who would take ownership or management of homes developed by Partners. Without this target Ujima's programme might well have been smaller. Although Ujima was assessed to have the financial and technical capability to deliver its programme, it turned out to lack the resources and ability to deliver it, even though in qualifying for Partner status Ujima underwent a technical assessment of its ability to deliver the Corporation's requirements. This could be an issue for other medium-sized RSLs, which may appear to have sufficient financial capacity but lack the experience, depth and technical wherewithal to deliver a greatly enlarged programme.
- 1.5 Land banking and the financial commitments flowing from the decision to build out specific sites without the available funding coupled with an unsustainable revenue deficit and major overspends on the capital

programme were fatal to Ujima. If it had not bought those sites, and if it had had a sensible business plan, it would still be viable.

### Failures by the Ujima Board

- 2.1 The Board received some information but took assurances from management too readily, partly because after 2006 the experience and ability of the Board was limited. The Board failed in its duties because it did not insist on receiving management accounts and this should also have been a key issue for the audit committee.
- 2.2 The audit committee worked cooperatively with the external auditors and raised issues on the accounts and challenged management on the quality of information. However, its independence was jeopardised by the fact that the Ujima Chair, Adonis Daniel, was an audit committee member, which is contrary to good practice.
- 2.3 The Board should have seen the potential breach of loan covenants as more serious; accepting assurances that these were ‘technical breaches’ was insufficient.
- 2.4 It is to the credit of Board members that they continued to serve on the Ujima Board despite evidence of internal division and increasing difficulties in carrying out their duties. It is especially to the credit of the three remaining legally appointed Board members that they served with the statutory appointees on the reconstituted Ujima Board from November 2007 and worked with them to find a solution at the end.
- 2.5 Shareholders held power without responsibility once Ujima became insolvent, as they remained in ultimate control despite having no economic interest in the entity.
- 2.6 The fortuitous failure of the original Board to implement the rule change on election left the association in the hands of the statutory appointees and the three remaining legally appointed Board members in November 2007. Had this not happened, it is clear to us that it would have been more difficult to find a way forwards, in particular if the Chair and the Group Chief Executive had ‘dug in’ and insisted on staying.

## The Housing Corporation's role

- 3.1 If the Corporation had intervened more effectively during 2006 or even earlier in 2007, it is possible that Ujima might have been able to avoid insolvency, or at least have had more time in which to exercise choice and consult with its tenants and stakeholders in reaching a solution to its problems. It was already apparent that the information that Ujima provided during 2006 on its development programme was incomplete and not fit for purpose and that there was no realistic prospect of the association meeting its target in 2006-07. The number of allegations and resignations in 2006 also reflected a troubled organisation.
- 3.2 Within the current inspection and regulatory framework, feedback from tenants is not central to regulatory engagement. The backlog of tenants complaints, repairs and rent arrears following the transfer of Ujima's operations to L&Q suggests the continuation of serious weaknesses in service delivery at Ujima, which were alluded to in the Audit Commission inspection report published in January 2005.
- 3.3 There appeared to be a disconnect between the Corporation's regulation and investment activity in Ujima's case: problems in development did not trigger sufficient regulatory action. Communication between the Corporation's regulation and investment arms should have been better.
- 3.4 The Corporation should have been more interventionist in its regulation when it did not get the cooperation from Ujima that was required, in particular over Ujima's persistent failure to supply requested Board papers. There should have been an internal review to trigger more intensive engagement and move the risk rating upwards. Non-compliance should trigger regulatory action which is set out and known in advance.
- 3.5 In the face of all this evidence, the Corporation sustained its judgement that Ujima's traffic light should not be amended. The procedure was to respond to information as it came through and the 'development' traffic light was amended without sufficiently considering the impacts on the traffic light for other activities. This put potentially confusing messages into the public domain. Ujima ended up with a red light for development but green for governance.

## Issues in the Corporation's approach to regulation

- 4.1 The Corporation's approach to regulation depended on historic information as its starting point, coupled with the judgement of regulatory staff as new and more current information came into play. In Ujima's case it appears that such regulatory engagement was not adept at acting upon more current information that would have shown up problems.
- 4.2 There appears to have been a failure to take decisive action at the Corporation. There needs to be a more robust response mechanism that ensures action is taken and inaction does not become the consequence. The Corporation frequently talks of “insufficient evidence to intervene”. It took 11 months for Ujima to investigate the allegations made in 2006. The Corporation did not secure more rapid compliance when Ujima's 2005-06 accounts were very late, and the response to the management letter, which one of the Corporation's regulatory staff described as “*the worst he had seen*”, arrived four months later. The Robson Rhodes report on governance and the Audit Commission action plan were not followed up sufficiently promptly. All these delays should have caused more serious concern, especially in the context of all the other issues.
- 4.3 The Corporation would have been more aware of the weaknesses in governance apparent in Ujima in 2006 if Board minutes been received.
- 4.4 There seemed, in the case of Ujima, to be an approach which continually stopped short of taking statutory action. The Corporation had considerable information on a range of issues but did not bring this to a head. Instead there was a reliance on assurances from Ujima and a failure to pursue problems in the face of assurances from Ujima that all was well. What was required was an exercise of judgement on all the issues taken together and not as a series of one-off concerns.
- 4.5 This system also depends on the willingness of housing associations to supply relevant information to the Corporation and it was unclear how the process was supposed to work where this was withheld. This created a perverse incentive for an association that wished to hide its troubles from the Corporation to withhold the information concerned.

The Corporation did have powers to intervene, but we welcome the changes under the new legislation that will make a more proportional intervention available.

- 4.6 More widely, although regulators had an overall perspective in the Corporation, there was a lack of triggers for action and very strong concern at the possible impact of being taken to judicial review, which in other cases had caused a virtual stalemate in regulatory action. The regulatory approach was not the moving, reactive process it should have been.

### Factors that inhibited action

- 5.1 Once the independent reviews had been commissioned, in line with procedures, the Corporation did not feel able to act until they were concluded, although it had little control over how long these processes took. It was also content with plans of action drawn up by Ujima, which took too long to conclude or were never concluded.
- 5.2 It has been suggested that the Corporation may also have been inhibited from action by sensitivity to allegations made by Ujima's Group Chief Executive that its regulatory interventions were motivated by racism. We saw no evidence to support such assertions.

### Assessments and validation of data

- 6.1 The Audit Commission's report was produced at a time when they were still finalising their inspection process. It is difficult to reconcile the hard evidence in the Commission's report with the conclusions in its summary. Nonetheless there was an important list of recommendations in the report – and it is a concern that it took Ujima two years to sign off the action plan arising out of the Commission report.
- 6.2 The widespread opinion of senior Corporation staff and others in the housing sector that Ujima's business plan was unrealistic did not feed into the AVR because Project Jerusalem had not been agreed in detail. Ujima received green lights on this basis.
- 6.3 The self-assessment and validation of data, for example of the key performance indicators, was in line with Corporation regulatory

procedures, but we question whether it was adequate. Corporation regulation of Ujima repeatedly relied ultimately on assurances from Ujima, for example on loan covenant breaches.

### Insolvency processes

- 7.1 We have identified a number of problems that arise because the insolvency process is not suited well to an organisation that has public services to deliver, which could not be delivered were its assets sold off by a receiver acting for a lender. Several factors meant Ujima was fortunate in avoiding a situation where its residents' interests were unprotected during insolvency, but that might not be the case in any similar crisis.

### Overall view

- 8.1 Ujima's collapse was the result of bad management and an ineffective Board, and it was responsible for its own demise. However, it is possible that the outcome could have been different had earlier and more decisive action been taken by the Corporation.
- 8.2 Overall, there is no evidence that the Corporation failed to comply with the letter of regulation. It appears the problem was more a matter of judgement. Historically, the Corporation has exercised its regulatory role through huge influence but with limited powers and has depended typically on collaboration with those being regulated. This has meant that it has exercised considerable discretion and judgement within this role. In this case, it failed to use its influence effectively as it relied on process, rather than raising and pressing issues of concern persistently and consistently with Ujima's Board. If an overall view was taken, then a lack of effective action resulted from it until October 2007.

## Recommendations

We are aware that the Corporation has carried out its own review of regulatory engagement and has made the following improvements:

- Restructuring and strengthening regulation teams.
- Better quality assurance of HCAs, risk ratings and key regulatory engagements.
- Increased awareness of financial risks ahead of the AVR process.

In addition, the Corporation has made the following further recommendations:

- A move away from the regional model for the management of regulation to create single teams to be deployed according to need.
- Reviewing the resources dedicated to financial viability and regulation annually.
- Reviewing regulatory plans where key changes occur in a provider.
- Whistleblowing allegations to be directed through Supervision rather than regional teams.
- Further training of regulation staff in financial and analytical skills.
- Seeking external assurance of implementation of external auditors' management letter.
- An approach whereby the regulatory approach is genuinely risk based and proportionate, i.e. regulatory engagement is increased where risk is heightened, such as in the case of obstruction.

- Work with the Audit Commission in developing an approach to short-notice inspections (as envisaged by the Housing and Regeneration Act).

We concur with the above actions and recommendations, especially those that strengthen the leadership and definition of responsibility in decision making. In addition, we have the following further recommendations to make coming out of the Inquiry:

1. Ujima's experience points to potential flaws in the laws that govern I&P Societies should they become insolvent. The introduction of a modified process of administration as set out in our report should be introduced. We recommend that CLG and the Regulator should seek to address this as a matter of priority. We also consider that the appointment of an interim manager at the start of a moratorium is a step forward which could be used prior to the introduction of a process of administration.
2. If property is to be transferred to another RSL because of financial or other difficulties, then there should be consultation with tenants, and an open and transparent process of selection undertaken. This reinforces our recommendation that there should be a process of administration.
3. Both the regulation and investment arms of the Corporation and its successor agencies must ensure they understand the wider implications of the failure of a development programme. This type of overview and information sharing will be essential under the new arrangements, and we consider that effective arrangements are needed to put into practice the statutory requirement in the Housing and Regeneration Act on the agencies to cooperate and ensure effective communication between them.
4. In any regulatory system which uses publicly available traffic lights, clearer triggers for changes in such traffic lights are needed. If the Regulator does not receive timely information from an RSL, or pending resolution of any issues raised by regulators, the light should become amber, with a requirement on the RSL to notify its stakeholders when that occurs.

5. In particular, failure by an RSL to cooperate with the Regulator's legitimate requests for information should in itself move it to higher risk category and procedures need to be strengthened so as to trigger appropriate action to ensure that the information is received. The Regulator should act more readily when faced with serious obstruction or delays, deliberate or otherwise, from an association in respect of regulatory matters. The use of enforcement notices as provided in the Housing and Regeneration Act should provide the Regulator with greater powers in dealing with an uncooperative RSL.
6. The Regulator needs to have a clear understanding of the issues affecting those it regulates and how those issues are being handled. Regulatory officials had insufficient understanding of financial issues, for example, the possible effects of commitments arising from land banking, and accepted Ujima's assurances.
7. The Regulator should ensure that those handling regulation have the necessary skills and knowledge to do an effective job and must also ensure that regulatory matters are, according to their complexity, handled by people at an appropriate level of seniority.
8. Action plans arising from inspections should be agreed within defined time scales, and there should be times set to meet the points contained with action taken if these are not met, including a change in traffic lights. Again the use of enforcement notices should be one way to deal with this.
9. The Regulator should take more positive steps to ensure that the people against whom allegations are made do not have any role in the investigation of such allegations (other than as a respondent) and the investigation should be transparent and independent.
10. The Regulator should consider whether Chairs of audit committees who resign should have to report their action to the Regulator, and whether there should be a requirement for RSLs to report to it should an auditor resign.
11. Consideration should be given to whether external auditors should be required to report 'matters of material significance' to the Regulator, as they are in the case of the pension fund and charity audits.

12. Where audit management letters indicate significant concerns, the association should be required to respond within a specified period to the Regulator. The Regulator should also confirm that the auditor has seen and has had the opportunity to comment on the management response.
13. With the greater emphasis on service standards there will need to be consideration on how the new Regulator gets assurance on the reliability of reported performance and that there is a clearly defined process to risk-assess, test and confirm the reliability of information provided by associations on service standards, for example through the service inspection process.

### Terms of reference

Our conclusions and recommendations in most cases necessarily span several of the terms of reference but for convenience we have listed those particularly pertinent beneath each.

- 1 Assess the extent to which Ujima's Board and senior management had access to accurate and timely information on its performance and whether that information was shared with its auditors, lenders and the Corporation in an open and accountable manner.  
Recommendations: 10, 11, 12  
Conclusions: 2, 8.1
- 2 Assess the application of the Housing Corporation's risk-based approach to regulation, including its investment decisions, and to determine whether there were any deficiencies in the approach and/or its application.  
Recommendations: 3, 4, 5, 6, 7, 8, 9, 11, 12, 13  
Conclusions: 3, 4, 5, 6, 8.2
- 3 Assess the effectiveness of the Housing Corporation's insolvency powers, and how they were employed in ensuring: (a) the protection of Ujima tenants' interests; (b) the protection of the public purse and publicly funded assets; (c) the safeguarding of lenders' interests; (d) consideration of other Corporation objectives, e.g. sustaining a vibrant independent BME sector.  
Recommendations: 2  
Conclusions: 7
- 4 Make recommendations as to whether, and if so how, regulation policy and/or operational systems may be improved in preparation for the establishment of the new social housing Regulator.  
Recommendations: 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13  
Conclusions: 3, 4, 5, 6, 8.2

- 5 Recommend any amendments to the Housing and Regeneration Bill that would improve the new Regulator's ability to identify and respond to the potential failures of a registered provider to meet regulatory requirements.

CLG meeting, 31 March 2008 (see Paragraph 262)

- 6 Review the adequacy of other legislation (such as that governing Industrial and Provident Societies and the role and responsibilities of shareholders) that impacted on the operation of Ujima over this period.

Recommendations: 1

### Corporation BME policies

1985 Corporation published its first circular on race and housing.

1986-91 Five Year Strategy

Corporation published its first strategy towards BME housing needs which focused on promoting the creation of BME-led housing associations.

1992-96 An Independent Future – BME Housing Association Strategy

An Independent Future was launched in 1992, and aimed to build upon the Housing Corporation's first BME strategy that firmly established a role for BME associations changing the emphasis to support and consolidation. By 1992, four BME associations were independent and An Independent Future aimed to increase this number to 40-45.

Overall, the strategy set out a number of key objectives aimed at consolidating and improving on the opportunities available for specialist providers. In broad terms these objectives were:

- 40 BME<sup>13</sup> associations to become independent<sup>14</sup> and effective by 1996.
- BME associations to receive £750 million to provide new homes<sup>15</sup>.
- Increased revenue grants to assist BME associations to become fully independent.
- BME associations to receive around 2,400 homes through stock transfers.
- BME associations to own and/or manage 16,500 homes by 1996.
- Training programmes to be established to support associations reach high standards of performance.

1996 Housing Needs Enabling Framework

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<sup>13</sup> BME associations are those defined as those established to meet the needs of BME communities and are managed by a committee of which at least 80% are from ethnic minority communities

<sup>14</sup> Independent is defined in the 1992 strategy as associations no longer dependent on public revenue grant for funding core activities and overheads.

<sup>15</sup> £750 million amounted to 9% of investment in new programmes of rented housing in 1992, a increase from 6.8% in 1989-90.

End of Corporation capital and revenue support directly to BME associations to promote their growth and viability. Enabling housing needs framework developed (Black and Minority Ethnic Housing Needs: An Enabling Framework), shifting the emphasis of support from BME associations to a BME housing needs approach to be adopted by all RSLs.

1998                      Black and Minority Ethnic Housing Policy

It was designed to combine their work on BME housing associations with a more general approach aimed at encouraging mainstream associations to take action on racial equality. Highlighted the need for associations to develop organisational cultures that empowered BME communities, integrating their needs and aspirations into their everyday business (mainstreaming).

- RSLs to keep the membership of governing bodies under review and set targets to ensure that they are reflected of the communities they serve.
- Recruit and develop staff – particularly at senior levels.
- Work to secure the ongoing engagement of BME tenants and adhere to best practice.
- Promote the inclusion of BME contractors – possibly through partnerships with local authorities.
- Conduct research on BME aspirations and housing experiences.
- The Corporation would continue to register new BME-led associations.
- RSLs to develop effective targets for allocations for BME communities.

1999                      Publication of the Stephen Lawrence Inquiry Report.

Widespread acceptance of Lord Macpherson's definition of Institutional Racism across the public sector and its impact.

1999                      Corporation Circular

Informed all associations that it would include two new questions on race equality in the Regulatory and Statistical Return (RSR) for 1999-2000 covering strategies for the recruitment and retention of BME staff and BME

housing needs. State of the Nation Report produced from RSL strategies

2000 Corporation published Source 43: A Question of Diversity

A baseline report developed to support and inform the BME Housing Policy which explored career opportunities for BME staff.

2000 Developing Race Equality Strategies

Chartered Institute of Housing (CIH), Federation of Black Housing Organisations (FBHO) and Corporation published good practice guide to developing race equality strategies.

Corporation published Source 50: A Question of Delivery

The second baseline research report of the BME Housing Policy, which assessed how far housing associations had met the needs of BME communities.

Corporation published Am I Included

An independent scrutiny of the organisation's culture, policies and practice that affect diversity in the workplace. Intended to show leadership by example.

2001-05 Race and Housing Inquiry – Challenge Report

Following the disturbances in Bradford, Burnley and Oldham, the Race and Housing Inquiry was established to challenge RSLs and the organisations they worked with to examine how the housing sector could better meet the needs and aspirations of BME communities and improve race equality.

The subsequent Challenge Report laid out a series of recommendations for key stakeholders such as the Commission for Racial Equality (CRE), National Housing Federation (NHF) and the Corporation. These included the following:

- That the Corporation promote race equality.
- That the Corporation conducts appropriate research in race equality issues.

- That the Corporation request evidence of working with BME associations as part of the investment bidding and as part of best value performance.
- That the Corporation provide training on race equality to regulation staff.
- That the sector aims to maintain Boards of associations that reflect the communities they serve.
- That Board members are training on race equality and can illustrate a commitment to equality.
- That associations set out their arrangements for achieving race equality in actions plans – setting targets as appropriate.
- That associations address racist incidents and monitor performance.
- That associations adopt effective equal opportunities practices in regard to employment and career development.
- That associations support supply diversity in the use of contractors and consultants.
- That associations improve partnership opportunities for BME associations.
- That the BME National Advisory Group (NAG) brings together the Housing Corporation, FBHO, NHF and CRE to ensure that race equality issues maintain high profiles within the sector.

#### 2001 Regulatory Code – Race Equality

Corporation published the Regulatory Code and Guidance, which outlined its changed approach to regulation and included a fundamental obligation covering various aspects of race equality and diversity. The code included all significant issues and recommendations highlighted by the Challenge Report.

#### 2001 Good Practice Note 4: Equality and Diversity

Corporation published Regulatory Code Good Practice Note 4, expanding upon the regulatory requirements and setting the targets that housing associations should set and meet.

#### 2004 Good Practice Note 8: Equality and Diversity

Corporation published Regulatory Code Good Practice Note 8, on equality and diversity, advising associations of the need to meet a diverse range of

needs in addition to race and the bank of legislation around various forms of discrimination to be complied, and restating the 'business case' for diversity.

2007                    How Effectively Housing Associations Meet the Needs of  
New and Emerging BME Communities

Research commissioned on how well BME communities served by RSL sector. The research recommended further work to be carried out looking at BME satisfaction and the provision of culturally sensitive services.

2005-08                BME Action Plan

This BME Action Plan covers the period between 2005 to 2008 and sets out the Housing Corporation's continuing commitment to the vision and objectives set out in the Race and Housing Inquiry Challenge Report 2001, as well as our existing BME Housing Policy. The actions set out here are also key to delivery of our statutory Race Equality Scheme:

- From May 2005 all reports to senior management committees and the Housing Corporation Board will include an assessment of the equality and diversity implication of proposals/policies and procedures.
- We will proactively assess the impact that our policies and procedures have on BME communities and ensure that we act on lessons learnt.
- We will use our regulatory powers to act against unlawful discrimination and promote equality of opportunity.
- We will work with ODPM [now CLG], other Government Departments and Agencies, our regional stakeholders, and local authorities to highlight the needs of BME groups and the needs of new emerging communities.
- We will take into account the interests of BME communities when promoting implementation of choice-based lettings arrangements.

NAHP 2006-08

In 2006-08 indirect and direct allocations to BME associations have totalled £220 million, delivering 2,774 units. BME associations have also had a ring-fenced place within the Specialist Route within the investment programme – although only two BME associations took advantage of that route in 2006-08.

Whilst most BME associations remain small and community based – often serving very specific needs or a particular geographical area – the three largest BME-led associations manage assets of £475 million and compete with mainstream developing associations for inclusion in our Partnering programme. The prospectus required all associations operating in areas where 10+% of the population were from BME communities to work with and through a BME association partner. This commitment was outlined in a method statement that illustrated how the needs of BME communities would be met. In addition, the London region retained a 15% investment target to BME association – as a total of its investment programme.

#### NAHP 2008-11

In recognition of the changing profile of BME communities, the approach to method statements was updated to reflect local and national challenges. Specifically, method statements were now required in areas of 10+% BME communities and areas identified within regional housing strategies as having an impact on race equality. Furthermore, to support provision for diverse communities, Investment Partners were required to identify and work with community bodies with an expertise or understanding about the needs of BME communities in housing need. This enabled Investment Partners to work with non-RSL partners, although it was expected that BME associations would remain the partner of choice. In addition, method statements would only be accepted if all partners were signatories to the method statement.

#### 2008 Drivers of BME Satisfaction

MORI research that examined the drivers of satisfaction for BME communities was published on 10 July 2008. This work originated from earlier research published in 2007.

#### 2008 Culturally Sensitive Services

This work examined the degree of importance and awareness tenants had of services that were defined as culturally sensitive.

**List of interviewees and those submitting evidence**

Julian Ashby, Tribal Consulting (L&Q appointee to Board of Ujima HA)  
Colin Buckley, Consultant  
Andrew Cowan, Devonshires Solicitors  
Aman Dalvi, former CEO, Ujima HA  
Kye Gbangbola, former Development Director, Ujima HA  
Arvinda Gohil, statutory appointee to the Board of Ujima HA  
Andrew Heywood, Council of Mortgage Lenders  
Keith Kerr, former Group Chief Executive, Ujima HA  
Leslie Laniyan, Chair, FBHO  
Marta Phillips, Board Member, Ujima HA  
Terry Roque, FBHO  
Tony Shoults, statutory appointee to the Board of Ujima HA  
Jheni Williams, Executive Director, FBHO  
Sam Williams, former Board member, Ujima HA  
Don Wood, Chief Executive, L&Q Group

Kemi Awolola, Housing Corporation  
Dennis Chambers, Housing Corporation  
Roger De La Mare, Housing Corporation  
Andrew Dench, Housing Corporation  
Steven Douglas, Deputy CEO until July 2007, then CEO of Housing Corporation  
Simon Goulding, former Lead Regulator, Housing Corporation  
Bill Hennessy, Housing Corporation  
Roy Irwin, Audit Commission  
Jackie Jacob, Housing Corporation  
Roger Jarman, Audit Commission  
Peter Marsh, Director of Resources until July 2007, then Deputy CEO of Corporation  
Clare Miller, Director of Regulation, Housing Corporation  
Rona Nicholson, London Field Director, Housing Corporation  
Jon Rouse, CEO of Corporation until July 2007  
Janet Trench, Housing Corporation  
Joann Walsh, Housing Corporation  
Doug Wynne, Housing Corporation

Rob Wilson, MP for Reading East

Vivian Bairstow, Begbies Traynor

Clive Barnett, RBS

Ian Davies, Trowers & Hamlins

Mike Dudman, Abbey

Richard Hughes, HBOS

Arthur Merchant, Robson Rhodes

Philip Rego, BDO Stoy Hayward

Raymond Ruse & Martin Amis, Lloyds TSB

David Thurgood, Grant Thornton

Piers Williamson, The Housing Finance Corporation

Invited to interview:

Anton Albert, former Ujima employee – Contacted through L&Q but has not responded

Adonis Daniel, former Chair of Ujima – Contacted, but has not agreed an interview date

Nathan Gravesande, former Ujima Board member – Contacted but has not agreed to be interviewed

Previn Tailor, former Ujima employee – Contacted through L&Q but has not responded