



# Chapter Ten

## Modern Institutions and Governance

Kenneth Gibb<sup>1</sup>

<sup>1</sup> Roger Wilshaw, Places for People, made an important contribution to the development of this theme

**‘We define ‘institutions’... as ‘systems of established and prevalent social rules’ – a wide definition that encompasses laws, policies, cultural norms, corporate and organisational forms and patterns of practice by individual persons’.**

(Martin, et al, 2018, p.9, following Hodgson, 2006, p.2)

## Introduction

The delivery of effective housing policies requires an institutional infrastructure that is consistent with the contemporary national and local housing systems found in any given nation state. Path dependency matters to how institutions impact on housing systems. There is no point considering the rapid introduction of a sophisticated and mature model of regulation into an environment where the regulated activities concerned are quite differently organised, resourced and of a much more fragmentary and smaller scale. This is a rephrasing of a standard argument made in comparative policy analysis that we must beware of institutional differences before leaping to proposing unfiltered international policy transfers. However, that does not mean there would not be something to learn.

The institutional and governance structure for housing is a necessary though not sufficient condition for effective housing policies of the sort that are of interest to the Shaping Futures project. If we just think of regulation of non-market housing, badly designed policies can still occur in a well-regulated system but it is the case that an overly burdensome and bureaucratic approach to regulation or indeed far too weak a system can have all manner of damaging and limiting impacts on the scope for better housing policies. Institutions more generally play an important role in making housing systems function but they can also promote innovation and experimentation as well as providing a necessary predictability and stability required in a context of typically long lasting relationships, be they between landlord and tenant, providers and tiers of government and bankers and clients.

Institutions of course cover many things. We might be talking about the governance and legal basis or powers of an individual housing provider or larger scale city organisations, or dedicated finance institutions or indeed regulators or other enabling government agencies that work in finance, housing, land or other relevant parts of the housing system. We need to think about institutions at different scales, either as individual providers or organisations, whether we have the right form of institution and the best governance in order to make the kinds of change to housing outcomes we seek – and this might be on a specific site, at a metropolitan scale or nationally. In this chapter we focus on a small sub-set of governance and institutional forms but reiterate that there is a much wider set of bodies, mechanisms and habitual forms of relationship that we

think of as housing institutions. The academic literature also has several different strands of institutional analysis that can be deployed to assist our thinking about the housing system (Gibb, 2012).

The structure of this chapter is as follows. We start by asking how institutional form can support more effective housing policies and practice. We also ask why and how they can go wrong in terms of housing outcomes. The section also thirdly considers the range of institutions that would be of interest to the Shaping Futures agenda. The second section briefly considers well-rehearsed but important principles that might underpin good institutional design and practice in a housing context. This discussion also allows us to highlight a number of important trade-offs that need to be recognised. The third main section looks at contemporary challenges facing each of the three countries’ main housing institutions before the penultimate section draws out a number of possible innovations and good governance ideas again from the UK, Canada and Australia. The final section summarises and draws general lessons. Throughout the chapter we make use of boxed examples, illustrations and diagrams. Most of the focus though not all is on the delivery of low cost and much though certainly not all of our attention is with regulation.

## What are they good for?

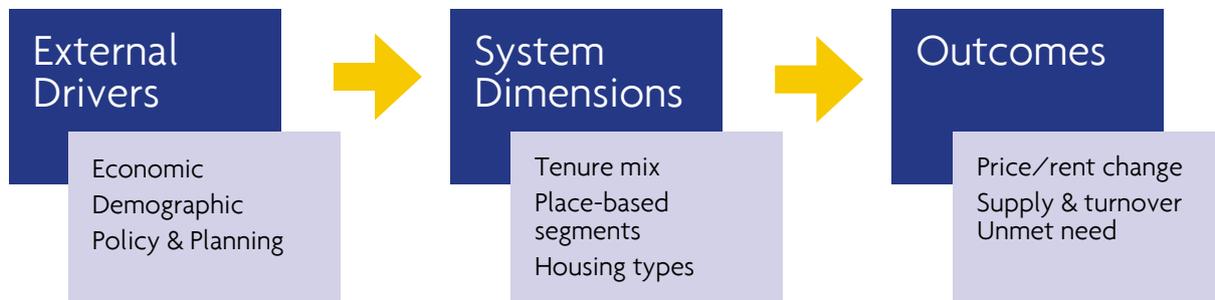
Modern housing institutions play a myriad range of roles to standardise, stabilise, regulate and facilitate routine critical housing actions. They make investment, reform and change possible. Of course, there are a vast number of possible forms and combinations of institutions delivering different versions of similar activities – think of the varieties of regulation and finance used in England and Scotland to support social housing since the establishing of the mixed finance system in 1988. Or, to what extent should consumer protection and regulation in the interest of residents be tenure -neutral or generic to all housing forms and tenures? Well run institutions have a clear mission, transparent and lean accountability and governance and will enjoy greater longevity if they can operate at a distance from political interference. While this is obviously true of not for profit regulators it also applies to delivery and innovation-based mechanisms such as land development agencies, state-backed housing finance institutions and experimental delivery vehicles such as those produced by the Scottish Futures Trust. An effective nexus of institutions provides comfort to risk-taking parties like developers and funders but also to tax payers in terms of value for money for important place-based, long lasting investments. They may also act as enforcement agencies policing the system to protect the above interests but also consumers, landlords, providers and others directly affected.

Institutions can enable housing policy reform in a number of ways. First, they can be the literal source of the reform proposal or more likely they are the critical vehicle charged with piloting, rolling out and evaluating reform proposals from government. At the same time, institutions are critical friends but also helpful in the sense of lending credibility to a programme through financial or other forms of support. The withdrawal of that credibility may fatally undermine reform. A further dimension is that poorly designed or functioning institutions may inadvertently impair the chances of policies working and in a similar vein the absence of a necessary institution may significantly reduce the chances of a successful outcome.

The other side of the balance sheet is that institutions can impair the housing system and calls for reform may be to restructure or reshape the institutions themselves in order to improve the wider housing system’s capacity to work in general and embrace reform specifically. Key recurring challenges concern mission creep, excessive design tinkering (often by government to its arms-length agencies in terms of competencies and duties), poorly structured incentives, or excessive (or conversely, weak) regulatory burdens.

Institutions therefore can be thought of in two ways: first, the range of specific entities that support and promote critical aspects of the functioning of the housing system – key examples are outlined in box 1 below. Second, institutions collectively perform a systems level role in that the housing system as understood in Shaping Futures requires the general confidence created by and the aggregation of the roles provided by a minimum set of institutions so that the system can fundamentally function. This is described schematically in figure 1, which is a simple representation of a housing system determined by external drivers, for example, economic, demography and planning/policy drivers (see also O’Sullivan, et al, 2004). These drivers impact on the housing system characterised by, for example, tenure structure, place-based market segments and house type propensities. In the diagram, this middle system component is shaped and stratified by housing institutions. The system then generates housing system outcomes such as housing cost changes, new investment and tackling housing need. The thinner arrows represent the recursive nature and feedbacks within the system.

Figure 1: Housing System Schema (including Institutions)



**Box 1:**

## Examples of Housing Institutions

*Tenure and Property Rights:* at the heart of housing is the classification, contracting and enforcement of property rights. Leasehold, ownership and letting rights, as well as land transactions, owner obligations compulsory purchase (eminent domain) and a sufficiently comprehensive codified set of property legal arrangements are fundamental. Of course, these vary nationally but now it is also the case that with the UK, for instance, housing law is increasingly fragmented and that include sits institutions (e.g. how housing disputes are settled).

*Trade Bodies and Professional Groups:* both as representative organisations, policy negotiators and often in setting (jointly or alone) the rules or standards (e.g. housing association rules, codes of good practice, etc.) applied in the relevant sector.

*Financial Institutions:* have a huge influence on both the conduct of providers and households but also on other institutions if we think of the relationship between lenders and not for profit regulators (and, ultimately, systems of subsidy both capital and social security). These institutions increasingly include pension funds, insurance companies and superannuation investors as well as the capital markets.

*Providers and Delivery Agencies:* some providers because of their size e.g. the London G15 housing associations are influential for the wider sector (though others, like the community-based housing associations are small but influential too). Many countries have bespoke delivery agencies at different spatial scales and these can set standards and form partnerships which shape how the housing system functions (though they may also de facto narrow what is possible).

*Planning Bodies:* perform a central function supporting, stabilising and delimiting the housing system, particularly in terms of land use, development and conservation. The planning function is also an important form of dispute resolution.

*Land Value Uplift Vehicles:* also critical to development, land servicing and infrastructure funding, these vary in form from development agency models to planning obligation systems and all points in between (including community land trusts and analogous innovations).

*Regulatory Bodies including consumer protection:* the heart of the matter including the regulation of not for profit providers, the policing and licensing of private landlords, consumer protection in the private housing market, dispute resolution between tenants and landlords and between neighbours, ombudsman services, as well as fire, health and safety matters.

*Innovation Facilitators:* here we are thinking of bodies that manage, facilitate, pilot and assess innovative schemes to deliver or fund affordable or other housing initiatives. We later in the chapter consider the role of the Scottish Futures Trust in this context.

*Public and NGO Housing Agencies:* these take many forms but may be a conduit to finance, investment and public funds into low cost housing e.g. a national investment bank or the Canadian Mortgage and Housing Corporation, land-based agencies like English Partnerships or the New Town Development Corporations, or, indeed bodies like the NRAS in Australia.

## Principles

If we take a housing-systems approach seriously we might well ask what such an approach suggests we would require from key institutions and governance?

A first key point is to ensure that the system's institutions provide stability, predictability but also space for experimentation. In this sense, well-functioning institutions and good governance are the regulatory infrastructure underpinning the housing system. A stable and predictable set of arrangements, relationships and incentives allow stakeholders to make the necessary long-term commitments required to support long term decisions around asset management, housing development, tenancies, community development and related actions.

A second issue concerns the inevitability of recognising and making the best of trade-offs between competing and conflicting elements. Housing systems have multiple institutions and governance arrangements which emerge incrementally and from different starting points. Where we are now has path dependency characteristics and if instead we were able to start with a blank page we no doubt would propose a simpler and smaller set of institutions. But we do not have that luxury and it is likely rather they may have their own independent objectives, ways of working and these need not cohere or complement other institutions completely. In the UK, for instance, a housing association may be a regulated subsidiary in one jurisdiction but its parent operates and is regulated in a different country. This can effectively mean aspects of both regulatory frameworks can apply and of course these can have different priorities (e.g. England and value for money; Scotland's focus on risk management and the tenant's interest). At the same time, lender requirements need to be set off against their clients (providers and end users – the tenants). The regulator often has to navigate between these and other housing interests, making trading off inevitable and from an economics point of view requiring that we often approach the equilibrium between the interested parties as a 2<sup>nd</sup> best solution.

A third systems-thinking point is to help policymakers decide when considering housing reform whether institutions themselves need to be reformed or in a more nuanced way, whether the status quo would suffice, or a degree of modification is required or more thorough-going reform or replacement, given housing system objectives. The policy maker as system architect needs detailed evidence and analysis on both the direct impact and role of the reformed delivery agency or regulator but also credible logical and evidentiary analysis of the wider repercussions of reform on the affordable housing sector and beyond. This takes us into the realms of the quality, extent, accessibility and timeliness of routine housing planning evidence around housing needs and demand in well-defined functional housing market areas but also the richness of the interdependence of the different components in the housing system and how well they are represented, modelled and understood.

A critical fourth issue concerns the balance of regulation (deregulation versus re-regulation; light touch compared to stronger degrees of intervention) but also the necessity and level of burden imposed on principals. There are several efficiency dimensions to this question, including designing out the risk of regulatory capture of the regulators by the regulated. To an extent these tendencies will be a function of wider socio-political trends in regulation and the role of the state, as well as longer term traditions that 'stick' and are difficult to alter. The stance will also be affected by housing-specific dimensions of what the sector deems to be effective regulation. While politics and policy analysis can help us understand these processes, their remain long-standing disciplinary debates for instance mainstream economics debating the relative costs and benefits of different regulatory systems, measuring counterfactuals and capturing the full dimensions of the elements of the benefit-cost calculations. At the same time, institutional economists assess these questions taking more explicit account of power relationships, the way institutional arrangements such as regulation evolve and also for new institutional economists, the role of transactions costs and property rights analysis in shaping economic governance structures.

It is also the case, finally, that different models of wider governance can act as constraints on behaviour and equally promote desired outcomes. However, and in the context of non-profit housing in Australia, Pawson (2017) notes the necessary condition of the need to possess sufficient capacity within the system to actually achieve the fundamental objectives of regulation of not for profit housing.

## Challenges

What are the main challenges confronting governance and institutions of contemporary low-cost housing in the three countries studied? A particularly (though not exclusively) British problem is institutional instability as a result of excess government re-organisation of relevant housing institutions. This might be a bonfire of quangos but as often it could be argued to reflect restless intervention for personal and party-political reasons by ministers. Rather than seek improvements within existing structures, there are new models or variants of old ones to replace what is deemed no longer to work. Eye-catching announcements trump quiet perseverance.

AHURI (2017) and Pawson (2017) identify the absence of sufficient capacity to enable a strong regulatory function for non-profit housing to take root in Australia and that this is an important brake on the scope for the sector to thrive and to benefit from deeper funding and corporate partnership

and to demonstrate the performance levels that provide sufficient comfort to private and public sector partners. The existing framework is unevenly developed across Australian states. Publishing provider performance data, an important accountability mechanism elsewhere, is hardly evident in Australian regulation. Without movement from the parties (particularly Federal and state governments) it is difficult to see how the low scale equilibrium size of the community housing sector can be changed – and the institutions are at the heart of this problem. Figure 2, adapted from AHURI (2017), sets regulation in a wider Australian affordable housing context. In the end there is a paradox here that may prevent progress – the high set up costs of a sufficiently robust regulatory system means that it is difficult for the community sector to grow, but in order to have critical mass or reach take-off velocity that would warrant the institutional investment, there needs to be capacity and comfort in the regulatory system.

Figure 2: Affordable Housing Resourcing & Policy Framework



Source: Adapted from *Ready for Growth? Inquiry into Australia's Affordable housing industry capacity* (AHURI 2017)

The English newly titled Ministry of Housing, Communities and Local Government published a social housing green paper in 2018. This initiative arose for several reasons, however, the overriding motivation was in response to the terrible Grenfell Tower fire. Government is concerned to establish the necessary fire, health and safety framework to address such risks in future. It also is seeking to transform the voice and position of social tenants (this latter theme was the focus of the former housing minister now reshuffled to social security after less than 9 months in the job). While this is important work, it is perhaps less focused on, than might have been anticipated, the future, investment or how the sector is to be positioned. However, it is evidently centrally about the balance and purpose of regulation of social housing providers. Consequently, all of the traditional in-principle issues arise about regulatory change in terms of balance, incentives, efficiency and the consequences of changing the existing system<sup>1</sup>.

Initially England, but then the rest of the UK, has also recently gone through a classification crisis in the housing association sector. Associations are traditionally voluntary sector bodies, often also charities, that are deemed for accounting purposes to be private bodies. However, the Office of National Statistics who determine classification have in recent years moved bodies from private to public, usually because of the sense that the state exercised some form of significant direction over such bodies that effectively transferred control (and conceivably risk) to the public sector. Legislation on housing association governance in the previous decade was deemed to have given the housing regulator (the Homes and Communities Agency) considerable power over disposals, officer and board appointments. ONS deemed this went too far and reclassified associations as public bodies. This also transferred more than £60 billion of English housing association debt to the public sector balance sheet and potentially gave the Treasury legitimate powers over future borrowing decisions by providers. Similar decisions followed a year later as a result of regulatory influence in Scotland, Wales and Northern Ireland. Substantive deregulation<sup>2</sup> was then required and of course this needed to balance the comfort required of other stakeholders such as private finance. However, further challenges may occur because of subsequent legislative efforts in England by Government (the 2016 Housing and Planning act) to shape and direct the sector as a de facto instrument of housing policy.

In Canada, the Government announced the nation's first housing strategy in November 2017. The strategy includes a \$40 billion plan over ten years involving new programmes (the National Housing Co-Investment Fund (providing financial contributions and low interest loans), the Canadian Community Housing Initiative (to protect and maintain existing assets), new federal

homelessness programmes and a new Housing Benefit scheme. While responses to the strategy have been both welcome in parts and mixed in places, perhaps reflecting the lengthy build up and high hopes pinned on the strategy – nonetheless, a series of programmes have to be implemented and successfully delivered. This requires partnership across the three tiers of Canadian government and it also implies credibility and appropriate incentives, as well as strong institutional support for bodies like the Canada Mortgage and Housing Corporation. There will be a new National Housing Council that will promote participatory and evidence-based analysis (see box), as well as a new Federal Housing Advocate.

## Box 2

### Research, Data and Evidence in the Canadian Housing Strategy

Within the \$40 billion ten-year strategy is a commitment to evidence-based housing, to research, better use of data and learning from demonstration projects. The Government is committing \$241 million over ten years in order to:

- ▶ Develop tools within government (including two new surveys) to address data gaps and measure strategy outcomes
- ▶ Build capacity for greater partnership and housing research
- ▶ Support researchers and research communities outside of government
- ▶ Develop a network of housing experts to analyse housing challenges
- ▶ Introduce solution labs to solve housing problems by incubating and scaling potential solutions to things like affordability pressures (organised through a competitive process)
- ▶ Support demonstrations put forward by researchers and housing partners outside of government.

Also, during the development of the Strategy, the author discussed the development of the ESRC UK Collaborative Centre for Housing Evidence, in terms of pointers for Canadian housing research, evidencing and policy solutions.

Source: Canada Government (2017) *Canada's National Housing Strategy: A Place to Call Home* (<http://placetocalhome.ca>) Chapter 8

<sup>1</sup> The Green Paper, published in August 2018, included a controversial focus on increasing the tenant's capacity to scrutinise and benchmark their landlords through the use of new performance indicators.

<sup>2</sup> Often described as regulatory reform.

## Ideas

What lessons or ideas have been proposed or suggested that might allow reformed or new institutions to support constructive reform of low cost, affordable housing? Below, we highlight a half dozen or so innovations of different types and scales.

In the UK, there is undoubtedly growing appetite to contemplate new mechanisms by which land value uplift on the granting of residential planning permission can be captured to help fund infrastructure and promote a mix of housing including affordable and low-cost housing. This approach harks back to at least two earlier successful models – new town development corporations and the high-water mark of section 106 planning agreements for affordable housing. It also reflects a sense of what is possible by looking at continental experience of large site developments in countries like Germany and the Netherlands. The Centre for Progressive Capitalism wish to change the law on compensation (going back to the early 1960s) to facilitate this sort of reform. RICS Scotland (and separately, the housebuilders trade body, Homes for Scotland) has recently made a case for a national land delivery agency that would circumvent the current planning permission system by operating in the market buying sites at low cost, servicing them and then selling them on to promote a range of new housing through a self-funding model of operations (after initial pump-priming) – this is close to the underlying model of much of what English Partnerships did in an English context. Other policy entrepreneurs promote ideas that are in effect clever governance-oriented variations on the theme of community land trusts – in order to use the land value capture to mix tenure, significantly reduce the cost of land and the public cost of new infrastructure. Others continue to make the case for land value taxation. These sorts of ideas are now widely discussed in the new Scottish Land Commission as it assembles evidence on the type and nature of land reform it would favour. Box 3 is a further example of these sorts of proposals, in this case provided by Roger Wilshaw of Places for People.

### Box 3

#### **New local housing deals**

Government could consider piloting a new approach, akin to city deals to enable local authorities to propose policy changes or investment strategies that would make the whole housing system more effective and efficient in their area.

The approach would build on the concept of Local Place Partnerships, advanced by ResPublica (Fagleman, 2015). ResPublica believes that Local Place Partnerships in England could accelerate home building by bringing together all the interested parties: private developers, housing associations, residents, civil society and local business in one decision-making unit. Quality Assured by Department for Communities and Local Government, these new bodies would offer the long-term vision and determination needed to tackle the housing crisis.

ResPublica suggested that these Local Place Partnerships would be cross-boundary and have legislative powers to accelerate delivery. LPPs would build on and improve on the Urban Development Corporation and Housing Zone model, with local authorities taking the lead role as coordinators on new development. If such an approach were adopted the partnerships could provide a strong framework within which local authorities could propose policy changes or investment strategies that would make the whole housing system more effective and efficient in their area.

Source: Roger Wilshaw, Places for People, March 2017

The Australian government is exploring the development of a bond aggregator as a way of circumventing private finance shortages for would-be developing community housing providers. An aggregator allows several individual providers to club together to support a larger aggregate financial investment. This idea, drawing on the THFC model in the UK, appears to be one that is fit for the Australian market context and could if successful draw in finance and investors as the market for social housing finance evolves.

In Scotland, for ten years, the national infrastructure body, the Scottish Futures Trust, has taken on an interesting innovative role promoting, developing and managing several innovative projects related to the housing sector. First of all, they established the National Housing Trust, a delivery model that formed partnerships between councils and private developers with unviable sites or unsold units in the last recession. The partnership would develop and market short life mid-market rent properties to key workers at rents set to come within housing benefit support levels. After 5 years, the properties could be disposed by the partnership body as they thought best. The financial novelty was that this was one of the first use of a contingent liability guarantee. The SFT/Government guaranteed void loss to the council partner on rental income and capital loss on the ultimate disposal. Assuming rightly that the risk would not normally materialise this became a very inexpensive public sector way to promote affordable rent housing and support the private development sector. Currently, the SFT is managing the UK's first rental income guarantee scheme (RIGS) for corporate or institutional investors involved in new build to rent private rental projects in Scotland. The RIGS scheme offers time-limited guarantees on a proportion of potential rental income loss. Perhaps the Scottish Futures Trust should be looking at a creative role in the land value capture space?

A final example is a natural experiment underway in the UK. In December 2017, Scotland commenced a form of re-regulation. Since 1988, private rental tenancies have been free market rents negotiated between landlord and tenant on usually six months' tenancies. The Scottish legislation significantly reduces the grounds for landlords to terminate tenancies and ends the fixed duration of new tenancies. It is hoped that this will encourage families to rent and that longer de facto tenancies will be welcomed by the institutional investors that are being sought for build to rent investments.

**The Scottish legislation significantly reduces the grounds for landlords to terminate tenancies and ends the fixed duration of new tenancies.**

At the same time, borrowing from Ireland, Scotland is also introducing local rent pressure zones (RPZ), which if proposed by a local council and if the evidence is accepted by the Scottish Government, will mean that high and rising rents can be capped by rent limitations on rent increases in the RPZ areas. This is a relatively modest 3<sup>rd</sup> generation rent control (and may be of the form RPI & 1%) and has high data or evidencing requirements before it can be implemented. How will it play out in practice and will it deter investment? This re-regulation (if that is what it is) happens at a time when the rental market supply side has endured several significant tax policy reverses (to mortgage tax relief, on the cost of stamp duty and on their capital gains tax treatment) – might these and the new regulation disincentivise investment and some parts of the more than 90% of private landlords who might be called buy to let small scale providers. And might this have knock-on housing system effects by encouraging some investors into the unregulated short-term lettings market segment? However, and despite these concerns, the other nations of the UK look on with great interest to this experiment in rebalancing the rental market sector.

## Lessons

What are the conclusions or lessons from this wide-ranging set of reflections:

- ▶ There is no pat answer to the question ‘*what kind of governance or housing institution is required to achieve our housing policy reforms?*’ and indeed reasonable cost benefit or policy appraisal analysis may conclude leave things alone or indeed make only modest changes (but depending on the context, perhaps go further).

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- ▶ Governance and within it housing regulation should be balanced (i.e. trade off leanness, flexibility and responsiveness with appropriate analysis of performance and new risks) but also incentive-compatible (to build capacity, improve performance, educate about risk, finance, other parties, etc.,)

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- ▶ Complementing housing system characteristics (institutions and regulation should go with the grain of the housing system (e.g. if it is a market dominated system) and where they are required to intervene to improve system outcomes, this should also be planned, organised and implemented given existing system constraints (i.e. what is feasible and possible not what is desired in a context-free vacuum)

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- ▶ Institutions and governance of the housing system should be consistent with long term policy objectives and that suggests also that institutions should be designed and strategies constructed assuming a duration co-terminus with the broader policy objectives. This is an argument for long term institution building and incremental reform rather than wholesale institution building (other things equal).

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- ▶ Good governance, agencies and institutions need to be both robust and resilient to shocks. Funding for these institutions (particularly in the public sector) needs also to be incentive-compatible with rewards for good performance but also predictability over the economic cycle.

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- ▶ Despite the emphasis on long term stable institutions and its relationship to longer term policy objectives, there needs to be sufficient flexibility in arrangements to allow space for initiated innovation and experimentation in delivery models, finance, land interventions, etc. This may be led by those institutions, as with the Scottish Futures Trust, but could just as easily be sponsored by them to support private sector and third sector policy entrepreneurs to come forward, as is proposed in the new Canadian housing strategy.

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- ▶ Also, it is clear that doing the work of well-functioning institutions particularly regulators and those involved in commercial decisions do need to invest and promote well evidenced research and analysis, premised on the best and most up to date data, and this is especially important for thinking through the system wide consequences of possible actions and non-actions. particularly with respect to system-wide concerns.

In their recent comparative review of the changing institutions of private renting, Martin et al (2018, pp. 70-72) demonstrate that alternate national housing systems can lead to quite different, apparently paradoxical sets of outcomes, in this case with respect to private renting outcomes. They find, for instance, that Germany and Australia have similar stances on capital gains tax and negative gearing but this supports, respectively, more stable house prices and greater volatility nationally. At the same time, it does not follow that unincorporated landlords only thrive where the sector is deregulated – it is quite possible for stable and even growing rental markets to evolve alongside a more comprehensive set of regulatory features. Thus, as we argued above, the interplay of modern institutions with different path dependencies, economic, fiscal and housing policy settings, creates different possibilities for housing outcomes and system evolution.

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