

Briefing Paper

Housing Association Boards

The New Draft Code from the National Housing Federation

Introduction

The National Housing Federation has produced a new draft Governance Code for Housing Associations and are currently out to consultation.

Housing Corporation

The Housing Corporation considers that governance was critical to the success of the Housing Association sector. This is dependent on Board members and is becoming more complex. There are new activities and more regulation. The government wants Housing Associations to do more, more efficiently and to spend less money. There is increasing pressure on all company directors, for example from Turnbull. Very high standards of probity and ethics are expected. The Housing Corporation and National Housing Federation would like to support Board members in their role.

A new regulatory code entitled 'Competence and Accountability' has been prepared that is in draft form and is out to consultation. It refers to the principles of good governance and core values for members of the National Housing Federation, and addresses a range of issues.

The principles of good governance are:

- Standards
- Accountability
- Openness
- Equality
- Review
- Clarity
- Control
- Information
- Structures
- Audit

The core values for members of the National Housing Federation are:

- Commitment
- Integrity
- Equality
- Excellence
- Accountability
- Openness
- Unity

The matters that are addressed in the code of governance are:

- Constitution of the Board
- Board recruitment, renewal and review
- Essential functions of the Board
- Responsibilities of the Chair
- Conduct of the Board's business
- The Chief Executive
- Committees of the Board
- Openness and Transparency
- Accountability
- Equality and Diversity
- Audit
- Conduct and probity

Governance is based on the role of the Board to set strategy and approve key policies, while the Executive executes these. Aspects of governance include leadership, control and 'culture'. The Board sets the tone for the Housing Association. Housing Associations need to be viable, properly governed and properly managed. 'Housing Associations should be headed by an effective Board with a sufficient range of expertise'.

The elements of being properly governed are:

- Independence
- Compliant with statutory and regulatory requirements
- Committed to equal opportunities
- Having high standards of probity
- Positive relationships with stakeholders
- Protecting public investment
- Responsibility to residents
- Co-operative with the Housing Corporation

The regulatory code identifies a need for a:

- Coherent and robust business plan
- Effective risk management
- Review of activities and decisions
- Internal controls

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It is expected that the Board will:

- Ensure that tenants' expectations are met
- Set strategy and direction
- Monitor and challenge performance
- Understand key risks
- Self-assess compliance with the regulatory code
- Assess their own performance
- Ensure that the Housing Corporation are kept informed

A good Board will:

- Meet the requirements of the code
- Be well skilled, highly motivated and supportive
- Set challenging targets to management
- Be innovative
- Be comfortable with well managed risk-taking (in the past Housing Associations were considered to be risk-averse)
- Have good relationships with the Executive
- Achieve continuous improvement

To achieve this, a Board has to consider:

- Board size and composition
 - Numbers on the board – a smaller board is considered to be more focused and to have better decision making capacity, while a large board can contain more views and experience
 - Representation – the tenants must be at least a third and no group can have majority representation
 - Balance – age, gender and ethnicity
 - Executive Board Members – can be appointed but must not be a dominant force
- Board Skills
 - Members should make a unique and important contribution, but should not be pigeonholed
 - Skills
 - Ability to use them
 - Confidence to question
- Recruitment
 - Advertise for Board positions
 - Encourage interest
 - Prepare information pack
 - Use a formal process (as for a position of employment)
 - Use an independent element in the selection
 - Write a job description
 - Appoint for a fixed term
 - Use succession planning
- Appraisal and support
 - Use individual and collective appraisal
 - Use independent review

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- Use peer review (ask what other Members value in what you do!)
- Develop a policy for under-performance
- Set targets and objectives for improvement
- Do development and support
- Behaviour
 - The relationship between Chair and Chief Executive should be supportive but not cosy
 - Board and Executive should have clarity in their roles.
 - Introduce a code of conduct for meetings and for dealing with issues and problems

All Board members are there on an equal basis as Board members.

A study 'Learning from Problem Cases' has established that while weak governance is not usually the cause of problems, it is the reason why small problems become large.

An effective Board shows signs of working in the following cycle: Mutual trust and respect ~ Openness and sharing information ~ Questioning & challenging ~ Better decision-making.

A study in the United States looked at governance of 'good' organisations defined as how they performed and how they were regarded. They looked at various characteristics of the companies and found no correlation between any of the features of the Board and performance. The single critical factor was found to be whether there was mutual respect and trust between the Board and Executive. 'Softer' issues were found to be the most critical.

National Housing Federation

The closing date for consultation on the draft code was likely to be the end of March 2004. The background to the code was:

- In 1994 the Hancock enquiry into governance reported. This followed the 1992 Cadbury report into corporate financial management.
- In 1995 the first version of 'Competence and Accountability' was published.
- In 2000 it was reviewed after the Hopton report on corporate governance and the Turnbull report on internal control.
- In 2004 further revisions are proposed. Housing Associations are now recognised as leaders in terms of governance. For example, the Langlands review for the Rowntree Foundation said that Housing Associations represented best practice in governance.

The revised code is seen as necessary because:

- Housing Associations wish to promote and protect their reputations – both the sector as a whole and individual associations
- Clear standards are needed that are common to all
- There is a need to guard against failure
- IN Business has been created and there is a drive to improve performance
- Board improvement is sought

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There are links between governance and performance in that it is possible to have good performance without good governance, but this could probably not be sustained, while excellent governance promotes excellent services.

The reasons why the code is being updated now are:

- Possible payment of board members
- Higgs report that looked at the non-executive role, size of boards and renewal
- Smith report that looked at audit committees and issues
- The political environment is vociferous on governance issues. This includes the Office of the Deputy Prime Minister, Treasury and Housing Corporation. The Treasury is now very interested, especially in efficiency.
- IN business is changing the way that housing associations operate on the ground

The code cannot stop all failures, build teams or set strategies.

The main changes in the draft code are:

- Arrangements for board member payment (in light of business case, transparency and accountability)
- Fixed term appointments
- A maximum of nine years' continuous service. This has not proved a popular proposal in the sector. The National Housing Federation is seeking renewal of the sector. Individual housing associations can depart from the code, but must make a business case to explain why the code does not suit them.
- Nominations committee.
- Individual board member appraisal and governance action plan
- Matters reserved for the board
- Boards in group structures (the group board will become primarily responsible for the performance of all sub-boards)
- Annual review of terms of reference.

The consequences of these recommendations are expected to be more emphasis on recruitment and development of board members leading to better boards, and greater clarity of the responsibilities of the board and executive.

The main elements of the 'nine year limit' are:

- A 'cap' of nine years' continuous service, which for elected people, will be three terms of three years each.
- Housing associations will be able to start counting the nine years from the inception of the code or take account of existing years of service
- There is a need to adjust the limit for Chairs
- There is a need to balance the need for skill and experience with the needs for independent challenge and board renewal
- Housing associations have a choice of whether to comply with the code or explain non-compliance. The code represents guidance and is not compulsory.

Other voluntary organisations have a fixed term for board members. This includes Oxfam and the National Council of Voluntary Organisations.

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The next steps are:

- More seminars
- Feedback will be sought
- The revised code will be published in June 2004
- The code will be reviewed again after Langlands has reported.

Housing Association Views

The 'nine year limit' is the most contentious topics. The following points are being raised by Housing Associations:

- The code could be seen as prescriptive, and the requirement to comply or explain patronising
- There are a shortage of people who wish to sit on a housing association board
- The problem is finding appropriate new board members, not persuading board members to leave.
- The question of paying board members is driving the agenda relating to length of term of office and the size of the board.
- Housing associations are becoming more professional and larger, so appraisal systems should allow for the possibility that some members are no longer adequate.
- If payment is offered to a board member and this is refused, the board member can still be taxed on the income that has been refused.

The National Housing Federation and Housing Corporation suggest that housing associations should do more to encourage people to become board members. Evidence suggests that smaller boards of about twelve people are more effective. The 'Get on Board' campaign is to be re-vamped. People should consider moving from board to board more often. The current provisions regarding age limits are to be removed as they contravene guidance from the European Union. The suggestion that the code arises from the proposal to pay board members is denied.

Conclusions

The references to the Treasury's interest in the finances of housing associations are perhaps the most important. Housing associations manage an increasing proportion of social housing and receive considerable public funding for both housing improvements and new housing. The proportion of social housing that is owned and managed by housing associations is also increasing as they receive stock transferred from local authorities, and build new stock in contrast to local authorities that are demolishing stock and selling stock to sitting tenants.

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Neil McDonald, Director of Housing at the Office of the Deputy Prime Minister is reported to have said that running costs at the most efficient housing associations are up to three times lower than at others. As a result, if the majority of social landlords brought their performance up to that of the best housing associations, many millions of pounds would be released for new homes. In February 2004, he told an affordable housing conference:

“Affordable housing is high on the political agenda. Ministers are prepared to look very radically at the ways things are done... If there are ways that don't involve lots of extra money, then tell us about them. I think you'll find ministers are very receptive.”

He also commented on the 2004 comprehensive spending review:

“If we get a small increase, we'll have done well.”

So, the government wants housing associations to deliver more homes of a higher standard with fewer resources. It appears that they are not convinced at present that the sector will be able to deliver this.

The National Housing Federation, apparently acting on the suggestion of the Housing Corporation, Office of the Deputy Prime Minister and Treasury, has produced the revised code. Its apparent purpose is to raise the performance of housing associations by raising the performance of their boards. The vision appears to be for smaller boards, perhaps paid for their efforts that are expected to be highly professional and effective.

This raises significant issues for housing associations. For example, how will democratic accountability be demonstrated within the proposed framework? Will housing associations become simply commercial landlords directed by the Treasury to maximise returns on the resources at their disposal? Is this what the social housing movement should be about?

In view of the fundamental questions that have been raised, it is disappointing that most respondents within the sector have focused on the proposed 'nine year rule'. While there are arguments in favour and against this proposition, the fact that it has become the focus of discussion suggests that some housing association board members are more interested in self-preservation than the provision of social housing. This perception will only add weight to the argument that there is a need for renewal in the boards of housing associations.

My personal view is that the provision of good quality social housing within a democratic context should be the objective. It will be interesting to see how this debate proceeds.

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February 2004.

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