

## **GOVERNANCE ARRANGEMENTS REVIEW**

Report of the Director & Company Secretary

### **1. SUMMARY**

This report sets out a series of recommendations as a consequence of a review of Derby Homes' Governance Arrangements. The report is divided into a number of sections aligning with a report commissioned from Anthony Collins Solicitors :

- overarching issues – General
- overarching issues – Board matters
- Memorandum and Articles
- Standing Orders
- City Board
- Delegation of Responsibilities
- Financial Regulations
- Standing orders of appointment of staff
- Wider governance issues for consideration by officers.

### **2. RECOMMENDATIONS**

2.1 That the committee recommends that the Board:

1. Formally adopts the NHF Code of Practice 2010. **(See paragraph 3.2 below)**
2. Notes the report by Anthony Collins Solicitors [ACS] at Appendix 1.
3. Considers whether to include a statement in the Governance Arrangements setting out the key skills that all Board Members should have and delegates identification of the key skills to the Chair, Chief Executive and/or Director & Company Secretary. **(Paras 3.4.7)**
4. Considers whether to adopt a policy limiting the number of Board Members who are the paid staff or Board Members of other housing providers and determine what that number should be. **(Para 3.4.8)**
5. Considers whether to introduce Board Members' Services Agreements. **(Para 3.4.9)**
6. Considers whether to reverse the order of meetings to take confidential items after public reports. **(Para 3.6.2)**

7. Considers whether to enable Board Members to abstain in votes. **(Para 3.6.3)**
  8. Considers whether the current size of the City Board is appropriate. **(Para 3.7.1)**
  9. Requires a further report to be taken to each panel or Committee setting out new or revised terms of reference for that panel or committee, and to refer this matter back to this Committee and then to the Board. In the case of irregular committees and panels, it is suggested that suitable terms of reference be drafted and brought back to this committee at its next meeting **(Para 3.8.1)**
  10. Considers whether to delegate public questions to either the Board or City Board alone or to retain questions at both. **(Para 3.8.2)**
  11. Considers the level of delegation that is appropriate for the City Board. **(Para 3.8.3)**
  12. Considers whether to formally delegating decisions on early retirements and redundancy payments to the Resources, Remuneration & Regeneration Committee. **(Para 3.8.4)**
  13. Consider whether to rename the scheme of delegation to officers as the Officers Authorisation scheme. **(Para 3.8.5)**
  14. Considers whether to delegate the appointment of the Chief Executive to the appointments panel rather than receiving a recommendation from that panel and reserving the appointment to itself. **(Para 3.10.1)**
  15. Approves the updated set of Governance Arrangements attached at Appendix 2.
- 2.2 Considers whether to recommend to the Board the following changes to the Memorandum & Articles of Association, noting that these changes would have to be incorporated into a future review of the Memorandum & Articles and are subject to the Council's approval:
1. Considers whether to amend the current maximum term of office rules for Board members. **(Paras 3.4.1 – 3.4.3)**
  2. Considers whether to amend the current size of the Board from 15 to 12. **(Para 3.4.5)**
  3. Considers whether to move to a skills or competency base for recruitment of future Board Members. **(Para 3.4.6)**
  4. Considers whether to recommend to the Council that tenants of Derby Homes be given the same rights in terms of election to Derby Homes Board and City Board as tenants of the Council. **(Para 3.5.1)**

5. Considers whether to change the rules for removing Members from the Board by reducing the number of absences from board meetings from more than 3 consecutive meetings or 4 in any period of 12 months and that this is included in the proposed Board Members services agreement. **(Para 3.5.2)**
6. Considers whether the chair should be appointed for a three year term subject to annual confirmation. **(Para 3.6.1)**
7. Considers whether the election of the chair should take place at the first meeting of the calendar year rather than the meeting following the AGM. **(Para 3.6.1)**

### **3. MATTER FOR CONSIDERATION**

#### **3.1 Introduction/Background**

- 3.1.1 Following the expansion of Derby Homes to cover repairs in 2010, a general review/refresh of the rules, an update relating to legal developments, and a review of governance arrangements services previously directly undertaken by the Council was needed to update the current set of arrangements agreed by the Board in 2007. As a result, this review was commissioned.
- 3.1.2 Anthony Collins Solicitors [ACS] were appointed to undertake a desktop review of the current arrangements and to advise on these issues, especially with respect to legal and regulatory changes. Their report is attached at Appendix 1. The structure of the sections below - from 3.3 onwards - follows their report in structure
- 3.1.3 Internal Audit was invited to comment on the current financial regulations and many of their comments have also been included in the proposed set of amendments to those regulations. In addition, many detailed changes are proposed as a result of the ACS review and as a result of internal discussions about the existing rules. These have been combined into a full set of proposed amended Governance arrangements, with tracked changes which are set out at Appendix 2.
- 3.1.4 This report highlights a number of significant issues that remain to be determined by the Board following the recommendations of this committee. It therefore leads to recommendations that could update the Governance arrangements.
- 3.1.5 There are a number of relatively minor changes that would – if adopted – require a change to the Memorandum and Articles of Association. These would require formal approval of the Council, unlike the other changes being proposed. The last change to the Memorandum & Articles was in March 2011 and it is considered that it is too soon to go through and update these again at this stage. Further consideration to such issues will be given should a more pressing or major change to the Memorandum and Articles of Association be required. There is a possibility that this may now be sooner than anticipated as the Council may consider whether to widen Derby Homes' area of operation. If this is the case, then any changes to the Memorandum & Articles identified and approved within this report will be included at that time.

### 3.2 **NHF Code of Governance 2010 (ACS Report Paras 1.7 – 1.8)**

- 3.2.1 Registration with the Tenant Services Authority (TSA) this year means that Derby Homes needs to adopt the National Housing Federation's (NHF) recommended Code of Practice 2010. In theory adoption of the older, more prescriptive 2009 version is also possible, but Derby Homes needs to adopt one of these codes as a requirement of registration with the TSA.
- 3.2.2 The 2010 NHF Governance Code separates the provision of the 2009 NHF Governance Code into "the main code" and "good practice and excellence" and only requires a reasoned statement to be issued where there is non-compliance with the main code. A reasoned statement means Derby Homes having to publish reasons as to why it has not complied with the expected standard(s).

### 3.3 **Overarching Issues – general (ACS Report Paras 2.1 – 2.2)**

- 3.3.1 **Bribery Act 2010** coming into force 2011 – this has been addressed at the July meeting of the Board with the adoption of a new policy on this matter.
- 3.3.2 **Equality Act 2010** – this too has already been addressed at the July Board meeting and policies updated accordingly.

### 3.4 **Overarching Issues – Constitution and composition of the Board (ACS Report Paras 3.1 – 3.12)**

- 3.4.1 The 2010 NHF Governance Code states that **maximum terms of office** must be agreed and where practical and in the best interests of the organisation, should comply with current best practice, with an overall maximum for a non-executive Board Member of no more than nine years. The current Articles of Derby Homes provides for a maximum of ten years, that the Council Members should be exempt from this limit and that other members can be extended if the Board passes a resolution to allow them to do so.
- 3.4.2 The current Board has a number of members in this position already including many of those in the leading positions, and to change this would clearly be detrimental to the best interests of Derby Homes at this point.
- 3.4.3 The ACS report suggests that the Board consider whether to impose a maximum term of office of nine years or whether to adopt a position that this is not practical or in the best interests of the organisation. In this case, the Board should determine whether it wishes to review the current maximum term and if so what that should be in future. Any change from the current Articles would require approval from the Council at a convenient point. All these issues will also need to be addressed with respect to City Board members.
- 3.4.4 On the **payment of Board Members**, this is a matter separately considered by the Board in July 2011. Full disclosure will be required in future annual reports.

- 3.4.5 **Size of the Board** – NHF Code suggests a maximum of 12 – the Board could consider reducing its size from 15 to 12 or issue a reasoned statement as to its continued larger size. Reducing to 12 members would mean that one member from each category was reduced. Another possibility would be to move to 12 gradually as members leave – in the case of tenants and leaseholders there would be an election process as now but with one fewer position, in the case of Councillors there would be one fewer position and in the case of independents one post would be eliminated at the time of the next resignation. Again, any change would require formal approval of the Council.
- 3.4.6 **Composition of the Board** – the ACS report suggests possibly moving to a skills based or competency base of recruitment of future Board Members. This is currently applied to independent Board Members only. The current structure of a third each for tenants and councillors is however, fundamental to the current status of ALMOs as being a shared enterprise albeit fully underwritten by the Council. As a result, there is a strong argument against such a proposal, and a reasoned statement for the current composition is suggested.
- 3.4.7 **Skills, competencies, experience and knowledge for Board Members** – ACS recommends a specific statement, setting out the key non-negotiable skills that all board members should have, is included in the Governance Arrangements. Identification of these key skills could be delegated to the Chair of the Board, Chief Executive and/or Director & Company Secretary.
- 3.4.8 **Members of other housing providers** – recommended best practice suggests that organisations should adopt policies limiting the number of Board Members who are the paid staff or Board Members of other housing providers .
- 3.4.9 **Board Members’ Services Agreement** – a formal agreement setting out the expectations of Board Members, their roles, duties and remuneration, is recommended as best practice. This is especially recommended if there is remuneration.
- 3.5 **Memorandum and Articles (*ACS Report Paras 4.1 – 4.7*)**
- 3.5.1 **Eligibility of tenants of Derby Homes** – there is an issue as to whether tenants of Derby Homes are eligible to stand as tenant Board Members which are currently restricted to tenants of Derby City Council. At present, such tenants cannot be elected to the Board. To change this requires a change to the Memorandum and Articles at the next opportunity for review.
- 3.5.2 **Removal of Board Members** – Currently, Board Members are removed from the Board if they are absent for more than 3 consecutive meetings or 4 in any period of 12 months. Given that there are only 6 Board meetings a year, it is recommended that these numbers are reduced when the Memorandum and Articles are next reviewed and that this is included in the services agreement.

### 3.6 **Standing Orders (ACS Report Paras 5.1 – 5.4)**

- 3.6.1 **Appointment of the chair** – ACS recommend considering moving the date of election of the chair to the first meeting in the calendar year, and that a three year appointment subject to annual confirmation also be considered. The timing of appointment of the Chair is set out in Article 38 and therefore to change this requires a change to the Memorandum and Articles at the next opportunity for review.
- 3.6.2 **Order of business** – ACS recommend moving confidential reports to after public reports in line with standard practice in the public sector.
- 3.6.3 **Abstentions** – ACS recommend dropping the insistence that Board Members cannot abstain as this is highly unusual, and replace it with an expectation that Board Members will not abstain.

### 3.7 **City Board (ACS Report Paras 6.1 – 6.5)**

- 3.7.1 **Size** – ACS query whether the current size of the City Board is suitable for effective operation at 26 members.
- 3.7.2 ACS suggest that references to ‘representatives’ need to be eliminated as members of the City Board owe a duty to Derby Homes as for main Board Members. This has already been addressed and City Board Members are appointed as individuals by election or co-option and are not representatives.

### 3.8 **Delegation of Responsibilities (ACS Report Paras 7.1 – 7.10)**

- 3.8.1 **Terms of reference** are suggested for all panels and committees setting out their abilities to take delegated decisions. These are set out for the City Board and Committees but not for panels. These are to be standardised or drafted and taken to each committee for consideration and recommendation back to this committee and the Board.
- 3.8.2 ACS suggest considering the division of responsibility with respect to taking **questions from the public** – this could be delegated to City Board, retained at Board level or as now included in both.
- 3.8.3 **Delegation to the City Board** is able to be overridden by a Board Member reserving the right to take the matter to the full Board at present. ACS recommend making the level of delegation to the City Board clearer and preventing any decision being delegated that the full Board is not comfortable with delegating – there needs to be a consideration of what the full Board is prepared to delegate to the City Board.

#### **Issues raised by Officers:**

- 3.8.4 **Delegation of early retirements and redundancy payments** – it is suggested that this be formally reserved to the RRR rather than delegated to officers to provide an enhanced level of scrutiny on these payments.

- 3.8.5 Renaming of scheme of delegation to officers as the Officers Authorisation scheme to avoid confusion with other delegation schemes for instance to committees.
- 3.9 **Financial Regulations (*ACS Report Paras 8.1 – 8.3*)**
- 3.9.1 **Section 122 of the Housing and Regeneration Act 2008** requires registered providers not to make any gifts, dividends or bonuses to Members of registered providers. In this context, the only Member is Derby City Council (DCC). It therefore follows that Derby Homes cannot make gifts to DCC or to any associated company or organisation. Any payments from Derby Homes to DCC must be related to the management agreement.
- 3.9.2 Blanket orders remain in the current system for repairs work and will be addressed by updating of the operating system to Open Contractor rather than by changing the regulations. There is in effect a period before full operation of open contractor where the regulations will be applied more loosely in practice until this systemic improvement is possible.
- 3.10 **Standing orders for the appointment of staff (*ACS Report Paras 9.1 – 9.2*)**
- 3.10.1 ACS suggest delegating the appointment of the Chief Executive to the appointment panel set up for that purpose rather than for the panel to recommend it to the Board.
- 3.11 **Wider Issues for consideration by officers (*ACS Report Paras Appendix 2*)**
- 3.11.1 The many minor issues covered here are picked up in the tracked changes to the arrangements at Appendix 2.

#### **4. FINANCIAL AND BUSINESS PLAN IMPLICATIONS**

There will be costs associated with this review from Anthony Collins Solicitors for their input into the process which gave an external legal perspective.

#### **5. LEGAL AND CONFIDENTIALITY IMPLICATIONS**

Some updates to arrangements are required as a result of regulation – the adoption of the NHF code for instance, but most are questions of adopting best practice

#### **6. RISK IMPLICATIONS**

Governance arrangements are fundamental to the operation of any business and therefore any changes need to be considered carefully.

#### **7. POLICY REVIEW IMPLICATIONS**

This is a key policy of Derby Homes and is/will be included in the Key Policy Review Schedule. In accordance with minute 10/51 this policy will be reviewed no later than 3 years from the date of this meeting.

The areas listed below have no implications directly arising from this report:

- Personnel
- Equalities Impact
- Environmental
- Equalities Impact Assessment
- Health & Safety

If Board members or others would like to discuss this report ahead of the meeting please contact the author, or Phil Davies, Chief Executive, [phil.davies@derbyhomes.org](mailto:phil.davies@derbyhomes.org) – Phone: 01332 888528

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Background Information: Anthony Collins Report (appendix 1)  
Current governance arrangements marked with track changes for proposed  
changes (appendix 2)

Supporting Information: Previous review 2007