

Report to Derby Homes Limited
Desktop Governance Review

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1. Background and Scope of report

- 1.1. This is a report prepared for Derby Homes Limited (“you” or “Derby Homes”) by Anthony Collins Solicitors LLP (“we” or “us”).
- 1.2. You have instructed us to carry out a desktop review of the documents listed in Appendix 1 (“the Governance Arrangements Suite”) save for the parts in italics.
- 1.3. Derby Homes is a company limited by guarantee in which Derby City Council (“the Council”) is the sole member. It is a Round 1 Arms Length Management Organisation (“Almo”) established by the Council in February 2002 to take over the management of the Council’s housing stock. It manages the Council’s housing stock under a management agreement with the Council and we are currently advising on the renewal of the management agreement. In addition to managing the Council’s housing stock, Derby Homes also owns a number of its own social housing properties.
- 1.4. We carried out a desktop review for you in 2007. Since then, best practice in governance arrangements have developed and Derby Homes has become a Registered Provider of Social Housing (“Registered Provider”) (formerly known as registered social landlords) and is regulated by the housing regulator (currently the Tenant Services Authority). Additionally, you have made a number of amendments to the Governance Arrangements Suite.
- 1.5. This report does not generally repeat the advice that we gave in the 2007 review.
- 1.6. The review has considered both whether the Governance Arrangements Suite is compliant with the legislation and governance codes to which Derby Homes subscribes.
- 1.7. The housing regulator requires you to adopt a code of governance and you have indicated that you are intending to adopt the National Housing Federation’s Excellence in Governance Code (2010 version) (“the 2010 NHF Governance Code”). Therefore, we have reviewed the Governance Arrangements against this code. The NHF also publishes an Excellence in Standards of conduct code (“the NHF Standards of Conduct Code”), and

we have also reviewed the documents against this code. Additionally, our review has focussed on the following:

- 1.7.1. abolition of Schedule 1 of the Housing Act 1996 (which Derby Homes previously complied with voluntarily) and the introduction of s.122 of the Housing and Regeneration Act 2008 and probity arrangements;
 - 1.7.2. the housing regulator's regulatory framework, including customer / tenant scrutiny arrangements;
 - 1.7.3. new flexibilities under the Companies Act 2006; and
 - 1.7.4. the introduction of the Bribery Act 2010.
- 1.8. 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, which means that organisations reporting on the basis of the NHF 2010 Governance Code are less likely to have to issue reasoned statements than organisations reporting on the basis of the 2009 NHF Governance Code.
- 1.9. In reviewing the Governance Arrangements Suite, we have picked up on a number of minor drafting points and typographical errors. We have not generally covered those in this report on the basis that if you adopt the recommendations in this report, these will be addressed as part of the implementation.
- 1.10. The report is divided into two parts:
- 1.10.1. the first part considers key issues under the 2010 NHF Governance Code regarding Board members and documents in the Governance Arrangements Suite or are, in our view overarching or significant issues in need of review, each section split into both compliance with the main code, and good practice and excellence; and
 - 1.10.2. part two is contained in appendix 2 to this report and sets out other less significant governance issues that are highlighted for consideration by officers rather than Derby Homes' Board.

Overarching and Significant Issues

2. General

2.1. **Bribery Act:** The Bribery Act 2010 came into force on 1 July 2011. We previously recommended that you adopt a policy that specifically addresses the Bribery Act 2010, in addition to the provisions on gifts and hospitality that are already contained in your Code of Conduct for Board Members. We prepared a policy designed to sit alongside an organisation's existing probity arrangements and understand that by the time this report is to be considered, such a policy will have been considered and presumably adopted in some form by the Board. Failure to have a policy does not put you in breach of the Act but adopting a policy will help ensure compliance.

2.2. **Equality Act 2010:** Most of the provisions of the Equality Act 2010 are now in force. We note from the list set out in the Summary and Explanation document that you already have "personnel and equalities policies". However, we recommend that you have a separate policy covering Derby Homes' obligations under the Equality Act 2010. In particular it should address how Derby Homes will comply with the Public Sector Equality Duty ("the PSED"). The PSED requires Derby Homes to have due regard to the need to eliminate discrimination and enhance equality of opportunity by:

- 2.2.1. eliminating discrimination, harassment and victimisation;
- 2.2.2. advancing equality of opportunity between persons who share a protected characteristic and those who do not share it; and
- 2.2.3. fostering good relations between persons who share a protected characteristic and those who do not share it as set out in the Equality Act 2010.

If this is not something that you have already addressed, we would be happy to provide you with further advice on this and to assist you in developing a suitable policy.

3. Constitution and Composition of the Board – the 2010 NHF Governance code

- 3.1. **Maximum Terms of Office:** The 2010 NHF Governance Code [D1] 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 provide for ten years. They allow the Board to authorise service beyond the maximum term (Article 13 (12)) and they exempt Council Board Members from the maximum term (Article 13(8)). The Board should consider reviewing and amending its Articles of Association to fit within the nine year maximum term. Alternatively if the Board consider that it is not practical nor in the best interests of the organisation to adopt this, then that is another option. Due to the historically contentious nature of this provision it is open to interpretation as to whether not adopting the nine year rule means you need to report this in your annual compliance report so this can be a matter for you.
- 3.2. **Appraisal of Board Member's Performance:** The 2010 NHF Governance Code requires annual appraisals of both the Board and each Board Member. If this is not currently carried out, we would be happy to discuss with you the best options for putting this in place.
- 3.3. **Payment of Board members:** The Governance Arrangements Suite currently allow for remuneration of Board Members. Section D of the 2010 NHF Governance Code requires compliance with four sections of the Code (D4-D7) regarding the payment of Board members which includes: ensuring it has a mechanism to establishing payment levels that are independent of the Board; payments being proportionate to an organisation's size; linked to specific duties against which performance will be reviewed; and payment for non-executives fully disclosed on a named basis. You have stated that Derby Homes does not remunerate its Board Members but that it does pay for out of pocket expenses and for loss of earnings. Our view is that loss of earnings payments at the levels paid by Derby Homes are not out of pocket expenses and therefore are remuneration. The Board should consider complying with the above four sections or issuing a reasonable statement as to why it does not comply. We would be happy to discuss this further with you.

- 3.4. **Size of the Board:** Derby Homes has a Board composition which is common for many Almos. The Board comprises five Tenant Board Members, five Council Board Members and five Independent Board Members. The 2010 NHF Governance Code sets out that it is up to each organisation to decide on the best Board composition but the size of the and how Board Members are selected should, we suggest, be reviewed because paragraph A4 of the 2010 NHF Governance Code states the following:

“Boards should have at least five members and no more than twelve, including co-optees.”

Derby Homes should therefore consider the size of its Board (linked to our comments below on appointment of Board Members) and, if this remains unchanged, you will need to issue a reasoned statement for having more than 12 Board Members.

- 3.5. **Appointment of Board Members:** Derby Homes’ arrangements for appointing Board Members are set out in the Articles of Association and the document entitled “Appointment and Recruitment of Board Members”. This adopts the approach traditionally used by Almos for appointment to the Board, namely the Council appoints 5 Independent Board Members on recommendation from the Board and 5 Council Board Members of its choice, and the Tenants and Leaseholders of Derby Homes hold elections to elect 5 of their number to the Board with the Tenant elections taking place on an area basis.
- 3.6. There are potentially two problems with this approach. The first is that it may lead Tenant Board Members and Council Board Members to see themselves as representatives of the people who appointed them with an obligation to act in their best interests, whereas the legal position and the requirements of the 2010 NHF Governance Code (A2) is that all Board Members have to act in the best interests of Derby Homes. The second is that this approach may not always get a mix of people with the range of skills required for the most effective Board.
- 3.7. Best practice now suggests that housing providers should move towards selection on the basis of a skills mix that the Board has identified as being required. Moving to this kind of arrangement can be achieved either through more custom, practice, training and encouragement or through

substantial changes to the Articles of Association and the Appointment and Recruitment of Board Members document. However, this is a change we recommend that you consider if you are looking to ensure you have the best skilled Board Members in the future. We appreciate, however, the unusual position of Derby Homes being an Almo and a Registered Provider where few, if any, Almos have pursued this route.

3.8. There are a number of options available for implementing this kind of approach. At one end of the spectrum Derby Homes could adopt a procedure under which all Board Members are selected by the Board (with the Council) as the Board (with the Council) thinks best in order to achieve the skills mix required with no requirement for there to be a minimum number of Council Board Members or Tenant Board Members. An alternative, which would be closer to the current arrangements, would be for the current requirement for Tenant Board Member candidates to be invited to attend an interview and a specified number of Board Meetings. In addition to extending this to Independent Board Members and Council Board Members, if you adopted this approach, you could consider *requiring* candidates to attend the interview and the Board Meetings rather than just inviting them to do this, and consider what action the Board would take if it thought that a person was not suitable to be a Board Member following the interview and attendance at Board Meetings. In the case of Tenants, the Board may either:-

- refuse to allow a candidate to go forwards if it thought the candidate unsuitable;
- it could advise candidates not to go forward;
- it could put a recommendation on the ballot papers; or
- it could implement a combination of these options.

3.9. The practical implications of such recommendations would also need to be considered particularly due to the nature of Derby Homes being a managing agent which we understand results in significant tenant scrutiny at Board level.

Good practice and excellence

3.10. Skills, competencies, experience and knowledge for Board Members:

Part A of the 2010 NHF Code of Governance states, “Each board should determine the key, non-negotiable skills that all board members should have and the skills that individuals can bring that will make the board effective.” Derby Homes may already comply with this requirement but that is not clear from the Governance Arrangements Suite. Given that paragraph 2.5 of the Code of Conduct for Board Members requires all Board Members to go through an induction programme we anticipate that Derby Homes has drawn up a list of the skills that all Board Members should have. However, we recommend that Derby Homes have a **specific statement setting this out that forms part of the governance arrangements and that the Board be aware that skills can be requested of all categories of Membership.** Under the 2010 NHF Governance Code the skills requirement is contained in the excellence and good practice section so there would be no need to issue a statement of non-compliance if this was not put into practice.

3.11. Members of Other Housing Providers: Paragraph 2 (in the Good practice and excellence section) of part A in the 2010 NHF Governance Code states that organisations should adopt **policies limiting the number of Board Members who are the paid staff or Board Members of other housing providers.** As this is an issue of best practice rather than compliance, a statement of non-compliance is not required, but we consider the Board should be aware that this is recommended best practice.

3.12. Board Member’s Services Agreement: Paragraph 6 of the good practice applicable to section A of the 2010 NHF Governance Code states that “Each Board Member should be given a role profile and a formal agreement specifying his or her obligations, and should sign a copy to indicate acceptance.” It is not clear from the Governance Arrangements Suite whether this is implemented as although the Code of Conduct sets out some of the obligations for Board Members. **A services agreement would set out the expectations of specific Board Members, their roles, individual duties and the time commitment involved. It would also set out the details of any remuneration in the event that Derby Homes decided to pay Board Members (see 3.3 above also).** This is, as stated above, a matter of good practice rather than something in respect of which a

statement of non-compliance would need to be issued. However, if it does not already do so, we would recommend that Derby Homes does consider entering into services agreements with its Board Members especially if there is remuneration.

Individual documents within the Governance Arrangement Suite

4. Memorandum and Articles of Association

Introduction

4.1. Derby Homes' main constitutional document is the Memorandum and Articles of Association ("M&A" or "Articles"). The M&A were drafted by us in 2002 and were based on the template constitution prepared by the Template Group with a number of changes made to adapt the M&As to Derby Homes' specific circumstances and requirements. We have recently acted for you in amending the M&A so that Derby Homes could register with the Tenant Services Authority as a Registered Provider. When we amended the M&A for this purpose we made the minimum changes necessary. We have below identified issues which fall within "compliance" and "best practice" in the 2010 NHF Governance Code.

Compliance

4.2. **Maximum term of office for Independent Board Members:** Article 16(3) provides for retiring Independent Board Members to be automatically re-appointed where no replacements are found. Subject to the Board's consideration of our comments in the first part of this report regarding the composition of the board and the maximum period of office, the Articles could need to be amended so that they cannot be re-appointed if the maximum period has been served.

4.3. **Appointment to the board, board composition and terms of office:** Please see the section 3 of this report.

Good practice and excellence

4.4. **Removal of Board Members:** In the first part of this report, we recommend that the Board consider whether all Board members should be required to sign services agreements with Derby Homes. One issue to be covered by such agreements is attendance at Board meetings. Under Articles 18(7) and (8), Board members are only removed if they are absent for more than 3 consecutive Board meetings or, in any period of 12 months, are absent for 4 Board meetings. Given that Derby Homes now only has 6 Board meetings in a year we recommend you consider reducing these numbers upon your next review of the Articles and also covering this in the services agreement.

4.5. **Number of Board Members:** Please see the first part of this report.

4.6. **Derby Homes' Own Properties:** As well as managing properties owned by the Council, Derby Homes owns a number of its own residential properties. Whilst this is not an issue of good practice, we suggest the Board consider expanding that the definition of "Tenant" and "Leaseholder" in the Articles of Association to refer to Derby Homes' own tenants and then making appropriate amendments to take account of this in the rest of the Governance Arrangements Suite.

4.7. If the definitions of Tenants and Leaseholders are not extended, this will mean that residents of Derby Homes' own properties will not be eligible to be Tenant Board Members on the main Board nor to be one of the 15 tenant representatives on the City Board (assuming that the definition of Tenant in the Articles of Association is currently meant to apply to the word "tenant" in the City Board constitution). You should bear in mind that the City Board has delegated powers in relation to functions of Derby City Council that have been delegated to Derby Homes under the Management Agreement with the Council. The Council may be reluctant to have residents of non-Council owned properties making decisions that only affect residents of Council owned properties.

5. Standing Orders

Introduction

- 5.1. Derby Homes has prepared a detailed set of Standing Orders to govern the conduct of Board Meetings and General Meetings. Generally, they cover the areas we would expect them to cover. We have not identified any compliance issues within this document.

Good practice and excellence

- 5.2. **Appointment of the Chair:** Currently new Board Members are appointed at the AGM. If that practice is to be retained, we question whether the first Board Meeting following the AGM is the appropriate time to elect the Chair as newly elected Board Members may lack personal knowledge of the candidates. Therefore we suggest that you consider the timing of the appointment of the Chair to, say, the start of each calendar year. Many Registered Providers are now moving to an arrangement whereby the Chair is appointed for a 3-year term subject to annual confirmations and we suggest that you consider this approach.
- 5.3. **Open and Private Meetings of the Board (SO5):** We note that SO5 has been amended so that the private session is held before the public session. The standard practice is to hold the public session first followed by the private session. The reason for this is that many items are not inherently confidential but contain confidential elements, and in these cases it is standard practice to have a public report introducing the item and covering the non-confidential elements and a private report just dealing with the confidential elements. The public session is then held first so that the item can be introduced in public, and the non-confidential elements can be discussed. Members of the public who wish to attend also need to know what time they are required to attend the meeting. The confidential elements can then be discussed in a private session in an efficient manner because the Board has already been introduced to the general issues. We understand that you have considered and agreed reversing the standard order. However, there is a risk in reversing the standard order that officers preparing the reports will put everything in the private report and not provide a public report. In order to avoid this, we suggest including a Standing Order requiring that confidential items have both a public and a private report and that only the genuinely confidential

issues are dealt with in the private report. This could be covered by amending SO21.

- 5.4. **Conduct of Business (SO27):** SO27.16 sets out the following in brackets: "Board Members are not permitted to abstain from voting". This should be deleted. Instead there should be a requirement in the Code of Conduct that Board Members should vote for, against or abstain in relation to every resolution with guidance recommending that abstentions will only normally be appropriate on an exceptional basis.

6. City Board Constitution

Introduction

- 6.1. Derby Homes has a City Housing Board ("City Board") made up of a combination of members of the main Derby Homes' Board and tenants from Derby Homes' four management areas and leaseholders. The City Board constitution is based on the constitution of the two local housing boards that the City Board has replaced and was approved by the main Board of Derby Homes on 25 November 2010.
- 6.2. Under the Articles of Association, where the Board delegates powers to a committee (such as the City Board) the proceedings of that committee are regulated by the Articles so far as they are capable of applying, unless the Board provides that different rules will apply (see Article 24). In simple terms, this means that where the City Board constitution is silent on procedural issues, the provisions of the Articles will apply.
- 6.3. We have not identified anything in the City Board constitution in respect of compliance with the 2010 NHF Governance Code.

Good practice and excellence

- 6.4. **Effectiveness:** The City Board deals with operational and policy matters and also exercises a monitoring / scrutiny role. We question whether a board of 29 members, including 12 members of the Derby Homes' main Board, is manageable and whether this is the most effective way of achieving the functions of the City Board. Whilst this may deliver on engaging with a wider group of tenants, this may have a significant impact on the Board Members. However, as this is only a desktop review, this is outside the scope of this report.
- 6.5. As an authorised committee, we question whether the tenants and leaseholders are best described as "representatives" when they are exercising powers on behalf of Derby Homes as they primarily owe duties to Derby Homes.

7. Delegation of Responsibilities

Introduction

- 7.1. The Delegation of Responsibilities document sets out the functions of Derby Homes' Board, committees and key members of the executive team.

Compliance

- 7.2. **Matters that are delegated to Committees or Panels:** Section 2.3 lists 9 panels/committees. Save for the City Housing Board, and we understand the Audit Committee, none of these panels has its own terms of reference/constitution, which means that there is no indication within the governance arrangements of who determines the composition of these panels, the frequency of their meetings or their procedural arrangements.
- 7.3. For each of the three committees exercising delegated authority we recommend that these have their own terms of reference covering their responsibilities, appointments, quorum, voting, attendance and meetings. In the absence of specific terms of reference, the default position for committees is that the rules governing the Board apply which may result in unforeseen consequences and practical difficulties.
- 7.4. For each panel/committee, there should be clarity about whether the panel/committee just oversees the areas within its responsibility and reports to the Board or whether it can make non major decisions subject to an available budget. Where a committee does make decisions, is it the intention that it can take decisions with financial implications up to £200,000? If not, the appropriate limitation should be clearly set out.
- 7.5. **Resources and Remuneration Committee:** Clauses 2.3.9.3 anticipates that Board Members will be paid. The reference to the Combined Code at clause 2.3.9.3 should be replaced by a reference to the NHF's "Excellence in Standards of conduct code for members" because the 2010 NHF Governance Code requires organisations to comply with this code when establishing the remuneration of Board Members.
- 7.6. **Chief Executive's responsibility:** To comply with the 2010 NHF Governance Code all of the matters listed in section G of the Code should be covered. However, we have not checked the documentation in detail

against section G as we anticipate that much of this will be picked up in the Chief Executive's service contract, which we have not seen.

Good practice and excellence

7.7. **Matters reserved to the Board:** Clause 2.1(cc) states that receiving questions from members of the public is a matter reserved to the Board. However, the City Board constitution states that the main Board's Standing Orders (which cover questions from members of the public at board meetings) also apply to the City Board Constitution. It is unclear therefore, whether or not receiving questions from members of the public is a matter reserved to the main Board or whether this is also a matter for the City Board. We suggest that you consider the division of responsibilities here so that this can be set out clearly in the documents.

7.8. Under paragraphs 2.1 and 2.2 decisions with financial significance in excess of £200,000 are reserved to the main Board. This does not fit with paragraph 2.3.8.23 which allows some decisions in excess of £200,000 to be made by the City Board. These two sections should be considered together and clarified.

7.9. There is a caveat on the City Board's ability to take major decisions at clause 2.3.8.24(d)e in the following terms:

"e. in recognition of their legal responsibility and liability, main Board Members have the right to redirect a decision of the City Board to the next available main Board meeting. This has the effect of status quo applying until the main Board has considered the matter"

7.10. This is a very unusual approach that we do not recommend because it places the main Board Members in a different position to the other Committee Members. If you do want to limit the City Board's ability to make major decisions as a committee, these limitations should be set out clearly in the terms of reference rather than giving the City Board wide powers with an ability for the main Board Members to be able to veto the exercise of those powers. The Board could reduce the level of delegation if it has concerns here.

8. Financial Regulations

Introduction

- 8.1. We have reviewed the Financial Regulations only from the perspective of internal consistency and consistency with the other documents in the Governance Arrangements Suite, rather than considering matters of finance and accountancy.

Compliance

- 8.2. **Section 122 of the Housing and Regeneration Act 2008:** Section 122 replaces Schedule 1 of the Housing Act 1996. It restricts the making of gifts and the payment of dividends and bonuses to members of a Registered Provider and persons and companies who are connected with members.
- 8.3. In the case of Derby Homes, the only member is the Council. Therefore, you need to ensure that you avoid doing anything that could be regarded as the making of gift to the Council or to any companies to which the Council can appoint members to the board. Therefore we recommend:-
- including an extra section in the Financial Regulations which states that Derby Homes will not make any gift payments to the Council. Any payments made to the Council to be in accordance with the requirements of the Management Agreement and that payments to companies which have board members appointed by the Council, will only be made strictly in return for goods or services provided by those companies to Derby Homes; and
 - that where payments for legitimate purposes are made to the Council which are not gifts, that grant agreements are entered into specifying (1) the purpose of such funds (2) restricting the use of funds for that purpose, and (3) reserving the right to recover the funds if they is not used for the specified purpose(s).

9. Standing Orders for Appointment of Staff

- 9.1. The Governance Arrangements Suite contains a brief section setting out the arrangements for appointment of staff of Derby Homes.
- 9.2. **Appointment of Chief Executive:** Paragraph 4.1 provides that a committee of the Board will appoint the Chief Executive. This needs to be read together with paragraph 2.3.2 of the Delegation of Responsibilities and amended for consistency as the Delegation of Responsibilities document provides that the appointment panel makes recommendations to the Board on the appointment of the Chief Executive rather than making the appointment itself.

Anthony Collins Solicitors

18 July 2011

Appendix 1

Governance Arrangements Suite

Part I Summary and Explanation

Part II Memorandum and Articles of Association

Part III Standing Orders for Conduct of Derby Homes
Board and General Meetings

Part IV City Board Constitution

Part V Delegation of Responsibilities

Part VI Financial Regulations

Part VII Procurement Procedure Rules

Part VIII Appointment and Recruitment of Board Members

Part IX Code of Conduct for Board Members

Part X Standing Orders for Appointment of Staff

Part XI Protocol on Board Member, Executive Team and
Staff Relations

Part XII Services Agreement

Appendix 2

Wider Governance Issues for consideration by officers

Constitution and Composition of the Board

- 1. Openness and Transparency:** Section I of the 2010 NHF Code of Governance relates to openness and transparency. The main body of the report comments on the recommended best practice regarding Board Members being board members of staff of other housing providers. Paragraph I1 requires the board to publish an annual report of the organisation's activities and performance. We expect that you comply with this in practice through the board report to the Annual General Meeting detailed at paragraph 1.2(c) in Part II of the Standing Orders. However we recommend making this more explicit and would also suggest referring to Derby Homes' Freedom of Information and Data Protection policies within the Governance Arrangements Suite.

Governance Suite

2. Summary and Explanation document

- 2.1 Introduction** - This document serves as an introduction to the Governance Arrangements Suite. We understand that it was drafted in 2004 prior to the Governance Arrangements Suite being compiled as one set of documents. It would therefore benefit from a number of drafting amendments to make sure it fits better as an introduction to the Governance Arrangements. Subject to point 2.2. below, there are no compliance or best practice issues identified within this document and so it is not covered in the main body of the report.
- 2.2 Other Policies** - In addition to the policy documents listed in the Summary and Explanation document we assume that Derby Homes has data protection and freedom of information policies which should be contained in the list. On this assumption we have not put this into the main body of the report requiring compliance. Please let us know if you would like us to review these.
- 2.3 Scope of the document** - In the first paragraph, it is unclear whether the reference to "this document" relates to the whole Governance Arrangements Suite or just to the Summary and Explanation document. We would suggest the following as the first paragraph to the document:-

“The documents within these Governance Arrangements set out how Derby Homes is governed and contain a number of rights for Derby Homes’ Tenants. This Summary and Explanation summarises those arrangements and the rights of Tenants.”

2.4 Definitions: The Summary and Explanation document should refer to how key words within the Governance Arrangements Suite are defined. A schedule of definitions could be included as part of the Governance Arrangements Suite setting out all of the defined terms. The Articles of Association already have a set of definitions, but there are a number of terms within the Governance Arrangements Suite which do not appear within those definitions which could be covered in a Schedule of Definitions.

2.5 List of key documents. The Summary and Explanation document lists a number of key documents. Subject to our comments in the first part of this report recommending additional policies (i.e. Bribery Act), we suggest amending this as follows so that the documents listed in the Governance Arrangements Suite appear first and are dealt with together:

- *The Governance Arrangements Suite including:*
 - *This Summary and Explanation document*
 - *Articles of Association*
 - *Standing Orders*
 - *City Board Constitution*
 - *Delegation of Responsibilities*
 - *Financial Regulations*
 - *Procurement Procedure Rules*
 - *Appointment and Recruitment of Board Members*
 - *Code of Conduct for Board Members*
 - *Standing Orders for Appointment of Staff*
 - *Protocol on Board Member, Executive Team and Staff Relations*
 - *Management Agreement between Derby Homes and the City Council*
- *Tenancy agreements*

- *Tenants compact*
- *Tenants and Leaseholder handbooks*
- *Council housing allocations and lettings policies*
- *Derby Homes housing policies and procedures*
- *Derby Homes personnel and equalities policies*

3. Memorandum and Articles of Association

3.1. Format of the document. Although the M&A were merged together in one document when we amended the M&A for Derby Homes to register with the TSA, on the instructions that we should make the minimum changes necessary, we did not reformat the document. Although the document is entitled “Memorandum and Articles of Association”, technically everything that is in the document is now classed as being the Articles of Association of Derby Homes. Therefore we recommend reformatting the document so that it is simply headed “Articles of Association”, re-numbering the document accordingly and having one definitions section that applies to the whole document. Although this may mean that the document is less familiar, it will be more straightforward for the reader.

3.2. Removal of Board Members: When reviewing the Memorandum & Articles of Association, we would suggest that Article 18, which deals with removal of Board Members, should contain a provision that Board Members should be removed if they have not signed the services agreement and (if not covered in the services agreement or a services agreement is not implemented) a statement that they will comply with Derby Homes Code of Conduct within one month of being appointed. Note: please see 4.4 in the main body of this report also.

3.3. Annual General Meetings: Under the Companies Act 2006, there is no longer any requirement to hold an annual general meeting (“AGM”). Although a number of provisions within the Governance Arrangements Suite, including the appointment of Board Members, have the AGM as a reference point, there is no need for this to be the case. In the main part of this report the Board are asked to consider changing the procedures for appointment to the Board. In the event that such changes are made, we

would suggest that you consider whether it would be practically advantageous to remove the requirement of an AGM also.

- 3.4. **References to the Companies Acts:** All of the references in the document are currently to the Companies Act 1985. There is no need to change these provisions. However, we recommend updating them (if other changes are to be made) to refer to the appropriate provisions in the Companies Act 2006 so that the references do not appear to be out of date.
- 3.5. **Definition of Chairman:** We recommend changing “Chairman” to “Chair”. Currently both of these words are used in the Articles and Standing Orders but “Chair” is used more frequently.
- 3.6. **General Meetings:** Under the Companies Act 2006, meetings that are not Annual General Meetings no longer need to be referred to as “Extraordinary General Meetings”. Therefore, we suggest that you change references to “Extraordinary General Meetings” to “General Meetings” when reviewing the M&A. The standard notice period for General Meetings is also now 14 days (except where special notice is required under the Act) rather than 21 clear days and so we would suggest changing this in the Articles also.
- 3.7. **Decisions taken by the Council as sole member:** Where decisions are ordinarily required to be taken in General Meeting or by written resolution, Article 11 allows the Council to make such decisions without actually calling a General Meeting or following the requirements of the Companies Act 2006 that apply to written resolutions. If that power is exercised, Article 11 requires the Council to notify Derby Homes and requires Derby Homes to record the decision in the minute book. In addition to that requirement, the Companies Act 2006 requires that you need to file a memorandum of the decision at Companies House if it is a decision that would normally require a special resolution. On any revision to the Articles, we suggest making reference to this requirement in Article 11 so that this is not missed.
- 3.8. **Casual Vacancies:** Articles 17(5) and 17(6) set out the procedure for filling casual vacancies for Tenant Board Members where there remains one year or less until the end of their term. In the case of Tenants, reference is made to the Derby Association of Community Partners (“DACP”). In the case of Leaseholders, reference is made to the Derby Leaseholders Association (“DLA”). It is possibly unclear from the wording whether in each case the replacement Board Member will be the DACP/DLA itself (acting by an

authorised representative) or whether it will a willing Tenant/Leaseholder selected by the DACP/DLA. The Appointment and Recruitment of Board Members document suggests that it is the latter and we are confident that this is the case. We suggest confirming the situation by amending the final part of each sub-Article to read, “by a willing [Tenant]/[Leaseholder] selected by the [DACP]/[DLA].”

- 3.9. **Updating:** Article 18(4)(a) refers to the Mental Health (Scotland) Act 1960, which has been repealed. We recommend replacing the whole of Article 18(4)(a) with the following: “is required by law to be admitted to hospital because of that disorder; or”.
- 3.10. **Quorum:** We suggest including a statement that for the purposes of forming a quorum, a Board Member is present at the meeting provided that the Board Member can hear and be heard, to allow for telephone and video conferencing.
- 3.11. **Secretary:** The Companies Act 2006 no longer requires a company to have a designated Secretary. However, if you choose to remove the requirement for a Secretary you would still need the functions currently performed by the Secretary to be carried out. We suggest no change here but we are happy to discuss this further with you, should you so wish.
- 3.12. **Notices:** Articles G6 – G9 cover the requirements relating to notices. They assume that communication is not by electronic means. However, the Companies Act 2006 provides that if you give an electronic address in any notice calling a meeting, then the Council may communicate with Derby Homes officially by email. The Companies Act 2006 also allows meetings to be called by posting notice on a website subject to the consent of the Council. You may wish to consider whether you want to amend the Articles to refer to such methods.
- 3.13. **Payments to Board Members and Committee Members:** In addition to comments made regarding this in the main report, Clause 6 of the Memorandum and Article 26 allow for payment of Board Members even if this does not happen in practice. Article 30(3)(b) provides that a Board Member does not have a conflict of interest in the establishment of policies on expenses pursuant to Article 26. This should be extended to also refer to remuneration policies (such policy to be compliant with D4 of the 2010

- 3.14. We have not reviewed the Tenants' Handbook, but you may need to make amendments to this to distinguish between the rights of Tenants of the Council and the rights of Tenants of Derby Homes if the Tenants' Handbook summarises the rights set out in the tenancies.

4. **Standing Orders**

- 4.1. The paragraphs in the Standing Orders are sometimes referred to as "Rules" and sometimes as "Sections". When reviewing the Standing Orders we recommend adopting a consistent approach and suggest using the term "Standing Order" or "SO". We also recommend that the numbering be continuous throughout Part 1 and Part 2 rather than restarting the numbering for Part 2 in order to avoid any confusion in the cross references.
- 4.2. **Strategic Board Meetings:** Stating that Strategic Board meetings will be held in 2 particular months is more prescriptive than is necessary. For flexibility we suggest that this would be better dealt with by including an obligation in the Board Members' Service Agreements or the Code of Conduct that Board members should attend Strategic Board meetings as and when required to do so.
- 4.3. **Extraordinary Meetings of the Board (SO3):** The minimum notice requirements for calling Extraordinary Board Meetings ("EBMs") is only dealt with implicitly in SO9 through the requirement for agendas to be with Board Members at least 5 clear days before the relevant meeting. We suggest setting out explicitly what the minimum notice requirements are and the provisions for agreeing to short notice (usually a number of Board Members). This also applies to Strategic Board Meetings.
- 4.4. If EBMs can be called on very short notice you should consider the applicability of Article 18(7) in the Articles of Association. This Article provides for the disqualification of a Board Member if he or she is absent for more than three consecutive Board Meetings (even if apologies are received). You may wish to amend this Article so that it does not apply to EBMs at all, or so that it only applies to EBMs if no apologies are received.

- 4.5. **Confidential Information (SO20):** SO20 sets out individuals' rights to access information and SO20.2 provides a non-exhaustive list of information that can be withheld on the basis of it being confidential. In order to ensure that information that cannot be disclosed under the Data Protection Act is covered, we recommend amending this to say the following:-

"Information given to Derby Homes by another body on terms that forbid its public disclosure or information that cannot lawfully be disclosed due to statute, case law or an order of the Court."

- 4.6 **Format of the Document:** The document is split into Part 1 that applies to the Board and Part 2 that applies to General Meetings. On the current drafting, only SOs 15 and 18 from Part 1 are carried across to Part 2. The cross-referencing is incorrect as the references should be to SOs 16 and 19. You should consider whether SOs 8, 9, 15, 20 and 21 should also be carried across.

- 4.7 **Minutes (SO15):** SO 15 states: ".All minutes of committees not falling within powers delegated to them must be submitted to and noted by the Board". The meaning of this requirement is unclear and some Registered Providers supply Boards with summary minutes of all committees in any event. We would suggest that this is clarified to simply say: "All minutes of committees must be submitted to and noted by the Board".

- 4.8 **Access to information (SO19):** We assume the requirement in SO19.4 for the Company Secretary to give at least three clear days' notice of any matter to the Board refers to notice to residents and the public rather than to Board Members, but this is not clear and we suggest that this is stated.

- 4.9 **The Priorities Plan (SO22):** SO22.1 provides for publication of a priorities plan covering 6 month periods that are updated every quarter. We recommend deleting the words "beginning with the first day of any month" in the first sentence because a reader may on a cursory reading infer from this that the priorities plan has to be updated every month. This is clearly not the intention given the second sentence but the amendment suggested will avoid any potential confusion.

- 4.10 **Extraordinary General Meetings (SO2 Part 2):** In line with our comments on the Articles of Association, we suggest referring to Annual General

Meetings and General Meetings rather than Annual General Meetings and Extraordinary General Meetings.

4.11 We recommend amending SO2.2 (Part 2) to refer to the notice period in the Articles of Association to avoid any inconsistencies creeping in as the two documents evolve.

4.12 We refer to our comments on the Articles of Association regarding the standard notice period for General Meetings now being 14 days rather than 21 clear days.

4.13 **Drafting Points:** Throughout the Standing Orders, sometimes the word “Director” is used, at other times, the phrase “Board member” or just “member” is used. We recommend using the phrase “Board Member” for the sake of consistency with the Articles of Association.

4.14 The last sentence of SO23.3 seems intended to refer to the whole of SO23 rather than just to 23.3. If that is correct, we suggest this sentence becomes SO 23.4 and is amended to read “this SO23 shall not include....”

4.15 The cross reference in SO 14.8 should be changed from 12.5 to 14.5. The cross reference in SO21 should be to SO20 rather than 18. The cross reference to the Articles of Association in SO3 (Part 2) should be amended to refer to Article 9(1) rather than Article 10(1).

5. City Board constitution

5.1. **Delegation and Functions:** We recommend including a section at the beginning of the constitution making a reference to the fact that it is a committee with delegated authority pursuant to Article 24. This should be followed by the City Board’s functions which are currently contained at clause 6. We note that the Delegation of Responsibilities document list other functions of the City Board that are not contained within the City Board constitution and we suggest making them consistent.

5.2. The 10th bullet point in clause 6 states the City Board has delegated authority to “Approve Local Estate Agreements” and that the City Board will agree and sign the agreements within the City. This implies that the City Board has the final say as to whether Derby Homes signs a local estate agreement on behalf of Derby City Council. We recommend checking this is what is intended.

- 5.3. **Term of Office:** Clause 2.1 provides that the term of office is three years for the City Board Members who are not also members of the main Board. Clause 3.2 provides that the arrangements for electing tenants and leaseholders are as per the arrangements for members of the main Board. The implication is that City Board Members can serve for more than one term subject to the Maximum Period of Office. If that is the case, we recommend that this should be set out explicitly in clause 2.1.
- 5.4. **Chair and Vice Chair:** If our recommendation in relation to definitions applying consistently to the Governance Arrangements suite, “Chair” will mean the chair of the main Board. Therefore we recommend that the chair and vice chair of the City Board be referred to as the “City Board Chair” and the “City Board Vice Chair”.
- 5.5. We recommend combining clauses 4.4 and 4.5 as these deal with the same subject.
- 5.6. **Voting:** The section on voting should be a new clause 5 rather than clause 4.7 and there are typographical changes needed.
- 5.7. **Disqualification:** We refer to our comments on the Mental Health (Scotland) Act 1960 no longer being in force (see paragraph 3.9 above).
- 5.8. **Procedural Guidance:** There are a number of typographical errors in this section and paragraph 18 which we can pick up should you wish us to do so.

6. Delegation of Responsibilities

- 6.1. **Management Agreement:** The current version of Schedule 3 of the new management agreement to be entered into between Derby Homes and the Council requires the establishment of a joint capital, repairs and finance liaison group consisting of nominees of the Council and Derby Homes. This is a matter that will need to be covered in the Delegation of Responsibilities document as this reference group should have its own terms of reference covering the issues referred to at paragraph 7.2 in the main body of the report above. We raise this as an issue on the basis that Derby Homes will be legally required to comply with provisions of the management agreement.

- 6.2. **Delegation of Responsibilities (Committees) v. Scheme of Delegations (Officers):** We note that the Financial Regulations refer to the requirement for the Chief Executive to establish and keep up to date a scheme of delegation. We assume that all of the references to a scheme of delegation in the Financial Regulations refer to the same document which sets out specific delegations to officers and that this is separate from the Delegation of Responsibilities document. If this assumption is correct, we recommend that one is renamed to avoid any confusion.
- 6.3. **Allocation of responsibilities:** By consulting the Scheme of Delegation document and any other schemes of delegation in force, any officer of the company should be able to work out who is responsible for taking a particular decision. An effective way to test this is to take a sample of decisions and check whether officers are able to do this, you may wish to undertake this kind of exercise.
- 6.4. **Structure of the Document:** Paragraph 1 of the Delegation of Responsibilities document states that the document is set out as follows:
- A Matters that are reserved for the Board;
 - B Responsibilities of the Chair and Vice-Chair;
 - C Matters that are delegated to Officers.
- 6.5. However, Section A contains both matters reserved to the Board and also sets out the functions of various panels and committees. Therefore, assuming the recommendations suggested above are adopted we suggest amending the document so that it has the following overall structure:
- A Functions of and matters that are reserved for the Board;
 - B Terms of reference and delegations to committees and panels;
 - C Responsibilities of the Chair and Vice-Chair;
 - D Matters that are delegated to Officers.
- 6.6. **City Board.** All of the functions from 2.3.8.1 through to 2.3.8.13 replicate the delegations set out within the City Board constitution. However, the wording is different and we recommend that either the City Board constitution or the list in this document be amended so that there is consistency in the wording. Alternatively, the Delegation of Responsibilities

document could state that the Derby Homes' City Board has authority to undertake the functions delegated to it within the City Board constitution.

- 6.7. The functions as detailed at 2.3.8.14 through to 2.3.8.24 are not set out in the Derby City Homes' Board constitution. We suggest that they should be.
- 6.8. Clause 6.4 also sets out a function of the Company Secretary and we recommend that this is added to the list in clause 5.6 and/or 5.7.
- 6.9. **Legal Proceedings by Derby Homes:** Clause 6.3 provides that the Chief Executive of Derby Homes is authorised to institute, defend or participate in certain legal proceedings. Clause 4.2 states, however, that major decisions are not delegated to the Chief Executive. A major decision includes a decision which is likely to involve expenditure or savings of over £200,000. When costs and compensation are taken into account, many decisions in relation to legal proceedings could have implications in excess of £200,000. You need to confirm whether the Chief Executive's powers here are limited to decisions in relation to legal proceedings up to £200,000 or not. Currently, the Chief Executive's power is limited and this point may need to be clarified.
- 6.10. If the above recommendation is accepted you will also need to amend paragraph 4.2.1 and paragraph 2.1(u).
- 6.11. We recommend that paragraph 6.3 contains a reference to settling proceedings in addition to commencing proceedings, though you may want to set a financial limit for the amount of compensation that that the Chief Executive is able to authorise.
- 6.12. **Officers' Areas of Responsibility:** There is a summary at clause 5.4 of the different posts. We recommend that, clause 5.4 is brought to the beginning of clause 5 to become clause 5.1 so that all of the roles are introduced before any of them is considered in detail.
- 6.13. The heading currently at 5.3 (B) reads "Areas of Responsibility" but may be more appropriately read "Caravans Sites and Anti-Social Behaviour".
- 6.14. **Clause 2.3.9.5:** The section headed "Any Other Matters" at clause 2.3.9.5 appears to be superfluous and should be deleted.
- 6.15. **Staffing:** Clause 4.3.4 states: "The Chief Executive in conjunction with the Director (Investment and Regeneration), Personnel Officer and Senior

Health and Safety Advisor is responsible for..." Then the last three bullet points in the ensuing list states:-

- in conjunction with the Director & Company Secretary, reviewing annually the amounts of compensation provided for in the Company's employment policies to make sure they remain at appropriate levels;
- approving the implementation of grades resulting from the job evaluation process;
- approving changes to terms and conditions of employment where there is a cost of less than £200,000 in a financial year."

It is unclear whether the Chief Executive only has to consult with the other people mentioned in 4.3.4 or whether a decision has to be reached jointly in relation to these matters. This should be clarified and may be amended by inserting "and/or Senior Health and Safety Advisor (as appropriate)".

6.16. As shown by the comment by the fifth bullet point in clause 4.3.3, there is some further clarity needed in clauses 4.3.1 to 4.3.3 regarding who has final responsibility for the decision referred to.

7. Financial Regulations

As you are aware, the new Management Agreement between Derby Homes and the Council is still being finalised, but assuming that the final version will be such that it is similar to the version circulated on 24 January 2011, the following issues should be addressed in the Financial Regulations:

7.1. The Delivery Plan: Clause 6 of the Management Agreement refers to the Delivery Plan which is a significant document. Currently, the only reference to a Delivery Plan in the Governance Arrangement suite is the reference in clause 2.1 of the Delegation of Responsibilities document (Part VI) which states that the approval of the Delivery Plan is a matter reserved to the Board. Given the importance of the document, we suggest that the Financial Regulations set out who is responsible for the preparation of the Delivery Plan.

7.2. Council Consents: Clauses 38.4 to 38.6 in the Management Agreement set out a number of transactions that Derby Homes cannot undertake without the consent of the Council. The restrictions in clause 38.4 are

“38.5 The Organisation will not without written consent of the Council:

- 38.5.1 materially change the nature of its business;*
- 38.5.2 incorporate or acquire any subsidiary;*
- 38.5.3 enter into any formal legal partnership or joint venture;*
- 38.5.4 transfer or dispose of all or any substantial part of its assets or undertaking (whether by one transaction or a series of related transactions);*
- 38.5.5 other than as set out in the Delivery Plan, enter into any transaction or a series of related transactions to incur capital expenditure of more than £500,000 (five hundred thousand pounds) or to dispose of any capital asset having a value of more than £500,000 (five hundred thousand pounds) in the latest audited accounts. For this purpose, the terms ‘capital expenditure’ and ‘capital asset’ are as defined by standard accounting principles;*
- 38.5.6 enter into any material contract outside the ordinary course of its business;*
- 38.5.7 enter into any material contract that may entitle any person to remuneration calculated by reference to income or profits;*
- 38.5.8 arrange any borrowings or overdraft facilities;*
- 38.5.9 create any charge or any other security over its assets;*
- 38.5.10 make any loan or advance of over £50,000 (fifty thousand pounds);*
- 38.5.11 give any guarantee, indemnity or security in respect of the indebtedness or obligations of any person other than as set out in its Articles of Association;*
- 38.5.12 factor or assign any of its book debts; or*

38.5.13 *acquire any interest in or make any investment by way of subscription for shares or debenture in another company or business.*

38.6 *This provision applies whilst the Organisation has any employees who are members of the LGPS. In such circumstances the Council will ensure the Management Fee for each financial year includes sufficient funds for the Organisation to meet any increased employer's pension contributions required by the administering authority for the LGPS. This includes any due to deficits in the LGPS. However, it does not include contributions arising from actions of the Organisation to the extent these do not match the Council's own actions in relation to its own employees."*

7.3. Overlap with the Delegation of Responsibilities Document (Part VI):

The majority of the Financial Regulations consist of a division of responsibilities between the Company Secretary and the Chief Executive. As this document effectively defines part of the roles of these two officers, we suggest that the Delegation of Responsibilities document contains a statement that the Financial Regulations provide more detail on the roles of these officers.

7.4. Paragraph B4 states that the Company Secretary has the responsibility for the financial affairs of the company and this cannot be overridden by anything in a scheme of delegation or set of financial procedures. However, paragraph C1 states that in establishing arrangements for the audit of Derby Homes' financial affairs, the Company Secretary will act as directed by the audit committee. For consistency, therefore, we recommend adding clarificatory words to paragraph B4.

7.5. **Entry on to Property by the Company Secretary:** Paragraph H1 states "the Director & Company Secretary has authority to enter at all reasonable times on any Derby Homes premises or land." Given that Derby Homes owns its own residential properties as well managing the Council's housing stock, we recommend qualifying this statement.

7.6. **Ordering Goods:** Paragraph I3 states the following:-

"Each order must conform to the directions of Derby Homes on central purchasing and the standardisation of supplies and materials. Standard

terms and conditions must not be varied without the prior approval of the Director & Company Secretary.”

7.7. It is not clear what is meant by “the directions of Derby Homes”. If this is a policy document we suggested that this be dealt with in the Schedule of Definitions that we have recommended. If this is to refer to directions of the Board or a particular committee or individual we recommend amending this paragraph accordingly.

7.8. **Appendix 1 – Income:** The section headed “Income” in Appendix 1 states:

“The Director & Company Secretary may write-off bad debts in accordance with the published accounting policy

Sums over £10,000 require the approval of the Resources & Remuneration Committee.

The Director & Company Secretary may initiate such write-off or remission after consultation, if necessary, with the Chief Executive of Derby Homes.”

It is not clear whether the third paragraph is a qualification of the first paragraph or the second. This should be clarified.

8. Code of Conduct for Board Members

Introduction

8.1 Derby Homes’ Code of Conduct for Board Members (“Derby Homes’ Code”) was originally based on the Community Housing Task Force’s Model Code of Conduct and amended following our review in 2007. Now that Derby Homes is also a Registered Provider of social housing, it is required by the regulator to adopt a code of governance. Derby Homes has agreed to adopt the 2010 NHF Governance Code. The NHF also produces another code entitled “Excellence in Standards of conduct” (“the Excellence Code”).

8.2 Although Derby Homes is not required to adopt the Excellence Code, we have reviewed Derby Homes’ Code of conduct in light of this. When read together with the other documents in the Governance Arrangements suite, subject to the recommendations below, Derby Homes’ Code implements requirements of the 2010 NHF Governance Code.

8.3 References to the Local Housing Boards: Derby Homes' Code still refers to the Local Housing Boards and these references should be updated to refer to the City Board.

8.4 Derby Homes' Code includes summary boxes setting out key words and key messages from the Code. We recommend adding the following statement at the end of the introduction section of Derby Homes' Code:

"the code contains boxes summarising key words and key messages. The fact that a specific provision of the code has not been included in the summaries does not mean that it is unimportant. Board Members and Committee Members are expected to comply with this code in its entirety."

8.5 Equal Opportunities: We recommend amending clause 2.1 as follows to reflect the Equality Act 2010:

"2.1 We will not unlawfully discriminate against anyone on the basis of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or beliefs, sex, sexual orientation, [political allegiance] or any other characteristic which may not always be lawfully used as a basis for treating people differently."

8.6 Please note that under the Equality Act 2010 political allegiance is not a protected characteristic. We expect that you will not want to allow discrimination on the grounds of political allegiances.

8.7 The reason for adding the word "unlawfully" is that in some circumstances, Derby Homes is required by law to discriminate (according to the neutral meaning of this word) on the grounds of some of these characteristics. For example, under the Companies Act 2006, Board Members are required to be over 16 years old and so you are required to discriminate on the grounds of age. Further and you will need to discriminate on the grounds of disability where a person's disability means that they are genuinely unable to do the job they have applied for. Therefore, we also recommend inserting the word "unlawful / unlawfully" at paragraph 2.4 and at the third bullet point in the "key messages" box.

8.8 Conflicts of Interest: Paragraph B2 of the Excellence Code states the following:

"relevant personal interests take many forms. Some of the usual ones are:

- *employment, ownership or significant shareholding in a company or partnership providing products or services to the housing association sector;*
- *significant ownership of land and/or property in the area of operation of the association;*
- *tenancy or leasehold interests of a property owned by the association;*
- *membership of a campaigning, residents' or community organisation which has an interest in the business and/or operation of the association; and*
- *membership of a local authority, another public body, or another association or unregistered "not for profit" body with interests in the area of operation of the association.*

In the interests of transparency membership of political parties and pressure groups should always be declared. Membership of other boards or committees within the same group structure should also be declared."

8.9 Where they are not already covered, we recommend adding the bullet points in B2 of the Excellence Code to the list of bullet points in the box setting out examples of when conflicts can arise.

8.10 Paragraph 4.8 refers to properties owned by Derby City Council. As Derby Homes also owns its own properties, we recommend referring to properties owned by Derby City Council or Derby Homes.

8.11 Please note that the definition of family member in paragraph 4.8 is significantly wider than the definition of family member in the Articles of Association. We assume that this is deliberate on the basis that the definition in the Articles of Association is designed to comply with the requirements of the Companies Acts while the definition in the Code is aimed at setting out best practice for the sector. Therefore, we do not see that there is any need to change either of the definitions of family member.

8.12 **Using Derby Homes' contractors:** Paragraph 5.6 refers to the exceptional circumstances in which Board Members may use Derby Homes' contractors for personal use. It is not clear from paragraph 5.6 whether it is envisaged that the use of Derby Homes' contractors for personal use will be through a Derby Homes purchase order or through a private order made by the Board Member. We suggest that this be reviewed and clarified.

8.13 Hospitality and Gifts: Paragraph 5.14 refers to the Hospitality and Gifts Register. This is not a document we have reviewed. We recommend that the register has guidance notes attached to it setting out the circumstances in which gifts and hospitality may be:

- accepted and not declared (essentially nominal items should as pens, key rings, working lunches);
- accepted and declared and retained;
- accepted and declared and donated to a charity or other suitable cause; or
- not accepted.

This reflects the Excellence in Standards of Conduct Code (see F9).

8.14 In our comments on the Summary and Explanation Document we recommended adopting our standard anti-bribery policy. The anti-bribery policy also contains provisions in relation to gifts and hospitalities but is intended to work alongside current policies. Therefore we recommend adding a new paragraph 5.20 after 5.19 stating: “We will comply with Derby Homes’ anti-bribery policy enforced from time to time.”

8.15 Use of Equipment: We recommend adding to the end of paragraph 5.25 “....unless permitted in this Code” for consistency.

9. Standing Orders for Appointment of Staff

9.1. Disciplinary Action – Chief Executive: Paragraph 6 deals with disciplinary actions for the Chief Executive. We suggest that you consider this to clarify the uncertainty here.

10. Protocol on Board Member, Executive Team and Staff Relations

10.1. The Governance Arrangements Suite contains a protocol which sets out relationships between Board Members, the Executive Team and members of staff.

10.2. Paragraph 5.1 refers to Councillors and Tenant Board Members acting in their capacity as representatives of the Council and tenants respectively, and it requires Derby Homes’ staff to do what they reasonably can to

support their representative roles. Although Councillors and Tenant Board Members may have been selected/elected by the Council/Tenants, the Companies Act 2006 and the 2010 NHF Governance Code requires that all Board Members should always act in the best interests of the company. Therefore, we recommend that this section be amended to refer to 'Councillors and Tenant Board members acting in their capacity as representatives of *"Derby Homes"*'.

10.3.Roles of Board Members: The second bullet point of paragraph 2.1 refers to Board Members "leading the preparation of Derby Homes' policies and budget". For consistency with the Delegation of Responsibilities document, we suggest changing "leading" to "approving".