

**Hill, Susan**

---

**From:** Watson, Lorraine  
**Sent:** 21 March 2007 09:36  
**To:** Hill, Susan  
**Subject:** FW: board member payment - backdating

Appendix 2

Kind Regards  
 Lorraine

Lorraine Watson | Director & Company Secretary | Derby Homes Limited, South Point,  
 Cardinal Square, 10 Nottingham Road, Derby DE1 3QT | Telephone 01332 711014 | Mobile  
 07764 194800 |email lorraine.watson@derbyhomes.org | www.derbyhomes.org

-----Original Message-----

From: Andrew Millross [mailto:Andrew.Millross@anthonycollins.com]  
 Sent: 13 February 2007 12:24  
 To: Watson, Lorraine  
 Subject: board member payment - backdating

Lorraine

You have asked for advice on whether Derby Homes is able to backdate the payment of Board Members to the point at which the Board started to consider the issue, in around March 2006.

As identified in the Board Report of 30th March 2006, the payment of Board Members required an amendment to Clause 6 of Derby Homes' Memorandum of Association. This amendment could, of course, be made by the Council passing a special resolution to that effect, either at an extraordinary general meeting of Derby Homes or as a formal written resolution under the Companies Acts. If Derby Homes makes any payment either before this resolution has been passed or in relation to a period before this resolution has been passed, then such a payment would be ultra vires. It is clear, therefore, that the payment cannot be backdated to cover any period before the Memorandum of Association was changed.

DCLG Guidance on the payment of Board Members requires that tenants, the local authority, and other stakeholders are consulted on any proposal to pay Board Members and that the local authority first consents to this. Any payments that are made in respect of a period before this consultation has been completed or before the local authority's (Derby City Council's) approval has been given will be a breach of this guidance.

More fundamentally, it is important to consider the justification for the payment of Board Members. The report proposing the payment of Board Members makes it clear that the main reason why Board Member payment is being considered is to attract and retain good board members, particularly as independents. There is also a desire to reward Board members for the effort they put in which helps Derby Homes maintain its position as a leading ALMO which has achieved a three star rating at the last two inspections. Whilst the Guidance recognises that the desire to reward Board Members, in the context of a professional and accountable Board, is a legitimate reason to pay Board Members, it makes it clear that payments made for this reason should not be backdated. It is also difficult to see, in the context of this justification for the payment of Board Members, how backdating payments could encourage Board Member retention and recruitment.

Given that Derby Homes is not proposing to pay Board Members at the maximum permissible amount (£20,000 per year) it would of course, be possible to set the Board Member payments at a higher amount than that currently proposed. However, this would also be subject to consultation and the Derby City Council's consent. This may be something Derby Homes may wish to consider, although the amounts paid must still be objectively justifiable in terms of the enhanced Board Member recruitment and retention and Board performance that they are intended to secure.

Andrew Millross  
 Partner