



## Guidance – governance in community led housing

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This guidance is about good governance and the responsibilities of those who are charged with governing community led housing organisations. It relates to **G4 Basic Governance, L4 Excellence in Governance and L5 Statutory, Legal, Governance and Regulatory Responsibilities For Board Members** in the **Community Led Homes Programme**.

This guidance considers the following areas:

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## 1 Principles of good governance

There are many different approaches to community led housing and legal models as outlined in the guidance which accompanies module IL 'Community Led Housing Options'.

All community led housing organisations (referred to as organisations throughout this guidance) should aim to meet a baseline of good governance and ensure that at all times it remains accountable to the community it has been established to serve; whether that is a community of place or of people.

The foundation of good governance is that there should be an effective Governing Body which leads and controls the organisation and complies with its legal requirements. The Governing Body should ensure that the organisation upholds the following principles:

### 1 Ethics

The organisation operates according to high ethical standards, explicit values and is compliant with the Code of Governance for Community Led Housing (as outlined in section 3). People should seek to be involved in organisations not for personal gain but to work to meet its core objectives and meet the housing needs of the community it has been established to serve.

### 2 Accountability and Democracy

Community led housing is built on a fundamental principle of equality; there is no majority shareholder or controlling group. There must be proper accountability to the organisation's stakeholders, and democratic involvement of all members and residents.

### 3 Community First

Organisations should put the needs of the community they have been established to serve at the heart of business decisions and strategy.

### 4 Openness and Transparency

The organisation should be governed with a spirit of openness, making full disclosure of governance matters and other information to all members of the organisation.

### 5 Diversity & Inclusion

Organisations must respect the values of fairness and equality of opportunity and recognition of diversity in all aspects of the organisation's governance.

## **6 Review and Renewal**

Well governed organisations understand the skills, knowledge and experience that are required within their Governing Body. Formal and open processes for the periodic review of the Governing Body's performance should be established and to ensure its renewal on an appropriate basis.

## **7 Clarity**

There must be clarity of roles and responsibilities between the organisation's Governing Body, its membership, paid staff and Service Agencies.

## **8 Control**

Effective systems for internal delegation, audit, risk management and control are essential to ensuring long term viability. The Governing Body should receive timely reports and advice to inform its decisions. The Governing Body should maintain effective relationships with auditors and regulators.

## **9 Structures**

The larger and more complex an organisation becomes the more it needs effective staffing, service and committee structures to support the Governing Body's work.

## **Key Criteria in Good Governance**

Supporting the principles of good governance are the following basic requirements:

- The organisation must be effectively chaired and have a Code of Conduct that sets out the terms of reference for meeting conduct and acceptable behaviour.
- The Governing Body must have the right skills set to manage the organisation.
- Consideration should be given to appropriate maximum terms in office for Governing Body members, particularly those holding the positions of Chair, Secretary and Treasurer.
- Members' confidentiality must be adequately protected and an appropriate data protection policy in place.
- The organisation needs to agree policies and procedures that enable it to deliver its plans and services and adequate records must be maintained securely.
- Governing Body members should be prepared for meetings and maintain their focus on the agreed agenda for meetings.
- Organisations must agree rigorous, open and transparent procedures for recruiting employees and procuring support services and contractors and establish effective systems for monitoring and managing performance.

- Governing Bodies must be aware of their legal and regulatory duties and have effective systems in place to identify and manage key risks.

### **The Deadly Sins of Poor Governance**

Whilst striving to ensure effective governance, organisations must be mindful of the pitfalls; the 'Deadly sins'.

- ***The “little Hitler” syndrome*** – the individual who is motivated by power and control is a destructive or dominating influence in organisations,
- ***“Us and them” conflicts*** – the formation of cliques or control by narrow groups that work in their own interest and not in the interests of all members.
- ***Corruption***
- ***Favouritism***
- ***Lack of accountability and secretiveness***
- ***Failure to declare conflicts of interest***
- ***Apathy***

## 2 Governing body responsibilities

It is essential that members of the Governing Body are fully aware of their legal and regulatory responsibilities. Whilst the enthusiasm within communities should not be dampened, it must always be remembered that organisations are dealing with peoples' homes which are a fundamental bedrock on which their lives are built. Failure to ensure that organisations are effectively governed can expose it and its residents / members to a range of risks which are outlined further in the guidance which accompanies modules S3 and L9 'Managing Risk'.

### Legal Responsibilities

This guidance outlines the key areas of the law where Governing Bodies need to ensure they are compliant; it does not seek to provide detailed legal advice. Governing Bodies must decide for themselves whether they need to take specific legal advice as circumstances dictate.

#### (a) Society or Company Law

- **Rules or Articles** – organisations should adopt constitutions, legal instruments, financial regulations, standing orders and other governance frameworks which support and enable them to operate in line with their objectives and members' priorities. These should be kept up to date and be mindful of society and company law and other statutory and regulatory provisions.
- **Contract Law** – organisations must be aware of the legal provisions and requirements contained within any contract that they enter into with third parties including, but not limited to, development agreements, project management contracts, service level / management agreements and repairs and maintenance contracts
- **Employment Law** – if organisations are a direct employer they must be compliant with all relevant employment law including, but not limited to, health and safety at work, statutory provisions for leave and sickness, working time regulations, pay and deductions, training, pension provision and ensure that they establish effective systems for performance management.
- **Data Protection** – organisations will routinely process and store personal data regarding its members, residents, employees and contractors. Governing Bodies must be aware of their legal responsibilities related to the Data Protection Act and the General Data Protection Regulations and consider whether they need to register with the Information Commissioners Office.
- **Human Rights Act** – organisations must ensure that they are respecting individual rights regarding their homes as enshrined in the Human Rights Act.
- **Health and Safety** – organisations must ensure that the homes and communal areas that they own or manage are adequately

maintained at all times. Regular inspections should be undertaken to assess fire safety, emergency exits, trip hazards and any other issues that could pose risk to residents' personal safety and records of such inspections should be retained for as appropriate.

- **Financial Reporting Standards** – organisations must maintain their financial accounts and present them in a manner which is consistent with internationally agreed standards.
- **Tax and Fraud** – organisations must register for and make appropriate arrangements to report all employment, contract, corporation, capital gains and value added tax activity. Organisations must ensure that their financial procedures enable them to comply with requirements regarding tax avoidance, money laundering, enveloping and inheritance tax.

## (b) Housing Law

- **Housing Acts** – organisations need to be aware of statutory provisions contained within housing legislation regarding security of tenure, granting leases, allocating housing, succession, rent setting and service charge billing and other relevant issues.
- **Tenancy and Leasehold Management** – the rights of tenants and leaseholders must be upheld at all times by organisations.
- **Crime and Disorder** – organisations have responsibilities to ensure that their tenants and leaseholders are upholding good behaviour requirements and not causing nuisance to their neighbours. In the more extreme cases, organisations should be aware of the powers that are available to them under the Policing, Crime and Anti-Social Behaviour Act 2014 and the need to work in partnership with relevant statutory bodies.
- **Safeguarding and Abuse** – organisations should be aware of their responsibilities and duty of care to young people and vulnerable adults living in their properties.
- **Repairs Legislation** – landlords have a duty to maintain their homes to agreed standards and failure to do so could result in claims being brought by tenants and leaseholders for disrepair, reduce resident satisfaction and lead to governance problems due to falling involvement and increased complaints.
- **Planning, Listing and Bye-Laws** – organisations should be aware of any restrictions placed on their development activities or property management and maintenance.
- **Building Regulations** – organisations must ensure that they do not breach building regulations by undertaking unpermitted works.
- **Immigration Status** – organisations must ensure themselves that employees and tenants have the necessary right to remain in the UK.

- **Regulatory Compliance** – where an organisation is a Registered Provider it must ensure that it complies with the Regulatory Framework.

### Record Keeping

Organisations need to maintain accurate and relevant records of their business activities and Governing Body decisions. It is for organisations to decide whether these records are held in paper form or electronically and how best to maintain back up copies.

#### (c) Society or Company Records

- **Registration Certificates** for incorporation and taxation.
- **Share/Membership Register** – the organisation must maintain an up to date list of its members.
- **Seal Register** – for co-operative and community benefit societies a register of use of the company seal should be maintained.
- **Minutes Book** – all key decisions of the Governing Body must be recorded in their minutes and, following approval, these should be signed and held in a minutes book.
- **Register of Members' Interests** – to minimise the risk of fraud or misappropriation of funds, all Governing Body members should complete declarations of pecuniary interests, including but not limited to, details of whether they are employed by, are a shareholder or a director of any company or statutory body that the organisation conducts business with and whether any family member holds such a position.
- **Financial Accounts and Annual Returns** – signed copies of financial statements and annual returns to registering/ regulatory bodies must be maintained.
- **Employment Records** – organisations that employ their own staff members must maintain employment files and details of payroll and deductions for all current employees.
- **Health and Safety / Fire Risk Assessments** – copies of all inspections and safety tests should be maintained.
- **Accident Book** – if the organisation has an office or other working premises it must maintain an accident book and ensure that it is a safe working environment.
- **Insurance Documents** – the organisation should ensure that it maintains copies of all insurance policies regarding both its properties and business.

#### (d) Housing Records

- **Tenant and Leaseholder Files** – detailed files regarding all tenants and leaseholders should be maintained; these must include copy of

the original tenancy or lease agreement, application forms and supported information and all relevant correspondence.

- **Assets and Liabilities Register** – organisations must maintain up to date information regarding their assets and liabilities and in particular any liabilities that are secured against their property assets.
- **Service Level/Management Agreements** with third party organisations including service providers and contractors.
- **Contractor Files** – detailed files regarding all building and repairs contractors should be maintained; these must include copy of insurance documentation and information regarding company registration, ownership and tax status.
- **Complaints Records** particularly for organisations that are Registered Providers and therefore members of the Housing Ombudsman Service.
- **Stock Condition Surveys** – periodically landlords should undertake surveys of their properties to inform their asset management and financial plans.
- **Deeds, Loans and Grant Agreements** for all properties owned by the organisation.
- **Repairs Records** – warranties, safety test certificates and repairs orders should be maintained for all properties owned or managed by the organisation.



## **3 Code of governance for community led housing organisations**

### **Introduction**

Governance is about ensuring that an organisation complies with its constitution and the law.

It is the task of defining the goals and standards of an organisation and ensuring that there are effective management and other structures that will enable it to achieve those goals and standards and be a viable business.

This Code of Governance aims to assist organisations put the principles of good governance into practice. Good governance is more than good practice – it is good business too. It is about organisational vision, mission, clarity of purpose and effectiveness. As such good governance enhances organisational reputation and ensures better results are achieved. This code does not attempt to reproduce good practice guidance which is contained elsewhere.

The overall Code of Governance is split into the main principles and key provisions for each area. Organisations should consider the Code in full in a way that is appropriate to their size, profile and structure and provide a statement of compliance against the principles and provisions which should include a reasoned statement about any areas where they do not comply. The compliance statement should be the basis for the Governing Body's assessment of governance contained within its financial statements.

### **Main principles**

The main principles define each section and provide a guide to Governing Body behaviour and overall approach; they provide clarity on excellent governance.

### **Provisions**

These are the areas that, along with the main principles, organisations must assess themselves against and provide a statement of compliance. They underpin the main principles and provide the evidence to members; if excellent governance can be achieved by other means, an explanation of non-compliance with the provision should be given.

## **The Code of Governance**

### **A Constitution and composition of the Governing Body**

#### **Main Principle**

The Governing Body must be effective in leading and controlling the organisation and acting wholly in its best interest. Governing Body members must ensure that the interests of the organisation are placed before any personal interests.

## **Provisions**

- A1** The primary purpose of the Governing Body is to determine strategy, direct, control, scrutinise and evaluate the organisation's affairs.
- A2** All members of the Governing Body share the same legal status and have equal responsibility for decisions taken.
- A3** It is up to the organisation to decide on the best Governing Body composition. Where the Governing Body is a Management Committee or Board it should have at least five members and ideally no more than twelve, including co-optees.
- A4** The roles of Chair of the Governing Body and Sub Committees must be held by a member.
- A5** Governing Bodies must consider any potential conflicts of interest.
- A6** Where conflicts of interest arise, these must either reflect provisions made by relevant legislation or they must be recorded and the individual concerned excluded from the discussion or decision.

## **B Essential functions of the Governing Body**

### **Main Principle**

Governing Bodies must be clear about their duties and responsibilities and those of their Chair, Secretary and Treasurer. These must be set out and made available to all existing and potential Governing Body members.

## **Provisions**

- B1** The essential functions of the Governing Body must be formally recorded in the Rules or Articles of the organisation.
- B2** Governing Bodies must have a set of core responsibilities. These will include as a minimum:
- Ensuring compliance with the values, vision, mission and strategic objectives of the organisation as directed by its membership
  - The appointment and if necessary the dismissal of the Senior Staff Member and the approval of their salaries and terms of employment or in the case of a Service Agency the approval of their fees and management agreement
  - Satisfying itself as to the integrity of financial information, approving each year's budget and business plan and annual accounts prior to publication
  - Establishing, overseeing and reviewing annually a framework of delegation and systems of internal control
  - Establishing and overseeing a risk management framework in order to safeguard the assets of the organisation
- B3** The Governing Body, through its terms of reference, must draw up a schedule of significant matters specifically reserved for the Governing Body's decision, which cannot be delegated to individual members, staff, Service Agencies or Sub Committees.

## **C Induction and information**

### **Main Principle**

All Governing Body members should receive appropriate induction on joining and should regularly refresh and update skills. The Governing Body must be supplied in a timely manner with information in a form and quality appropriate to enable it to discharge its duties.

### **Provisions**

- C1** All Governing Body members should participate in training programmes that enable them to be effective in their roles.
- C2** Governing Bodies must receive up-to-date, clearly presented and accurate information to enable them to make decisions.

## **D Recruitment, renewal and review**

### **Main Principle**

Recruitment to Governing Body vacancies must be open and transparent. The Governing Body must undertake an annual appraisal of its members and of the Governing Body as a whole.

### **Provisions**

- D1** While the contribution of experienced Governing Body members is important, Governing Bodies also need to involve newer members who can provide a fresh challenge to long-standing practices and thinking and should have a policy for involving such members. The organisation should establish a succession plan for Governing Body involvement and link this to training programmes for members. Maximum terms of office should be considered, where appropriate and in the best interests of the organisation.
- D2** The Governing Body must carry out an annual appraisal of its own performance and of its individual members including the Chair.
- D3** If the organisation is paying Governing Body members, it must ensure that it has a mechanism for establishing payment levels that are independent of the Governing Body, possibly through a Remuneration Committee, an independent advisor or by using published guidance and industry norms. Payments must be disclosed to all members and be proportionate to the organisation's size, complexity and resources and be linked to the carrying out of specified duties against which performance will be reviewed.

## **E Responsibilities of the Chair**

### **Main Principle**

The Governing Body must appoint a member to act as Chair who is aware of their duties and the clear division of responsibilities between members and officers, staff and Service Agents.

## **Provisions**

- E1** The Chair has particular duties and responsibilities. These must be formally agreed and recorded and should include as a minimum:
- Ensuring the efficient conduct of meetings and compliance with the Code of Conduct
  - Ensuring that all members have an opportunity to express their views
  - Creating an appropriate environment for employees and contractors
  - Ensuring proper delegation of authority within the organisation and to third parties as appropriate
  - To make decisions under 'Chair's Action' when absolutely necessary
  - Getting professional advice for the Governing Body when appropriate
  - Ensuring that the Governing Body has the right mix of skills knowledge and experience and to address shortfall through training and co-option

## **F Responsibilities of the Secretary and Treasurer**

### **Main Principle**

The Governing Body must appoint members to act as Secretary and Treasurer who are aware of their duties.

## **Provisions**

- F1** The Secretary has particular duties and responsibilities. These must be formally agreed and recorded and should include as a minimum:
- Arranging and minuting meetings
  - Preparing agendas and papers for meetings
  - Providing procedural guidance for the Governing Body and advice on compliance with the organisations governing documents
  - Reviewing legislative, regulatory and corporate governance developments
  - Ensuring that the Annual Return is prepared and filed with the relevant registering body
    - Financial Conduct Authority (for co-operatives societies and community benefit societies)
    - Companies House (for companies limited by guarantee)
    - CIC Regulator (for community interest companies)
    - Charities Commission (for incorporated charitable organisations)
  - Maintaining the Register of Interests for Governing Body members
  - Maintaining the Members / Share Register
  - Organising new member and Governing Body inductions
- F2** The Treasurer has particular duties and responsibilities. These must be formally agreed and recorded and should include as a minimum:
- Overall financial control of the organisation

- Ensuring that a procedure and timetable are established for preparing and agreeing an annual budget
- Ensuring that financial accounts are maintained and that at each financial year end they are appropriately audited
- Providing financial reports to the Governing Body and membership
- Ensuring compliance with the Financial Standing Orders
- Ensuring that adequate accounting records are maintained in order to protect the organisation's assets and prevent fraud
- Ensuring that suitable accounting policies are consistently applied

## **G Conduct of the Governing Body's business**

### **Main Principle**

The Governing Body must act effectively, making clear decisions based on timely and accurate information.

### **Provisions**

- G1** The Governing Body and its sub committees must have clear terms of reference in order that their conduct is transparent, effective and in the interests of the cooperative; often referred to as a Code of Conduct which should include as a minimum:
- Guidelines on how meetings will be conducted
  - A requirement that Governing Body members declare all relevant conflicts of interest and that at all times they represent the interests of all members
  - Details of how information will be communicated within the organisation; its reporting channels
  - A statement regarding confidentiality and how information will be handled to such that the organisation complies with its obligations under data protection legislation
  - A statement regarding collective responsibility and details regarding how decisions will be made (by majority, super majority or consensus)
  - Guidelines for dealing with *matters arising* that ensure that previous debates are not routinely reopened at subsequent meetings
  - Guidelines for managing *any other business* at meetings
  - A policy on receiving and giving hospitality and gifts
  - A policy on how breaches of the Code of Conduct will be managed
- G2** Governing Body decisions should be, wherever possible, based on full agendas and documents circulated to members sufficiently in advance of meetings. Decisions and agreed actions should be recorded in the minutes.
- G3** Urgent decisions between Governing Body meetings must be taken in accordance with predetermined arrangements as set out in the organisation's governing documents or delegated authorities.

## **H The Senior Staff Member or Service Agency**

### **Main Principle**

There must be clear working arrangements between the Governing Body and the Senior Staff Member or Service Agency and clear delegation of authority.

### **Provisions**

- H1** The Senior Staff Member or Service Agency must be clear about the essential duties of the role and have clarity over their role, legal responsibilities, delegation of authority and relationship with members.
- H2** Like all employees, the Senior Staff Member must have a written and signed contract of employment; a Service Agency must have a written and signed management or service level agreement.
- H3** The Governing Body must ensure that there is effective and transparent scrutiny of the Senior Staff Member or Service Agency and that this is reflected in decisions on the remuneration package for the Senior Staff Member or fee for the Service Agency; these costs must be disclosed in the annual financial statements in accordance with relevant accounting practice.

## **I Sub Committees**

### **Main Principle**

Sub Committees may be established where the Governing Body determines that they will provide expertise, enable it to scrutinise and deliver effective corporate governance and manage risk or for operational purposes.

### **Provisions**

- I1** Each sub committee must have clear terms of reference approved and reviewed by the Governing Body on a regular basis.
- I2** Paid employees or Service Agents must not chair sub Committees or form the majority of the membership of these committees.

## **J Openness, transparency and accountability**

### **Main Principle**

The Governing Body must provide leadership in operating in an open and transparent manner, having satisfactory dialogue with members and must demonstrate democratic accountability to members and other key stakeholders.

### **Provisions**

- J1** The Governing Body must make an annual report to its members regarding the organisation's activities and performance.

- J2** The organisation must have in place a strategy for ensuring that it operates in a fair and democratic manner and for communicating information about its work to its members.
- J3** The organisation should review its policies for admission to membership on a regular basis.

## **K Diversity and inclusion**

### **Main Principle**

The Governing Body must demonstrate leadership and commitment to equality, diversity and inclusion as outlined in the Equality Act 2010 across all its activities.

### **Provisions**

- K1** The Governing Body must comply with current legislation and keep its policies for involvement and inclusion under review.
- K2** The Governing Body must provide leadership and clear strategies on how the organisation will meet the needs its community and the steps it will take, including through lawful positive action, to ensure in so far as it is able that it can reflect its community in its governance structures.
- K3** The Governing Body must ensure that the organisation demonstrates, throughout all its functions, its commitment to the characteristics protected by the equalities legislation, and develop action plans to implement this commitment.

## **L Audit and risk**

### **Main Principle**

The Governing Body must establish a formal and transparent arrangement for considering how the organisation ensures financial viability, maintains a sound system of internal controls (policies, procedures and processes) and manages risk.

### **Provisions**

- L1** Every organisation must have effective internal controls.
- L2** The organisation's external auditors or accountants must be independent and effective.
- L3** The organisation must have in place appropriate arrangements for enabling members to scrutinise performance.