Guidance – Governance in Community Led Housing

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This guidance is about the procurement and management of contractors and advisors. It relates to **C3 Governance in Community Led Housing** in the **Supporting Community Led Homes Programme**.

Section one: Principles of Good Governance

There are many different approaches to community led housing and legal models as outlined in the guidance A3 'The Options for Community Led Housing'.

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 it a community of place or of people. The baseline of good governance is detailed in the 'Code of Governance for Community Led Housing Organisations 2021'.

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 complaint with the Code of Governance for Community Led Housing Organisations 2021. People not get involved for personal gain but to work to meet the core objectives and meet housing needs of the community.

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.

3 Community First
Organisations should put the needs of the at the heart of its decisions and plans.

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 and 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***.

Section two: 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 complaint; 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 complaint 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 under the Care Act 2014.
- ***Repairs Legislation*** – landlords have a duty to maintain their homes to agreed standards and failure to do so could result in claims being bought 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 if the society has decided to continue to use a seal.
- ***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*** – warrantees, safety test certificates and repairs orders should be maintained for all properties owned or managed by the organisation.