

Roles and responsibilities of Board Members

1 The Role of Board Members

- 1.1 Barnet Homes Limited (**the Company**) is a company limited by guarantee with limited liability. Its activities are governed by Articles of Association (its written constitution) which state that it will be managed by a Board of Management (**the Board**). It is the Board that will be responsible for the affairs of the Company and will owe a number of duties to it.
- 1.2 The Board will include people representing the Barnet Council (**the Council**), the tenants and the community. The Company will not own the homes, as legal ownership will remain vested in the Council, but it will be responsible for their management and for its own finances.
- 1.3 Board membership of the Company should be drawn as widely as possible to reflect the Company's responsibility to stakeholders including tenants, future tenants, the local authority, local residents and others interested in furthering social housing objectives locally. The Company should therefore take steps to identify potential Board Members with appropriate skills and will need to consider advertising in appropriate forums as a way of securing a wider choice of candidates.
- 1.4 It is essential to ensure that Board members collectively possess the qualities required to take decisions and monitor the Company's performance and that (where possible) the Board includes those with skills relevant to the following:
- The housing needs met by the Company
 - General business skills, including the management of staff and of property.
 - Finance.
 - Residents' issues and concerns.
 - Community relations and needs, including equal opportunities.
 - Making public presentations.
 - Development and building.
 - Legal matters.
- 1.5 The Company's Board should carry out a regular review of its own strengths and weaknesses in order to ensure its continuing effectiveness and to satisfy the requirements of paragraph 1.5 above.

1.6 The primary duties owed by Board Members are set out in the Companies Act 2006 and include:

- (a) the duty to act within the powers of the Company,
- (b) the duty to exercise independent judgement,
- (c) the duty to promote the success of the Company,
- (d) the duty to exercise reasonable skill, care and diligence,
- (e) to avoid conflicts of interest, and
- (f) any other directors' duties set out in the Act as in force from time to time.

1.7 Registered social landlord law does not apply to ALMOs as they are not landlords registered with the Housing Corporation. It is however considered good practice for an ALMO to comply with the spirit of registered social landlord law and this note refers to this law where it is relevant.

2 **Core Functions of the Board and obligations of Board Members**

2.1 The role of the Board includes the following core functions (as agreed by the Board at their meeting of 15th March 2004):

- 2.1.1 Define and ensure compliance with the management agreement, values and objectives or the organisation
- 2.1.2 Agree the annual Delivery Plan with the Council
- 2.1.3 Establish policies and plans to achieve the Delivery Plan and meet the agreed objectives
- 2.1.4 Approve each years' budget and accounts prior to publication
- 2.1.5 Establish and oversee a framework of delegation and systems of control
- 2.1.6 Agree policies and make decisions on all matters that might create significant financial or other risk to the organisation, or which raise material issues of principle
- 2.1.7 Monitor the Company's performance in relation to these plans, budgets, controls and decisions.
- 2.1.8 Appoint the Chief Executive (and dismiss if necessary)

2.1.9 Satisfy itself that the Company's affairs are conducted lawfully and in accordance with generally accepted standards of performance and propriety.

2.2 The obligations of a Board Member include:

2.2.1 Commitment to the values and objectives of the Company (these are primarily concerned with the management of affordable social housing)

2.2.2 Commitment to the Company's core policies including equal opportunities.

2.2.3 An obligation to contribute to, and share responsibility for, Board and Committee decisions.

2.2.4 An obligation to read Board papers

2.2.5 An obligation to prepare for and attend meetings, training sessions and other events. Meetings will normally take place in the evenings.

2.2.6 An obligation to declare any relevant interest.

2.2.7 An obligation to maintain the confidentiality of any private information relating to the Board's decisions or the business of the Company.

3 **Conflicts of interest**

3.1 Under the Companies Act 2006 there is a positive statutory duty on Board Members to avoid situations in which they have or can have a direct or indirect interest which conflicts, or possibly may conflict, with the interests of the Company. These conflicts must be authorised to ensure that the Board Member in question is not in breach of his/ her duty. Where a conflict is not authorised in any way, then in extreme circumstances a director may be required to stand down to avoid being in breach of this positive statutory duty.

3.2 Authorisation can be given in a number of ways:

3.2.1 Conflicts can be authorised through the Company's articles. For example, the articles currently authorise conflicts arising from any Board Members also being tenants.

3.2.2 Conflicts can also be authorised by the Council as the Company's only member. The Council can be asked to authorise Board Members' conflicts as and when they arise.

3.2.3 The third way to authorise conflicts, and the most practical way, is for the non-conflicted Board Members to authorise conflicts. The Council has passed an ordinary resolution giving the Board

Members this power. [this is subject to the Board's decision and the Council's formal approval]

- 3.4 If an actual or potential conflict of interest arises for a Board Member because of a duty of loyalty owed to another organisation or person and the conflict is not authorised by virtue of any provision in the Articles, the un-conflicted Board members may authorise such a conflict of interests provided that:
- 3.4.1 any conflicted Board Member is not to be counted in the quorum of Board Members at the meeting where the conflict is to be authorised,
 - 3.4.2 the un-conflicted Board Members consider that it is in the interests of the Company to authorise the conflict of interest in the circumstances applying, and
 - 3.4.3 a condition is attached to the authorisation requiring that the conflicted Board Member complies with the procedure for declaration of interest set out below every time the authorised conflict arises for any conflicted Board Member at a board meeting.
- 3.5 The Board Members may attach any conditions to an authorisation given through this procedure that they consider to be in the best interests of the Company.
- 3.6 The Board should consider whether any actual or potential conflicts should be authorised in accordance with this procedure each time:
- 3.6.1 a new Board Member is appointed, or
 - 3.6.2 a new situation (not already authorised) arises for an existing Board Member that gives rise to an actual or potential conflict of interests.
- 3.7 A Board Member who is interested directly or indirectly in any matter which is under discussion by the Board Members shall disclose the nature and extent of his interest in that matter.
- 3.8 A Board Member who is directly interested in any matter which is under discussion by the Board Members:
- 3.8.1 shall not vote on that matter; and
 - 3.8.2 shall not (unless required to do so by the Chair) remain during the Board Members' discussion of such matter.
- 3.9 If a Board Member inadvertently votes on a matter to which the above paragraph applies, his/her vote shall not be counted.

4 **Executive and Non-Executive Directors**

- 4.1 The term "executive officer" is generally used to mean the most senior members of staff of a company, including for example the Chief Executive, Finance Director, Director of Housing etc.
- 4.2 Executive officers are sometimes called "executive directors" although use of the word "director" in this sense is most often used to denote their seniority within the organisation rather than to indicate that they are directors in the legal sense of the word. Executive officers are not (generally) subject to the same duties as non executive directors. In contrast to the non executive directors, (or the "Board Members"), the executive officers are employed by the Company and will have contracts of employment with the Company. They will also be paid for their services as employees.
- 4.3 Whilst the role of the non executive directors (the Board Members) is to deal with setting overarching strategic and policy frameworks for the Company, the role of the executive officers is to deal with the day to day management of the Company, and to do this within the parameters set down by those frameworks. This day to day management is delegated to the executive officers by the Board, and the Board is responsible for monitoring compliance with those frameworks.
- 4.4 As employees of the Company, executive officers have various implied duties to the Company, such as a duty of trust and confidence, and a duty to take care of employer's property etc, and also have certain contractual obligations, such as the obligation to carry out his/ her duties in accordance with any job specification they may have. In law, this is a slightly different duty than that of the board members.

5 **Registered Social Landlord law - payments and benefits**

- 5.1 For many years the Housing Act 1996 imposed a number of duties and restrictions on registered social landlords and although these did not apply strictly to the Company, it was considered good practice (in the 2003 Government guidance) to comply with the spirit of these duties.
- 5.2 The Act provided that very limited payments and benefits may be received by a Board Member.
- 5.3 In addition, the Act prevented payments or benefits to close relatives of Board Members or business trading for profit in which a Board Member had a direct management responsibility or in which they are a principal proprietor.
- 5.4 The Act sets out the kinds of payments or benefits that can be made where there is a case for it, but payments and benefits received beyond those permitted in the 1996 Act may be recovered by the Company.
- 5.5 For registered social landlords, the provisions of the Act are being repealed, and those housing providers will be required to adopt their own policies on payments and benefits. It is expected that many will simply continue to act in accordance with the regime under the Act.

- 5.6 The Company will continue to act within the spirit of the Act and registered social landlord law existing on 1 March 2010, as far as is appropriate to do so in each set of circumstances.

6 Company Law and Insolvency Law

- 6.1 The Companies Act 2006 imposes a large number of detailed statutory duties, prohibitions and restrictions on Board Members. Provisions include an obligation to prepare and file company accounts, the regulation of loans by companies to Board Members, the control of disposal of company assets, the requirements for Board Members to disclose interests in contracts. Breaches of these requirements may sometimes lead to personal liability or prosecution.
- 6.2 A Board Member of a company which is facing financial difficulties should be aware of the scope of potential personal liability if he or she is found guilty or wrongful or fraudulent trading. Fraudulent trading requires an action to defraud creditors of the company or creditors of any other person or a similar fraudulent purpose.
- 6.3 Wrongful trading can arise where a company has gone to insolvent liquidation and the Board Member knew or ought to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation and that once the Board Member knew or ought to have known this, he or she failed to take every step possible to minimise the potential loss to a company's creditors. This may include a situation where a company is unable to pay its debts as they become due, but still continues to trade.
- 6.4 A Board member cannot escape liability by arguing that he or she does not take an active role in the affairs of the company or that he or she did not have access to adequate information concerning the company's trading position. It is one of the requirements of the fiduciary duties of the Board Members that they should ensure that they do take an active role and that they obtain adequate information from their officers.

7 Local Authority Law

- 7.1 The Company, as an ALMO, has only one member – the Council – and as a consequence it is subject to certain statutory requirements because it is a company in which a local authority has an interest.
- 7.2 Such companies are subject to the same range of propriety and other controls as local authorities and for capital purposes are treated as public bodies. The Board will find that a number of key financial powers are limited as a result. For example, the articles of Association requires the Company to get Council consent before borrowing, loaning or granting any money.

8 Practical Considerations

- 8.1 In practical terms, the duties of Board Members require them to attend meetings and to become actively involved in the management of the Company and its decision making processes.

- 8.2 Board members may (and will in the case of the Company) delegate the administrative duties of running the company to their staff and agents. The Board will employ professional officers to run the Company on a day-to-day basis. However, Board Members cannot delegate ultimate responsibility for their powers or discretions and consequently it is for them to set the policies which the officers implement and the parameters of delegation must be clear. These are set out in the Company's Scheme of Delegations.
- 8.3 In addition, it is for the Board to monitor and review compliance with the policies it sets and the Company's performance generally. Adequate reporting procedures from officers to Board are a vital component in protecting the Board Members and enabling them to fulfil their role.
- 8.4 The Board should also authorise the appointment of external advisors: legal, financial, accounting, taxation etc. Generally, Board Members will not be liable for any loss arising from a default of an agent of this nature provided that the agent was employed only to do acts in the scope of his or her normal business, the appointment was made on a reasonable basis and their activities were supervised with common prudence. In practice, the Board should ensure through its officers that any agent has relevant experience and qualifications.
- 8.5 The Company will also arrange for insurance to be put in place to protect Board Members from personal liability in their roles as Board Members. This will protect Board Members against any actual or alleged "wrongful act" that may be committed in the course of carrying out their duties (other than dishonest, fraudulent or illegal acts).
- 8.6 The Board may create committees of the Board from time to time to which the Board would delegate work for detailed consideration.