

SECTION: 10

Policy Disqualifying Directors from Board Membership

1. Purpose of Policy

- 1.1 In accordance with its commitment to maintaining the highest standards of probity and to protect the reputation of Barnet Homes, the Board expects any Board Director to act in accordance with the duties required of them as Board Directors and in a manner which is consistent with that of a Board Director of an ALMO such as Barnet Homes. Amongst other things, this means complying with the Directors' Code of Conduct.
- 1.2 Because Barnet Homes has tenant and leaseholder Board Directors, it is also important that they comply with their tenancy or lease terms. It is important that Barnet Homes acts and is seen to be acting as a responsible landlord in relation to housing management issues, and this is vitally important in relation to its tenant and leaseholder Board Directors who are in the public eye of the tenant population as a whole.
- 1.3 The purpose of this policy is to set out Barnet Homes' approach in relation to the disqualification of Board Directors and also on the admission of people as Board Directors.

2. Automatic Disqualification under Barnet Homes' Articles of Association

- 2.1 Article 19 of Barnet Homes' Articles of association sets out a list of circumstances in which Board Directors will be prevented from being appointed as, or for existing Directors will automatically cease to be, Board Directors. Article 19 provides:

"19 Disqualification and removal of board members

A person shall be ineligible for appointment to the Board and if already appointed shall immediately cease to be a Board Member if the relevant individual:-

- (1) ceases to be a Board Member by virtue of any provision of the Act or becomes prohibited by law from being a company director; or*
- (2) is or becomes a person disqualified from elected membership of a local authority; or*

- (3) *becomes bankrupt or makes any arrangement or composition with his creditors generally; or*
- (4) *is, or may be, suffering from mental disorder and either:-*
 - (a) *is admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983 or, in Scotland, an application for admission under the Mental Health (Scotland) Act 1960; or*
 - (b) *an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his/her detention or for the appointment of a receiver, curator bonis or other person to exercise powers with respect to his property or affairs; or*
- (5) *resigns his office by notice to the Organisation; or*
- (6) *is removed from office by a resolution (or written notice signed by) at least three quarters of all the other Board Member from time to time; or*
- (7) *shall for 4 consecutive months have been absent without the permission of the Board from all meetings of the Board or of any committee or subgroup of the Board of which that Board Member forms part or of any other meeting called by the Board, or shall have been absent without permission of the Board from at least 33% of such meetings within any 12 month period, and the Board resolves that his office be vacated.*
- (8) *in the case of a Tenant Board Member he or she ceases to be a Tenant or a Leaseholder of the Council Member PROVIDED THAT this Article 19(9) shall not apply in respect of a Tenant Board Member temporarily ceasing to be a Tenant or a Leaseholder as a result of the demolition of or works carried out to that Tenant Board Member's home; or*
- (9) *is a Tenant Board Member and is (in the reasonable opinion of a majority of Board Members) in serious breach of his obligations as a Tenant; or*

(10) is a Council Board Member and is or becomes a Tenant or a Leaseholder leading to a breach of the limit in Articles 14(6) or 14(8) or ceases to reside in Greater London; or

(11) is a Tenant Board Member and is or becomes a Leaseholder or a Local Authority Person leading to a breach of the limit in Articles 14(7) or 14 (8); or

(12) is an Independent Board Member and is or becomes a Tenant or a Local Authority Person or a Leaseholder; or

(13) is removed by resolution of the Council Member pursuant to Article 15.

2.2 Where any of the circumstances above apply, an existing Board Director will automatically cease to be a Board Director without any further action being required, except for where the circumstances in Article 19(9) occur in which case the Board must consider whether the breach of tenancy obligations is serious, or where Article 19(6) applies in which case the procedure set out in paragraph 11 below will be followed.

2.3 Where, under Article 19(9), the Board considers a Board Director who is a tenant to be in serious breach of their tenancy agreement, the Board will first give the Board Member in question the opportunity to voluntarily resign before using its removal powers under that Article.

2.4 Barnet Homes will notify all Board Directors, including the Board Director in question, in writing as soon as it becomes aware of any of the circumstances set out in Article 19 arising.

3. Unpaid Rent Arrears

3.1 The Board expects any Board Director who is a tenant to ensure that his or her rent or other charges is paid when due.

3.2 The Board will not accept as a new Board Director any tenant who has unpaid arrears or other charges.

3.3 It is recognised that tenants can find themselves in circumstances where they are unable to pay their rent regularly, for example where problems occur in the payment of Housing Benefit. Such situations would be dealt with sympathetically and pragmatically by Barnet Homes.

3.4 Nevertheless there may be circumstances in which the nature of the arrears is such that it is not considered conducive to the role expected of a Board Director of Barnet Homes. These circumstances would include (but are not limited to) the following:

- The Board Director's rent arrears are significant and/or persistent and the arrears are not attributable to delays in the processing of Housing Benefit payments;
- No satisfactory explanation has been given by the Board Director as to the reason for the arrears;
- The Board Director has failed to consult with a housing officer of Barnet Homes about resolving the problem or follow any resulting advice; or
- The arrears are such that under the Barnet Homes Rent Arrears policy, the Barnet Homes has commenced or would be entitled to commence possession proceedings against the Board Director.

3.5 The Board will consider the above points when determining whether a Board Director who is a tenant is in serious breach of their tenancy agreement for the purpose of Article 19(9).

4. **Breach of Other Tenancy Terms**

4.1 The Board expects any Board Director who is a tenant to comply with all of his or her tenancy terms.

4.2 The Board will not accept as a new Board Director, and will consider an existing Board Director to be in serious breach of their tenancy for the purpose of Article 19(9), if:

- the tenant is subject to possession proceedings for breach of tenancy; or
- the tenant has previously been evicted for breach of tenancy within the last 5 years; or

4.3 There may also be circumstances where a breach of the tenancy has occurred which would lead the Board to consider this serious for the purpose of Article 19(9). A serious breach may include (but is not limited to):

- using the premises for illegal purposes (e.g. drug dealing)

- harassing anybody who is lawfully within the locality of the premises occupied by the tenant (e.g. by using abusive words or behaviour)
- the premises deteriorating owing to the neglect of the tenant
- anti social behaviour
- any other breach which is of a nature that would entitle Barnet Homes to commence proceedings against the tenant

5. **Breach of Lease**

5.1 The Board expects any Board Director who is a leaseholder to comply with his or her lease terms.

5.2 The Board will not accept as a new Board Director, and will expect an existing Board Director to follow the procedure in paragraph 11 below, if:

- the leaseholder is subject to legal proceedings for breach of lease; or
- the leaseholder has previously been subject to legal proceedings within the last 5 years.

5.3 There may also be circumstances where a serious breach of lease has occurred which would lead the Board to consider following the procedure in paragraph 11 below. A serious breach may include:

- using the premises for illegal purposes (e.g. drug dealing)
- harassing anybody who is lawfully within the locality of the premises occupied by the tenant (e.g. by using abusive words or behaviour)
- the premises deteriorating owing to the neglect of the tenant
- anti social behaviour
- unacceptable behaviour of sub-tenants of the leaseholder
- any other breach which is of a nature that would entitle Barnet Homes to commence proceedings against the leaseholder

6. **Unpaid Service Charges**

6.1 The Board expects any Board Director who is a leaseholder to ensure that his or her service charges are paid when due.

- 6.2 The Board will not accept as a new Board Director any leaseholder who has outstanding service charges.
- 6.3 It is recognised that leaseholders can find themselves in circumstances where they have difficulty paying service charges. Such situations would be dealt with sympathetically and pragmatically by Barnet Homes.
- 6.4 Nevertheless there may be circumstances in which the nature of the arrears is such that it is not considered conducive to the role expected of a Board Director of Barnet Homes. These circumstances would include (but are not limited to) the following:
- The Board Director's service charge arrears are significant and/or persistent
 - No satisfactory explanation has been given by the Board Director as to the reason for the arrears
 - The Board Director has failed to consult with a housing officer of Barnet Homes about resolving the problem or follow any resulting advice
 - The arrears are such that under the Barnet Homes Service Charge Arrears policy, that Barnet Homes has commenced or would be entitled to commence legal proceedings against the Board Director
- 6.5 The Board will consider the above points when determining whether a Board Director who is a leaseholder is in serious breach of their lease and in deciding whether to follow the procedure set out in paragraph 11 below.

7. Continuing Residential Requirement (Tenant, Leaseholders and Independent Board Directors)

- 7.1 In order to continue to qualify for board membership, Tenant Board Directors must be resident in the area they have been elected to. If they subsequently move to another area within Barnet, they will be expected to stand down at the next AGM, or a resolution will be put to the Board under Article 19 (6) recommending their removal. This will be subject to a 75% vote in favour.
- 7.2 Where Leasehold Board Directors subsequently cease to be Leaseholders, they will cease to be eligible to be Board Directors of Barnet Homes and will be expected to stand down, or a resolution will be put to the Board under

Article 19 (6) recommending their removal. This will be subject to a 75% vote in favour.

- 7.3 Where Independent Board Directors subsequently move away from the area of Barnet and the board feels that this has or will impact on the ability of the board member in question to continue to fulfill their duties they will be expected to resign, or a resolution will be put to the Board under Article 19 (6) recommending their removal. This will also be subject to a 75% vote in favour.

8. Breach of The Directors' Code of Conduct

All Board Directors will be subject to and must act in accordance with the Directors' Code of Conduct. Where a breach of the Code of Conduct occurs, the Board may take action against the Board Director concerned by following the procedure set out in paragraph 11 below.

9. Directors Who Have Previously Been Subject to Proceedings Under the Standards & Ethics Committee Procedures

Any ex-Board Director who has previously been dismissed from the Board, or who has been subject to Standards & Ethics Committee proceedings which have resulted in their being recommended for dismissal but the dismissal was not implemented (e.g. because they resigned first), will be disqualified from consideration for board membership. In this case they will be ineligible for consideration unless a vote is put to the full board and at least 75% of the Board approves their standing for election. This applies to tenants, leaseholders, independents and Council nominees alike.

10. Other Circumstances

- 10.1 In addition to the provisions of Barnet Homes' Articles of Association, and in addition to the provisions of this policy set above, there may be other circumstances in which the Board may consider a person unsuitable for appointment as a Board Director, or in the case of an existing Board Director that they should be removed from the Board under Article 19(6).
- 10.2 The Board will have the absolute discretion to consider all circumstances and determine whether someone should be considered ineligible for board membership or whether an existing Board Director should be removed by

the Board pursuant to Article 19(6) after following the procedure set out in paragraph 11 below.

10.3 The Board will act fairly and reasonably when considering other circumstances.

11. **Procedure for Removing Board Director**

11.1 The Board expects that an existing Board Director to whom the circumstances set out in this policy (or similar circumstances) will voluntarily resign, save for where any of the circumstances set out in Article 19 apply in which case they will automatically cease to be Board Directors.

11.2 Where a Board Director fails to resign, the other Board Directors will consider exercising their powers under Article 19(6) which provides that a Board Director may be removed by a resolution (or a written notice signed by) three quarters of the Board.

11.3 Before invoking their powers under Article 19(6), the Board will provide the Board Director concerned with the opportunity to present his/her case to Standards and Ethics Committee (SEC).