



GUIDANCE 1

BOARD MEMBER ROLES AND RESPONSIBILITIES

JANUARY 2022

INTRODUCTION

This guidance note is designed to assist Non-Executive Directors to understand and comply with the highest standards of Governance. It does so by explaining roles, responsibilities and obligations set within our governance framework and our agreed policies and practices.

Governance is how Non-Executive Directors exercise overall direction and control of the Association. It is about procedures, policies, documents and management arrangements that are in place to administer and control RBH effectively, including financing and delivery of services. It is also about the behaviour of Non-Executive Directors, relationships with residents and stakeholders and the aims and objectives of RBH.

Non-Executive Directors have ultimate legal responsibility for RBH. Many decisions can be delegated, but there must be clear lines of authority. Key to this, is defining responsibility and reporting to ensure that information of the right type and detail for the size and complexity of RBH is provided to Non-Executive Directors in a reasonable timescale.

This guidance note takes into account accepted guidance and best practice, in particular the National Housing Federation Excellence in Governance, the requirements of Financial Conduct Authority, the Regulator of Social Housing requirements and RBHs adopted NHF 2020 Code of Governance.

THE BOARD OF DIRECTORS

The function of the Board of Directors is: [Rule 2.4.1] *“Protecting and promoting the mutual nature of the Society. In addition, it is responsible for the management of the affairs of the Society including both the setting of, and the approval of, the Society’s business plan. The Board exercises all the powers of the Society subject to the Mutual Rules”*. The Board of Directors must live the values of the Society, and set a positive culture with a strong member and customer focus.

The purpose of the Board of Directors is to:

- Be an employer;
- Formulate and monitor adherence to the business plan objectives;
- Look forward and plan for the future;
- Secure and safeguard resources;
- Be the point of final accountability; and
- Provide a link between RBH and its external stakeholders and the environment.

ROLE OF THE BOARD OF DIRECTORS

The overarching role of the Board is to determine strategy, direct, control, scrutinise and evaluate RBH's affairs. Some of the key aspects are:

<p>Guarding the purpose:</p> <ul style="list-style-type: none"> The Board and Representative Body determine the focus of RBH's work. As external circumstances change, RBH's objectives have to be reconciled with what is practical and achievable without compromising RBH's core purpose and core values. 	<p>Setting strategic direction, plans and objectives:</p> <ul style="list-style-type: none"> The wider objectives of RBH are only likely to be achieved if they are translated into clear plans and strategies. 	<p>Setting high standards of conduct and probity:</p> <ul style="list-style-type: none"> The Board must behave with high standards of probity and integrity, and ensure that these apply throughout the organisation, so as to ensure continuing public support. 	<p>Setting the delegation framework:</p> <ul style="list-style-type: none"> Clarity of delegation helps to achieve a clear and effective relationship with employees and is an essential safeguard for the Board. The Board should spell out which decisions are reserved for the Board and then clearly delegate the rest. 	
<p>Taking key decisions:</p> <ul style="list-style-type: none"> Some decisions will always be of such importance that they should only be taken by the Board, for example, a substantial change in direction or where substantial financial or reputational risks are at issue. As a Mutual, the Representative Body would also be involved in any substantial decisions or direction changes. 	<p>Financial Control and Managing Risk:</p> <ul style="list-style-type: none"> Almost anything that helps RBH to achieve its objectives will involve risk. The Board has an overriding responsibility for the financial viability of the organisation and for managing risk. 	<p>Scrutinising Performance and holding the Executive to Account:</p> <ul style="list-style-type: none"> Having a set clear strategies and plans and a clear framework of delegation, the Board must scrutinise performance and check that work is progressing as intended and objectives are being achieved. And if not, take appropriate remedial action. 	<p>Appointing and Remunerating the Chief Executive:</p> <ul style="list-style-type: none"> The appointment of the Chief Executive is one of the most important decisions that the Board has to take. It is the responsibility of the Representative Body to approve the appointment of the Chief Executive following a recommendation by the Non-Executive Directors. 	<p>Ensuring Accountability:</p> <ul style="list-style-type: none"> The Board needs to ensure that tenants and other stakeholders can monitor the organisation's performance and hold the Board to account.

Both Non-Executive and Executive Directors share a collective responsibility for everything that the Board of Directors does and they need to work together collaboratively as a team. Like any other team, the Board of Directors will only be effective if it is pulling in the same direction and can resolve differences of opinion amicably. The Board has a right to expect that all its members will support RBH's objectives and policies once these have been agreed.

All Board Members share a responsibility for working with the Chair and with each other to make decisions and deal with the business smoothly and effectively in the time available. Working together collaboratively and effectively is often a challenge when members only meet each other from time to time, and particularly for members who are new. To maximise performance and effectiveness, the Board should ensure that:

- Members are clear about their role and new members receive good induction to get up to speed quickly;
- Good servicing which enables members to conduct Board business efficiently and make best use of the time spent together in meetings;
- Members take regular opportunities away from the pressure of Board business to plan longer term; and
- Performance appraisal and renewal take place regularly, so as to ensure that the Board performs to best effect and recruits and retains the right mix of members.

DUTIES OF THE BOARD OF DIRECTORS

The main duties of the Board of Directors is to:

- Recognise its duty to residents and service users, as beneficiaries;
- Protect the assets of the Association;
- Ensure compliance with the Social Housing Regulatory Standards and the NHF Code of Governance;
- Comply with all relevant law;
- Comply with the Association's Rules, Standing Orders and Mutual Governance Excellence Framework;
- Monitor the work of its Committees;
- Constructively challenge and contribute towards the development of policies and plans;
- Scrutinise and monitor the performance of management in meeting objectives;
- Exercise ultimate control over the Association's finances ensuring that income exceeds expenditure and that the Association's financial function adequately matches the scale of its activities;
- Satisfy itself with the accuracy and integrity of financial information provided;
- Satisfy itself that financial controls are robust and effective;
- Ensure that there is a balance of skills and experience on the Board and that there is effective succession planning;
- Ensure that there is a mechanism for regular performance reviews of the Board;
- Review the framework for delegation and the systems of internal audit and internal control;
- Ensure that the system of risk management is adequate and effective in safeguarding the assets of the Association, including the setting of a risk appetite and the stress testing of the business under a range of scenarios;
- Positively represent the Association externally and promote its success;
- Oversee and exercise control over the Association whilst delegating day to day management to the Chief Executive and Senior Management Team;
- Recommend the appointment (and if necessary, dismiss) to the Representative Body including any material changes to the remuneration of the Chief Executive. The Board is responsible for reviewing the benefits and terms of employment of the Chief Executive;

And working with the Representative Body to:

- Set the vision – where or what does the Association wants to achieve;
- Set the objectives – the stages for reaching the vision;
- Define the strategy – the detail of how the Association will deliver the objectives; and
- Define the core values – how the Association will behave.

The Board has overall responsibility for the financial health and viability of the organisation and must make sure that effective financial control arrangements are in place. Key elements are:

- business plans and budgets that outline the organisation's resource requirements;
- management accounts and cash flows to monitor performance through the year;
- effective financial controls and procedures; and
- treasury management.

NON-EXECUTIVE DIRECTOR / INDIVIDUAL DUTIES

As a Non-Executive Director, you will take on specific fiduciary, common law and statutory duties and responsibilities when you are appointed, your status is registered with the Financial Conduct Authority, RBH Funders, Traffic Commission to name but a few.

Non-Executive Directors must ensure that they act in accordance with all relevant legislation, governing documents and regulations.

All Board Members have the same legal status and have equal responsibility for decisions taken.

Your fiduciary duties as a Non-Executive Director reflect a relationship of trust and loyalty between yourself, RBH, its members, and stakeholders. The expectation is that you will act in good faith, and in the best interests of the company. These duties overlap and inter-connect with your common law duties - operating with skill and care as a director - and also the statutory duties as laid down in the Companies Act, 2006.

Each Board Member shares the responsibility, along with other Board Members, for directing the affairs of RBH and ensuring it is solvent, well-run, and delivering the outcomes for which it has been set up, and that it complies with all relevant legal and regulatory requirements. Each Board Member also has a personal responsibility to:

- always act in the housing association's best interests;
- uphold the housing association's purpose, objectives and policies;
- uphold the values of the organisation through high standards of conduct and behaviour;
- comply with the code of conduct, rules, standing orders and financial regulations;
- contribute to, and share responsibility for, the board's decisions, including its duty to exercise reasonable care, skill and independent judgement;
- prepare for and attend meetings;
- participate in reviews of board performance and measures designed to develop the board's capacity and effectiveness;
- declare any relevant interests and avoid conflicts of interest;
- respect the confidentiality of information; and
- ensure your skills are kept up to date and that you participate in training sessions.

FIDUCIARY DUTIES

Directors are subject to a number of fiduciary duties, which are set out in the Companies Act 2006:

Duty to act within your powers

These are the powers as specified in RBH Mutual Rules, and they should only be exercised for the purposes intended, i.e. for the good of the society rather than the Director concerned.

Duty to promote the success of the company for the benefit of its members as a whole

When making decisions as a director, you must consider:

- The potential long-term consequences for the company
- The interests of your employees
- Maintaining your company's good business reputation

- The need to promote good relationships with suppliers and customers
- The company's impact on the environment and local community
- The need to act fairly between members, for example, treating those with few shares in the same manner as institutions with a large shareholding.

Duty to exercise independent judgement

You must consider all members when exercising judgement, rather than an individual or a particular group of shareholders.

Duty to exercise reasonable care, skill, and diligence

This applies to both Executive and Non-Executive Directors. Anyone with specific training and skills would be expected to apply them to their role as director, for example.

Duty to avoid conflicts of interest

This includes actual and potential 'situational' and 'transactional' conflicts, as well as direct and indirect interests. If a conflict is disclosed, the company's constitution may allow the board of directors to approve it as long as it is sanctioned in the proper manner.

Duty not to accept benefits from third parties

It can be difficult to gauge the difference between accepting a 'benefit' and simply trying to engender good relationships with a supplier/customer. Some companies have a written policy to clarify such situations.

Duty to declare an interest in proposed transactions or arrangements

Your interest must be declared before the company enters into the transaction or arrangement. The company's Articles of Association may set out the procedures and requirements for doing so, and how the board should deal with the matter.

COLLECTIVE RESPONSIBILITIES

The Board is a team and like any other team, it will only be effective if it is pulling in the same direction and can resolve differences of opinion amicably. The Board has a right to expect that all its members will support the organisation's objectives and policies once these have been agreed.

Your collective responsibilities as a Board Member are matched by a series of more personal responsibilities which are set out in writing as a Service Agreement which you are required to sign at the commencement of your board membership.

The key role of housing associations in meeting housing need, and the substantial level of public investment, makes it essential that all those concerned with them operate to the highest standards of probity and conduct. Nothing can undermine public and government support more quickly than misconduct, or the muddling of self-interest with public interest. Board Members must not only set and maintain appropriate standards for their own conduct; they must take reasonable steps to ensure that these apply throughout the organisation.

DIRECTORS' AND OFFICERS' INDEMNITY AND INSURANCE

Rule 10.10 states: (for the purposes of the Rules, an Officer includes the Chair and Secretary and any Director):

- 1010.1 Every officer or employee shall be indemnified by the Society for any amount reasonably incurred in the discharge of their duty.*
- 1010.2 Except for the consequences of their own dishonesty or gross negligence no officer or Employee shall be liable to any losses suffered by the Society or any part of the RBH Group.*
- 1010.3 The Society shall pay insurance premiums in respect of insurance taken out to insure Directors, officers and Employees.*

RBH has insured against the risk of unlawful acts by Board Directors and employees. Whilst the amount will change over time, the principle is important. There is a general expectation that skill and care will be exercised in carrying out the duties for which they have been appointed. At the time of any perceived risks growing, all Directors should be mindful of limiting their scope of their liability.

RBH have secured Director and Officer Insurance individually and currently have cover up to £1M, for an annual premium of £5582.80. This has been brokered through Gallagher, and underwritten by Nexus.

LEGAL AND REGULATORY COMPLIANCE

RBH as a regulated, incorporated Mutual Society with incorporated subsidiary companies is subject to numerous laws, legislation, regulation, statutory guidance and industry best practice.

These are summarised in our Compliance and Assurance Framework which outlines how we provide evidence and assurance that it complies to all legal and regulation requirements, as well as operational best practice and achieving external accreditation.

Performance against this framework is reported quarterly to the Board in an assurance report, alongside a quarterly and annual self-assessment of how RBH meets the requirements of the Social Housing Regulator in its regulatory framework which can be found at <https://www.gov.uk/guidance/regulatory-standards>

REGULATOR OF SOCIAL HOUSING

The Board should aim to have an open and constructive relationship with the regulator's staff, and adopt a 'comply or explain' approach to meeting their requirements. The Board should be open and honest with the regulator about serious problems or difficulties with a view to agreeing steps that will be taken.

Regulation should be recognised as an essential feature of providing core services to the community with the benefit of public funds. It is also a protection for the key role that housing associations play in delivering social housing.

Board Members should understand and keep up to date with the regulator's requirements and their implications for RBH and the Executive Leadership Team will keep the Board informed about the regulator's requirements and make sure that policies, procedures and other arrangements comply with them. However, the Board is ultimately responsible for compliance.

The regulator's aims are to ensure that tenants receive a fair deal and to protect public and private investment. Its requirements are generally based on sound management principles and good professional practice. If, for some reason, these requirements appear to be overly onerous, prescriptive or inappropriate for a housing association's business or circumstances, a constructive approach is to seek to demonstrate how the organisation meets the regulator's requirements in a way that is appropriate to the organisation.

FUNDERS

Funders will want to be assured that RBH is financially viable and continuing to meet its commitments and covenants, and that the Board understands the business and is being prudent and not taking any undue risks. They will also want to be reassured that reports match the reality of what is happening on the ground and that governance is functioning properly.

THE BOARD'S LEGAL RESPONSIBILITIES AS A LANDLORD

The Board is responsible for ensuring that RBH meets all legal and regulatory requirements relating to its role as landlord. These include nomination commitments, the form of tenancy, security of tenure, rent levels, gas servicing, disrepair, health and safety, equality and diversity, and obligations relating to enforcing tenant commitments on antisocial behaviour.

THE BOARD'S ROLE AS AN EMPLOYER

The Board is responsible for ensuring that RBH complies with employment law, a key principle is to act fairly and reasonably.

The Board will ensure that:

- it complies with all relevant legislation and RBH's employment policy;
- the society adopts management practices which use resources in the most economical, efficient and effective manner;
- the policies and procedures for the recruitment and management of employees provide for the appointment and advancement on merit on the basis of equal opportunity for all applicants and employees;
- Board, Committee Members and employees have appropriate access to expert advice and training opportunities in order to enable them to exercise their responsibilities effectively; and
- the Board annually reviews the performance of the Chief Executive.

Employment law is complex and constantly evolving and Board Members need to understand and keep up to date with their legal responsibilities as an employer and the implications for the RBH. The Chief Executive/Executive Leadership Team will keep the Board informed about changes in legal requirements and make sure that policies, procedures and other arrangements comply with them.

HEALTH AND SAFETY

Ensuring that employees are safe and healthy at work is a fundamental aspect of being a responsible employer. The legal requirements about health and safety are extensive, and organisations that fail to comply risk facing substantial penalties. Housing associations that

invest in the health and well-being of their employees will also benefit from enhanced employee commitment, reduced levels of absence and greater staff retention.

EQUALITY AND DIVERSITY

Equality and diversity issues affect everyone at some point in their lives and the Board should understand and respond to the particular needs of tenants, and demonstrate how they have taken into account the needs of tenants across all the different equality strands.

Housing associations must comply with equality legislation and avoid discriminating against an employee or job applicant on any of the prohibited grounds. This requires implementing policies and taking action to eliminate discrimination and ensure that everyone is treated fairly and respectfully. A welcoming and inclusive approach also helps to attract the best talent.

ACCOUNTABILITY

The Board has a duty to be open and accountable for RBH's work and performance, and for compliance with the law and good practice.

RBH have a range of accountabilities: to employees, tenants and other customers, to local authorities, to funders, to the Regulator and to the wider community.

Real accountability involves more than just giving an account of, and being held to account for, RBH's actions and performance. It also means welcoming and being responsive to feedback, and taking account of the requirements and views of tenants and other stakeholders in the planning and provision of services.

Members

As a mutual society, the Board of Directors and the Representative Body are accountable to its Members. The Board recognises its accountability to members through the Representative Body. Structured formal arrangements ensure that the Board works in co-operation with the Representative Body to develop the Corporate Strategy and through reporting and attendance at meetings the Board are held to account for their actions.

Representative Body

The Representative Body represents Members and the wider interests of the community in the governance of RBH's affairs and work with the Board of Directors to secure the good governance of RBH for the benefit of the community. The Chair of the Representative Body and either the Vice Chair or another member of the Representative Body may attend meetings of the Board to hold the Board to account.

Tenants, Residents and Customers

Tenants, as well as leaseholders, shared owners, licensees and other residents, are the principal recipients of RBH's services and have the greatest interest in ensuring that services are excellent and cost effective, and also that they are sensitive to the full range of tenants' needs.

Accountability to tenants requires comprehensive and systematic arrangements for ensuring that tenants are consulted about the way RBH provides its services and their view are heard and taken into account on the issues that concern them.

RBH is unique in that it is a mutual and we have the additional benefit of the Representative Body who are directly involved in the impact of decisions on tenants, and contribute to open decision-making. There should still be mechanisms in place for formal tenant consultation that is accessible to all tenants. It is the role of the Board to care about how the tenant voice is heard.

Local Authority

Local authorities have both a strategic housing function and statutory housing responsibilities. They derive their accountability from the local electorate. Most housing associations work in partnership with local authorities and contribute to meeting housing need and creating sustainable communities. The Board should ensure that the association maintains constructive relationships with Rochdale Council.

Funders

The benefits of substantial public subsidy place a duty on registered providers to be accountable, through grant providers, to Parliament and to the wider public whose taxes fund the grants. This accountability is mainly exercised through the overall regulation of Homes England and the detailed procedures that must be observed for obtaining grant.

Accountability to lenders is contractual through loan agreements which usually contain formal reporting requirements. However, it is a good idea to maintain an ongoing dialogue and to alert lenders in advance if any potential difficulties are foreseen. Providing boards act prudently and reasonably, lenders are usually also reasonable.

The Regulator

Accountability to Regulators is the main way that the government and the public hold RBH to account for performance. Regulation is an essential feature of providing core services to the community with the benefit of public funds. It is also a protection for the key role that RBH plays in delivering social housing. Public subsidy rests ultimately on public consent. Individual tenants also have rights of redress through the Housing Ombudsman.

The Wider Community

Accountability to the wider community requires openness of information and a willingness to admit and correct mistakes when they arise. The board must set the tone for this openness and encourage it at all levels.

RBH has a major impact on the communities in which we operate. Major developments can disrupt existing communities. Unless carefully planned, they can also create unbalanced communities with inadequate facilities. The board should ensure that arrangements are made to take account of community views. Organisations that are major providers in an area also have a duty to work constructively with other agencies.

FURTHER READING

Board Member Role Profile

The NHF Publication - Leadership and Control, A Governance Manual for Board Members, can be purchased on request to the Governance Team which provides more in-depth information about Board Members role, responsibilities, and duties.