

Code of governance

**Promoting board excellence
for housing associations
(2015 edition)**

**NATIONAL
HOUSING
FEDERATION**

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The principles of good governance

The nine principles set out below are those which have informed the drawing up and subsequent revision of this code. They are reproduced here, not as part of the code, but to help with its interpretation and implementation.

The foundation of good governance is that there should be a balanced, diverse and effective board which leads and controls the organisation and complies with its legal requirements. The board should ensure that the organisation upholds the following principles:

Ethics

It operates according to high ethical standards, explicit values and appropriate codes of governance and conduct.

Accountability

There is proper accountability to, and involvement of, all the organisation's stakeholders, primarily its residents.

Customer first

It puts the needs of existing and potential service users at the heart of business decisions and strategy.

Openness

There is a spirit of openness, making full disclosure of governance matters and other information.

Diversity and inclusion

There is fairness and equality of opportunity and a recognition of diversity in all aspects of the organisation's governance.

Review and renewal

There are formal and open processes for the periodic review of the board's own performance, which ensure its renewal on an ongoing basis.

Clarity

There is clarity of roles and responsibilities between the organisation's board members, paid staff and shareholders.

Control

There are effective systems for internal delegation, audit, risk management and control. The board receives adequate and timely reports and advice to inform its decisions. The board has an effective relationship with internal auditors, external auditors and regulators.

Structures

There are effective staffing and committee structures to support the board's work.

Introduction

It is now 20 years since this code first appeared, during which time it has been revised a number of times. Codes of governance are based on clear principles, requirements and provisions, and allow organisations to demonstrate the highest standards of governance through their adoption. This new version provides a substantial update to the 2010 edition.

The code has been revised as part of the Federation's commitment to reflect the experience of the sector, emerging best practice and changes in the operating environment. The latest revision emphasises the importance of boards and their strategic control. It also includes more detailed provisions for groups, which may have several boards within them. Some sections from the previous version have been combined, and some material moved between sections.

The overall code of governance is split into the main requirements and key provisions for each area. Organisations should consider the code in full in a way that is proportionate to their size and profile, and provide a statement of compliance against the requirements and provisions in the code, which should include a reasoned statement about any areas where they do not comply.

The code has been widely acknowledged as an example of best practice by a range of bodies, including the Homes and Communities Agency, the Committee on Standards in Public Life, and by the Chair of the Commission for Good Governance in Public Services. The commitment of Federation members to the implementation of this code can only further improve the sector's overall reputation. The Federation has also produced a wide range of supporting publications and training material to support its members in the implementation of this code.

Main requirements and provisions

The main requirements define each section and provide a guide to board behaviour and overall approach. They provide clarity on excellent governance for the wide range of housing associations and related organisations that comprise the Federation's membership. The provisions are the more detailed points that underpin the main requirements.

Guidance, notes and useful resources

For each section of the code there is a corresponding section separate to the code that provides guidance and useful resources that organisations may choose to follow wholly or in part, depending on their size, type and complexity and their existing policies. These sections are not part of the main code, and do not require explanation of non-compliance.

The code of governance

A Compliance with this code

Main requirement

Organisations which adopt this code must publish an annual statement of compliance with the code in their annual financial statements, and make a reasoned statement about any areas where they do not comply.

Provisions

A1 Where a statement of non-compliance is needed, it must:

- (1) be published in the organisation's annual financial statements;
- (2) be specific to the particular circumstances of the organisation;
- (3) explain why and how the principles of good governance are being upheld; and
- (4) set out in summary any plans for the achievement of compliance with the code.

A2 Where the formal constitution of an organisation conflicts with this code, the constitution must take precedence.

B Constitution and composition of the board

Main requirement

The board must be effective in the strategic leadership and control of the organisation and act wholly in its best interest. Board members must ensure that the interests of the organisation are placed before any personal interests.

Provisions

- B1** The core purpose of the board is to determine vision and strategy, direct, control, and scrutinise an organisation's affairs. Where the organisation has staff, operational management of the organisation must be delegated to them, and the board must hold them to account.
- B2** All members of the board, executive and non-executive, share the same legal status and have equal responsibility. Each must act only in the interests of the organisation and not on behalf of or representing any constituency or interest group. Board members must ensure that the interests of the organisation are placed before any personal interests, whether commercial or otherwise.
- B3** It is for each organisation to decide on its best board composition; in the case of a subsidiary within a group, this may be a matter for the group parent organisation.
- B4** Board members who are executive staff must be in a minority. Boards should have at least five members and no more than twelve, including any co-optees and any executive board members.
- B5** A majority of those present must be non-executive board members for a board meeting to be quorate.
- B6** The roles of chair (and vice chair or senior independent director, if there is one) of the board and main committees must not be held by an executive.
- B7** The board must appoint a company secretary (or a person with that function) with a clear accountability to the board, to advise it on compliance with the organisation's constitution, this code, and other statutory or regulatory requirements particularly as relating to their position as board members, company directors, and/or charity trustees as applicable.
- B8** Organisations with shareholders who elect the board must review their policies for admission to shareholding membership on a regular basis and with a view to supporting compliance with this code.

C Essential functions of the board and chair

Main requirement

Each board must be clear about its duties and responsibilities. These must be formally recorded and made available for all existing and potential board members. Each board must be headed by a skilled chair who is aware of his or her duties as leader of the board.

Provisions regarding the board

- C1** The essential functions of the board must be formally recorded. In addition to matters set out in law and in the organisation's constitution these will include as a minimum:
- (1) setting and ensuring compliance with the values, vision, mission and strategic objectives of the organisation, ensuring its long-term success;
 - (2) setting a positive culture, with strong customer focus;
 - (3) ensuring that the organisation operates effectively, efficiently and economically;
 - (4) providing oversight, direction and constructive challenge to the organisation's chief executive and executives;
 - (5) the appointment and, if necessary, the dismissal of the chief executive;
 - (6) satisfying itself as to the integrity of financial information, approving each year's budget, business plan and annual accounts prior to publication;
 - (7) establishing, overseeing and reviewing a framework of delegation and systems of internal control; and
 - (8) establishing and overseeing a risk management framework in order to safeguard the assets and reputation of the organisation.
- C2** The board must formally record a schedule of those essential functions and other significant matters which are specifically reserved for the board's decision and which cannot be delegated.

Provisions regarding groups

- C3** The board of a parent organisation in a group structure must ultimately have the responsibility and the clear powers to direct and if necessary intervene in the governance of its subsidiaries.
- C4** The board of the parent organisation must determine how and whether this code should apply to each of its subsidiaries.
- C5** The constitutional relationship and arrangements between parent and each subsidiary must be formally recorded.
- C6** The board of the parent organisation must approve the group's plans and budgets, and hold the subsidiary boards accountable for delivery of their objectives.

Provisions regarding the chair

- C7** The chair is responsible for leadership of the board, and ensuring its effectiveness. The particular duties and responsibilities of the chair must be formally recorded.

D Board skills, renewal and review

Main requirement

Recruitment to board vacancies must be open and transparent and based on the board's considered view of the skills and attributes required to discharge its functions. The board must select or appoint new members objectively on merit and must undertake regular appraisals of its members and of the board as a whole.

Provisions regarding renewal

- D1** Boards must have a strategy for their own renewal which is based on an agreed statement of the skills, qualifications and attributes required, and balances the need for experienced members with that for new thinking and independent challenge. This statement should be reviewed regularly, and whenever the organisation is about to undertake new activities or become exposed to new risks.
- D2** Maximum tenure must be agreed for all non-executives which must in total be nine years or fewer, composed of two or more consecutive terms of office. This maximum tenure must apply to all board member service with an organisation or its predecessors or its subsidiaries.
- D3** Where a member comes to the end of an individual term of office and is eligible for reappointment, this must be subject to consideration of the member's appraised performance and skills, and to the wider needs of the board at that time.
- D4** A member who has left the board after serving the maximum tenure must not be reappointed for at least one full term of office.
- D5** In considering its composition and renewal the board must have regard to the need for a board which includes people from diverse backgrounds and with diverse attributes, to help ensure healthy debate and challenge, and a range of perspectives.

Provisions regarding nomination and election

- D6** Where the board members are elected by a wider shareholding membership, the organisation must support its shareholders so they can play an informed role in the election of board members.
- D7** Where the organisation's constitution provides for one or more board members to be nominated or directly elected, the organisation must ensure that those coming forward bring skills and experience that meet the needs of the board, and that they are fully aware in advance of the responsibilities that they will undertake. New board members must

not be appointed without undergoing a due selection and assessment process to establish their suitability.

Provisions regarding learning and development

D8 So they can discharge their duties all new board members must receive a properly resourced induction, and ongoing learning and development during their tenure.

D9 A full and rigorous appraisal process for the individual members of the board and its committees, including the chairs, must be carried out at least every two years.

Provisions regarding board payment

D10 If the organisation is paying board members it must ensure that it has an objective mechanism for establishing payment levels. This will normally be the responsibility of a committee responsible for remuneration, using independent advice and benchmarking as required.

D11 Payment to non-executive board members must be:

- (1) permitted by law and by the organisation's own constitution;
- (2) in the best interests of the organisation;
- (3) reasonable and proportionate to the organisation's size, complexity and resources;
- (4) linked to the carrying out of the specified duties of the post, against which performance must be reviewed; and
- (5) fully disclosed on a named basis in the organisation's annual financial statements.

E Conduct of board and committee business

Main requirement

The board must act effectively, making clear decisions based on timely and accurate information. Committees may be established where the board determines that they will provide expertise and enable it to deliver effective governance and manage risk.

Provisions relating to the board

- E1** The board must have formally recorded terms of reference to ensure that its conduct is transparent, effective and in the interests of the organisation.
- E2** Board and committee meetings should, wherever possible, be based on full agendas and clearly presented and accurate documents circulated to members well in advance of meetings. Decisions and the main reasons for them must be recorded in the meeting minutes.
- E3** Urgent decisions between board meetings must be taken in accordance with proper, formally recorded and predetermined arrangements.
- E4** All boards and committees must consider their effectiveness annually and how they conduct their business, including:
- (1) their governing instruments, delegations, regulations, standing orders, structures, systems and other formal documentation;
 - (2) the timing and frequency of meetings;
 - (3) the format of their agendas, papers, minutes and communications;
 - (4) their collective performance as a decision-making body; and
 - (5) their compliance with this code and their legal duties.

There must be a formal review of these matters at least every three years, to ensure best practice, and that documentation is compliant with the latest legislation and regulations.

Provisions relating to committees

- E5** The chair of the board must not chair the committee responsible for remuneration, nor that responsible for audit.
- E6** Paid staff of an organisation must not be members of the committees responsible for nominations, remuneration, audit or risk.

E7 Each committee must have formally recorded terms of reference approved by the board, and must report regularly to the board on its work and the exercise of any delegated authority it has been given.

F Audit and risk

Main requirement

The board must establish a formal and transparent arrangement for considering how the organisation ensures financial viability, maintains a sound system of internal controls, manages risk and maintains an appropriate relationship with its auditors.

Provisions relating to audit

- F1** There must be effective internal controls and appropriate systems for business assurance, so that the board can have confidence in the information it receives.
- F2** The organisation's external auditors must be independent and effective.
- F3** All but small non-developing organisations must have a committee primarily responsible for audit, and arrangements for an effective internal audit function. Other organisations must make effective arrangements for discharging these functions.
- F4** The committee responsible for audit must bring independent scrutiny and challenge to provide the board with assurance, and exercise oversight of the internal and external audit functions.
- F5** The committee responsible for audit must meet regularly and its minutes must be available to all members of the board. The reasons for the decisions taken must be recorded in the minutes and presented to the board for noting or endorsement.
- F6** The committee must be able to meet with the external auditors without executives or other paid staff being present at least once a year.
- F7** The chair of the committee responsible for audit must either be a member of the board or have clear arrangements for reporting to the board.
- F8** The voting members of the committee responsible for audit must not include the chair of the board or any executives.

Provisions relating to risk

- F9** The board must identify and regularly review the individual and combined material risks faced by the organisation and make plans and strategies to mitigate and manage them effectively.

F10 The board must retain overall responsibility for risk management, and determine the organisation's tolerance of risk. The board may delegate the detailed scrutiny and evaluation of risk to the committee responsible for audit, or to another committee.

G The chief executive

Main requirement

There must be clear working arrangements between the board and the chief executive and clear delegation of authority.

Provisions

- G1** The chief executive must be clear about the essential duties of the role and have clarity over his or her legal responsibilities, delegated authority and relationship with the board.
- G2** Like all other employees, the chief executive must have a written and signed contract of employment; the board must consider whether it should be reviewed at least every three years.
- G3** Periods of notice of more than six months and other provisions for material payments to be made or benefits granted in the event of the contract being terminated must be specifically approved by the board with the reasons for the decision clearly minuted.
- G4** The board must delegate to a committee responsibilities that include oversight of the appraisal of the chief executive and making a recommendation to the board on the chief executive's remuneration. The committee must not include any executive members of the board.
- G5** The chief executive's remuneration must be disclosed in the annual financial statements in accordance with the applicable Statement of Recommended Practice (SORP).

H Conduct, probity and openness

Main requirement

Organisations must maintain, and be seen to maintain, the highest ethical standards of probity and conduct. Boards must operate in an open and transparent manner, having dialogue with and accountability to tenants and other key stakeholders.

Provisions relating to probity and conduct

H1 Board membership entails a particular responsibility to avoid any suggestion of impropriety. Matters such as conflicts of interest, or acceptance of gifts or hospitality, are particularly sensitive. Boards must adopt and comply with a code of conduct such as the Federation's *Code of conduct 2012*.

H2 Boards must consider any potential conflicts of interest and adopt appropriate policies and procedures for their declaration and management. All conflicts must be dealt with in a way which upholds the organisation's reputation, and reflects, as applicable:

- (1) the organisation's own constitution;
- (2) charity law;
- (3) The Co-operative and Community Benefit Societies Act 2014, concerning transactions and dealings with members and committee members; and
- (4) The Companies Act 2006, concerning how conflicts (of interest, loyalty or duty) are to be declared and managed.

H3 Where conflicts of personal interest arise these must be recorded and, if material, the individual concerned must be excluded from the discussion or decision by a resolution of the non-conflicted members present.

H4 In the case of a fundamental or ongoing material conflict the board must consider and determine whether the person concerned should cease to be a board member.

Provisions relating to groups

H5 Where there are persons who are members of more than one board in a group, there must be formal arrangements to ensure that if there are any actual or potential conflicts of interest, these are identified and managed.

Provisions relating to openness

H6 The board must publish an annual report of the organisation's activities and performance.

- H7** The organisation must have in place a strategy for regularly communicating information about its work to its shareholders and stakeholders, and ascertaining their views. In doing so, it must have regard to the communication needs of the diverse groups and communities it serves.
- H8** The organisation must respond in a considered and transparent way to requests for information about its work and activities.

Guidance, notes and useful resources

This section provides guidance, notes and some useful resources for organisations. It is not part of the code and does not require explanation of non-compliance. This section is not designed to provide an all-encompassing resource on governance documents and best practice but we have selected relevant links for each section.

An important document that may be referenced throughout the code for information, as it is the key regulatory document, is *The regulatory framework for social housing in England* – Homes and Communities Agency 2012 (amended 2015). Also of general interest will be *The UK Corporate Governance Code* – Financial Reporting Council, 2014, which is the code of governance widely used in the corporate sector.

A Compliance with this code

What's changed?

This new section makes it a requirement for organisations to publish an annual statement of compliance with the code in their annual financial statements. This was previously in the general introduction but was not formally part of the code itself.

Applying the code

The 'comply or explain' approach has been widely adopted in UK corporate governance. It is an approach that positively recognises that there may be sound reasons for non-compliance and obliges organisations to be transparent about their rationale in coming to that view.

An alternative to a provision may be justified, for example, if it nevertheless achieves good governance.

Some organisations may have a commitment to compliance within a specified timescale because of the need to sustain good governance through a period of transition (for instance in matters of board renewal).

Departures from a code provision do not – of themselves – constitute automatic breaches of the code where there is evidence of proper consideration of why an exception is necessary and how the principle informing the provision is observed through other means.

Useful resources

- *What constitutes an explanation under 'comply or explain'?* Financial Reporting Council, 2012 www.frc.org.uk
- *When is comply or explain the right approach?* ICAEW, www.icaew.com.

B Constitution and composition of the board

What's changed?

This section is mostly unchanged, but includes new provisions about the role of the parent board in determining board composition in a group structure, as well as about important duties for the company secretary and shareholders.

Applying the code

The responsibilities of board members

Most of the provisions in this section support board members' interests being focused on promoting the organisation's success and the board being able to operate without undue interference of any kind.

It is good practice for each board member to be given a role profile and a formal, signed agreement specifying his or her obligations. Agreements should set out the key role and duties of board membership, the time commitment involved, and the principle that any approved remuneration is linked to fulfilling the specified role and duties. (See the useful resources section below for examples of board terms of reference, chair and board member role descriptions, and guidance around conflicts of interest.)

Executive staff

As is the case in other sectors, it is not unusual to find boards (particularly of medium-sized and large housing providers) considering the benefits of having executive members. As part of that consideration, it is important to determine whether executive staff should be full or co-opted members.

If executive staff are to be full members, the board should agree those matters on which executive staff board members will not vote – for example, the membership of a remuneration committee – and should agree what core board committees it would be inappropriate for executive board members to sit on, eg, nominations and audit committees. These terms should be formally recorded.

Company secretary

In deciding whether the role of company secretary should be delivered through a specialised resource or forms part of the duties of an executive or other staff member, organisations need to have regard to their size and complexity, the demands of the role, the degree of

independence required of that role, and the ability of anyone occupying that role to be able to offer directly to the board expert advice and guidance. There are recognised constraints for smaller organisations, but it is reasonable to expect large or complex organisations not normally to appoint the chief executive to this role.

Where someone juggles company secretarial duties alongside other unrelated duties, it is important that the organisation invests in appropriate training and support to them.

Shareholders

Each organisation should decide the purpose and role of shareholders in its governance. In some cases, organisations operate closed membership in which only the board members may be shareholders and vice versa. In others, there may be much larger shareholding membership.

Shareholders should be appointed in a transparent and open manner. The policy for admission to membership should be freely available, and organisations should consider issues of equality, diversity and accountability when drawing up and implementing such policies.

The way in which shareholding members are chosen should realistically reflect their role in governance, and contribute to the organisation's long-term constitutional and financial stability. Shareholders should be informed of their role and responsibilities, including the obligation to act in the best interests of the organisation.

Useful resources

- Good governance for housing associations: guidance and model documents covering key policy areas (web resource). National Housing Federation, 2015
- *The essential trustee: what you need to know, what you need to do*. Charity Commission, 2015
- National Housing Federation Model Rules, 2015
- *Board member pay: What housing associations need to know*. National Housing Federation, 2014
- *Charity Secretary's Library*. ICSA, 2014
- *ICSA Guidance on Corporate Governance Role of the Company Secretary*. ICSA, 2013 www.icsa.org.uk
- *Company Secretarial Practice*. ICSA, 2013
- *The ICSA Company Secretary's Checklists*, 8th edition. ICSA, 2013
- *The ICSA Company Secretary's Handbook*, 10th edition. ICSA, 2013
- *Code of conduct 2012*. National Housing Federation, 2012.

C Essential functions of the board and chair

What's changed?

This section includes several new provisions for the board's functions, which recognise that a board's duties are not just procedural and technical, but behavioural and cultural too. The previous provisions relating to group structures have been expanded to outline the group board's overall responsibility for other organisations within the group.

Applying the code

Every board should be aware of the significant matters specifically reserved for its decision which cannot be delegated to executive staff or committees. An effective board will need, however, not only to follow the letter of these functions but discuss with the executive how governance is best conducted and developed to ensure effective and timely decision-making.

Group structures

Every group board should be clear with the members of its group about the scope and limits of their powers; these are most commonly documented in intra-group agreements. It is expected, for example, that the group parent will require subsidiary registered providers – but not necessarily all trading subsidiaries – to comply with this code.

A group board can balance effective parent control with an appropriate degree of operational independence by:

- defining the financial and other limits within which the subsidiary works;
- defining a group corporate plan which establishes the group's vision, mission and values and its overall aims and objectives;
- approving each subsidiary's business plan and budget;
- establishing which policies and codes apply to all entities within the group;
- having a clear reporting framework; and
- operating arrangements across the group for the management of risk.

The chair's duties

Taking on the role of chair is a significant responsibility. In appointing individuals to this role, boards should identify the skills, experiences, attributes and time commitment prospective

candidates offer, and be clear about what support may be available to a chair. (Sample role descriptions and person specifications can be found in the useful resources below.)

The chair must take responsibility for the smooth orchestration of a number of personnel and performance matters. In relation to the chief executive and other senior staff, the chair must ensure suitable arrangements are in place to appraise the performance of the chief executive and determine the remuneration of the chief executive and other senior staff. Where there is a group structure, the role of subsidiary boards in these matters needs to be clarified. In the event of a voluntary departure or a dismissal, the chair must also ensure that the chief executive is replaced in a timely and orderly fashion. In relation to the board itself, the chair must ensure proper and appropriate arrangements for the collective board appraisal and that of individual board members. It is preferable that the chair leads this process, even where other means of delivery (eg, external support) are used.

The chair should ensure that the board agrees the role of the vice chair or senior independent director, where there is one.

Useful resources

- Good governance for housing associations: guidance and model documents covering key policy areas (web resource). National Housing Federation, 2015
- *The essential trustee: what you need to know, what you need to do*. Charity Commission, 2015
- *ICSA Guidance on Matters Reserved for the Board*. ICSA, 2013 www.icsa.org.uk
- *The Non-Executive Directors' Handbook*, 3rd edition. ICSA, 2013
- *The ICSA Charity Trustees' Guide*, 3rd edition. ICSA, 2012
- *The Effective Board: Building Individual and Board Success*. IoD, 2007 www.iod.co.uk
- *Review of the role and effectiveness of non-executive directors* (the Higgs Review). DTI, 2003 (available from BERR) www.berr.gov.uk.

D Board skills, renewal and review

What's changed?

This section of the code has been extensively revised to reflect an increasingly strong focus across sectors on the need to have boards populated by a diverse group of competent individuals to avoid groupthink. A new provision for prospective board members to have their candidacy assessed against objective criteria must be applied to all board members, irrespective of the routes to board membership.

The ethos of board renewal also informs some new provisions around the application of maximum terms of office.

Applying the code

Skills and attributes

The board as a whole should have, or acquire, a diverse range of skills, competencies, experience and knowledge. It is for each board to determine the core skills and competencies that all board members should have, and the skills that individuals can bring that will make the board more effective. Many organisations opt to have a skills and competency matrix in place and conduct an audit of members at least every two years or when major changes occur to identify recruitment needs and learning gaps.

Board renewal and recruitment

Steps should be taken to identify potential board members who may have no connection with the organisation or existing board members. A range of recruitment techniques should be considered to secure a wider choice of candidates, from diverse backgrounds and with diverse attributes.

Organisations which were originally constituted with local authority nominations or tenant elections to the board will need to consider how they can adapt their existing processes to comply with the code's requirement for the suitability of candidates to be assessed.

New members should be appointed on a systematic and continuous basis, thus avoiding bigger changes at infrequent intervals. The board should agree, in writing, its policies for:

- the recruitment, selection or election of new members, including the chair;
- the creation of role profiles and competency frameworks for the board;

- the preferred composition of its membership;
- fixed terms of appointment. The maximum tenure must be nine years or fewer, and this applies to all board member service with an organisation or its predecessors or its subsidiaries;
- establishing a process for succession planning; and
- circumstances in which individuals would be excluded from becoming or continuing to be a board member.

Many organisations have made these policies available on their website or via other media.

Tenure and terms of office

Each organisation will have the length of a term of office set out in its governing document, with three years being the norm. Some boards have adopted a two-term, six-year limit, with a further three-year term being seen as exceptional.

Each organisation will need to determine the most appropriate process for assessing whether a further term of office by a board member (up to the maximum) is merited and of benefit to the business. Some may find it helpful to delegate the process of assessment to a nominations or appointments committee.

For those organisations which favour ‘schooling’ potential board members through subsidiary structures, the requirement to have maximum tenure apply to all board member service will need to be taken into account in any overarching succession planning strategy. Where someone has served on a committee or panel, and then joins the board, that previous service need not count towards the overall tenure limit, so long as the person was not a trustee or board director.

There is strong evidence that organisations have benefited from a tenure limit: it prevents the dominance of one viewpoint or mode of thought, it is demonstrably fair to all, and it encourages a renewal and refreshment of board thinking and skills.

In order for this limit to have a genuine impact, the code has been changed to require that a full term of office (ie, normally three years) must elapse before a board member who has served his or her full term can be reappointed. Many organisations choose to have a blanket ban on subsequent reappointment, even after considerable time may have elapsed, and clearly this is in compliance with this code.

Learning and development

It is usually the chair, in liaison with the company secretary or equivalent, who ensures that all new members receive induction training. The induction process should provide basic information on the role and responsibilities of the board as well as tailored information for each individual board member.

Learning and development activity should be based on an analysis of the needs of individuals and the board as a whole, to ensure that individuals remain up to date and continue to add value to the work of the board.

Individual board member appraisal

Individual appraisals should review the skills and contribution of individual members, and include the assessment of the chair and vice chair. Many organisations sometimes engage an independent third party to help design and support the administration of the process.

Boards should have clear procedures in place for the removal of board members where issues of performance, conduct or conflicts arise that cannot be resolved. These procedures should be covered in the organisation's governance arrangements.

Useful resources

- *Board member pay: What housing associations need to know*. National Housing Federation, 2014
- *ICSA Guidance on Corporate Governance Role of the Company Secretary*. ICSA, 2013 www.icsa.org.uk
- *Trustee expenses and payments*, CC11. Charity Commission, 2008
- *To see ourselves as others see us – but first*. HQN, 2008
- *Achieving excellence: board appraisal*. National Housing Federation, 2007.

E Conduct of board and committee business

What's changed?

This section includes the new provision that all boards and committees must consider annually their effectiveness and how they conduct their business, and undertake a more formal review of these matters at least every three years.

Applying the code

Board and committee effectiveness

The annual review of board and committee effectiveness could take the form of a discussion at a board meeting or awayday, or another form as the board or committee sees fit.

The formal review would likely involve more structured consideration, preparation of a report (with or without external assistance) and an action plan to map required changes over time. The board may wish to engage the help of an independent third party to demonstrate transparency and invite challenge to how governance is organised. This collective review of effectiveness is distinct from the individual appraisals for board members (see Provision D9).

The formal review could, for example:

- identify the board's ability to scan the operating environment, think strategically and adapt as necessary;
- review how well the board performs its key roles and how successful it has been;
- review the effectiveness of board relationships and its role as a team;
- assess how the board is viewed by key contacts, such as, regulators, investors, local authorities, tenant groups, staff etc;
- review the composition and size of the board, and the skills and experience that need to be represented among its members;
- review the organisation's ability to recruit and retain the balance of board members it needs;
- assess the effectiveness of board processes, including its accountability;
- assess the level and quality of the information the board receives;
- review the learning and development needs of the board as a whole;

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- review the committee structure;
 - result in a clear plan to support continuous improvement of the board to meet the challenges faced by the organisation;
 - address whether the board provides enough support, scrutiny and challenge to the senior team; and
 - assess the compliance of the key governance documents with legal requirements and good practice.

Committee structures

How committees work together with the main board, the degree of delegation to them and committee membership are always important considerations for any board. These issues might also usefully form part of the annual discussion about effectiveness.

The cycle of board and other strategic meetings, together with key business objectives, ought to be taken into account when determining the type, frequency and content of committee meetings. Periods of major change or risk may demand additional meetings or time-limited *ad hoc* working groups.

Many committee chairs have found that their roles have become more substantive in recent years, with some being engaged in leading aspects of appraisal processes themselves. It is useful to keep role descriptions under regular review to ensure that they reflect any changed responsibilities.

To demonstrate transparency, many organisations disclose the membership of board committees in their annual reports.

Useful resources

- Good governance for housing associations: guidance and model documents covering key policy areas (web resource). National Housing Federation, 2015
- *ICSA Guidance on Corporate Governance Role of the Company Secretary*. ICSA, 2013 www.icsa.org.uk
- *ICSA Guidance on Terms of Reference – Nomination Committee*. ICSA, 2013
- *ICSA Guidance on Terms of Reference – Remuneration Committee*. ICSA, 2013
- *ICSA Guidance on Terms of Reference – Audit Committee*. ICSA, 2013

- *ICSA Guidance on Terms of Reference – Risk Committee*. ICSA, 2013
- *Code of conduct 2012*. National Housing Federation, 2012
- *Review of the role and effectiveness of non-executive directors (The Higgs Review)*. DTI, 2003 www.berr.gov.uk.

F Audit and risk

What's changed?

The risk landscape for many organisations has changed, influenced by changes in the external world, different sources of housing finance and additional activities undertaken to deliver surpluses.

This section has been expanded in recognition of the increasingly important role of audit and risk committees to bring independent scrutiny and challenge, while providing assurance to the board, across housing and other sectors.

Applying the code

It is expected that boards understand the risks inherent in their business activities and engage in any further risks with a proper calculation of the benefits, consequences and remedies (where these are needed or exist). The risk appetite may vary across different activities and opportunities.

Audit committee arrangements

Best practice suggests that every board should consider in detail what arrangements for its audit committee are best suited for its particular circumstances. Audit committee arrangements need to be proportionate to the task, and will vary according to the size, complexity and risk profile of the organisation. It is likely that members will periodically need training or briefings to keep their knowledge current.

In many organisations the committee responsible for audit is also responsible for providing assurance on the accuracy of management accounts.

In larger organisations, occasionally there has been the appointment of an external chair to the audit committee, who may not sit on any board, with a view to offering independent challenge of culture and processes. Where this is the case, it is important that there are clear procedures in place to ensure a direct reporting line to the board and good communication. More frequently, an audit committee may have one or two external members for the same reason, and this can introduce a fully objective view to the debates.

Audit committee responsibilities

The main role and responsibilities of the audit committee should be set out in written terms of reference (see the useful resources below for further guidance on contents).

In the case of dispute, the board's decision must override that of a committee. The chair of the committee responsible for audit should have the right to report any such decision to the external auditors (and where necessary to external regulatory bodies), after discussion at the board about this proposed course of action. The chair of the committee responsible for audit should have access to paid legal advice from the organisation's appointed or usual legal advisers.

External auditors

External auditors are unlikely to be judged to be independent if they also provide significant non-audit services. Where the external auditor provides non-audit services, such as internal audit services, the committee responsible for audit should satisfy itself that there are safeguards in place to ensure that there is no threat to the objectivity and independence of the audit from the provision of such services. There should be a proper and transparent procedure for the selection and periodic review of the appointment of external auditors.

Risk

Effective management of risk extends beyond board consideration of risk maps to dynamic discussions about strategic risks, scenario planning, stress testing, establishment of risk appetite and tolerances.

Useful resources

- *Risk management: a guide for housing association board members*. National Housing Federation, 2014
- *Understanding assurance: a guide for housing association board members*. National Housing Federation, 2014
- *Audit Committees: Combined Code Guidance (The Smith Report)*. FRC, 2003 www.frc.gov.uk
- *Guidance on Audit Committees*. FRC, 2012
- *The ICSA Audit Committee Guide*. ICSA, 2013
- *Guidance on Risk Management, Internal Control and Related Financial and Business Reporting* (revises and replaces Turnbull Guidance). FRC, 2014.

G The chief executive

What's changed?

In recent times a small number of Federation members have faced reputational risk over the circumstances surrounding the severance terms of their chief executives. This section includes specific provisions which require the board to consider the review of the chief executive's contract and, in the event of any contract termination, reserve the approval of any terms as a matter for the board.

Applying the code

The essential duties of the chief executive will be captured in his or her role description. Some chief executives are now also members of their boards, and it is helpful for the chief executive and chair to think through any changes required to processes or documents as a result of that. This is a separate duty to any employment relationship, however, and should be treated as such.

Chief executive's contract

The written and signed contract, besides complying with current legislation, should clearly define:

- his or her duties and the standards of performance expected;
- the procedures for monitoring the chief executive's performance and fixing his or her remuneration;
- the remuneration level, and other terms and conditions, including such matters as retirement, redundancy or severance;
- how complaints and disciplinary matters will be dealt with;
- how the contract will be reviewed and can be amended; and
- the length of the contract, whether or not it can be renewed (if it is for a fixed term) and any notice period.

Remuneration committee

Where there are board members who are also the paid staff of other housing associations, the board should consider whether their appointment to the committee responsible for remuneration could create an indirect or perceived duality or conflict of interest.

Setting chief executive remuneration

Boards should consider the following when agreeing the remuneration of the chief executive officer:

- although the board may act on the recommendation of a committee, it is for the board as a whole to approve the chief executive's remuneration package;
- the board should consider the totality of any increases in the 'package' for a chief executive rather than consider each change in isolation;
- a remuneration package should be given which is proportionate to the size and complexity of the organisation and sector norms and sufficient to attract, retain and motivate the quality of chief executive required;
- any performance-related elements of the remuneration package should be linked to the achievement of specific and measurable targets which are reviewed at least annually.

Useful resources

- *Report of the Inquiry into Charity Senior Executive Pay and Guidance for Trustees on Setting Remuneration*. NCVO, 2014
- *Good Governance: a Practical Guide for Trustees, Chairs and CEOs*. NCVO, 2011
www.ncvo-vol.org.uk
- *The role of the managing director/chief executive*. IoD www.iod.com.

H Conduct, probity and openness

What's changed?

There are some additional provisions to ensure that conflicts of interest are properly acted upon. Group structures need to take account of potential conflicts of interest which may arise through membership of more than one board.

Applying the code

Probity and conduct

Boards are responsible for their own probity and need to ensure a framework of controls in place to act, and be perceived to act, in the organisation's best interests. The board, or a committee with the necessary delegated authority reporting to the board, should from time to time review:

- the stated values of the organisation, and how they are implemented in practice;
- the implementation of this code of governance, and its underlying principles;
- the codes of conduct adopted by the organisation for its board members and staff; and
- the policies and procedures of the organisation relating to hospitality, gifts, whistle-blowing (in accordance with the Public Interest Disclosure Act 1998), access to information and other matters of business ethics such as corporate social responsibility.

It may be sensible to include this consideration as part of the wider review of board effectiveness.

The board should ensure that proper arrangements are made for the referral and determination of individual cases raising issues of conflicts, ethics or probity. These should include a whistle-blowing policy to allow all board members, committee members and members of staff to raise issues of serious concern without the fear of reprisal, while maintaining their duty of confidentiality. Where a board member has concerns about the way the organisation is being run, these should be recorded in the minutes.

Openness

Running a housing organisation involves operating a large number of policies and procedures. Boards will wish to have a view on which should be publicly available and how requests for information or transparency on decision-making are handled in a way that promotes openness.

Useful resources

- *Code of conduct 2012*. National Housing Federation, 2012
- Co-operative and Community Benefit Societies Act 2014
- Companies Act 2006
- *Whistleblowing* (ICSA Solutions). ICSA, 2013 www.icsa.org.uk
- *The Bribery Act* (ICSA Solutions). ICSA, 2013.