Modernising Governance: An Enabling Approach

Analysis of responses to the discussion paper

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1 Introduction

This paper summarises the responses to the Housing Corporation’s discussion paper ‘Modernising Governance – An Enabling Approach’\(^1\) and presents the implications they may have for future regulatory policy in relation to governance.

1.1 Background to the consultation

The purpose of ‘Modernising Governance – An Enabling Approach’ was to outline the Housing Corporation’s emerging policy on governance and to consult key stakeholders (listed below) so that areas of consensus and areas of potential difficulty could be identified.

- Housing associations;\(^2\)
- Representatives of housing associations;
- Other regulators;
- Tenant representative organisations;
- Professional bodies;
- Lending community;
- Specialists/others;
- Selected individuals.

The discussion paper built upon previous work, which reviewed the case for modernising boards. The initial publication, ‘Modernising Governance: Starting the Debate’ (December 2000) was followed in May 2001 by ‘Modernising Governance: Reporting the Debate’, a detailed survey of housing associations' chairs, board members and chief executives. It mapped experiences, views and debates on the governance issue. The second report was sent out with the discussion paper for comments in March 2001. The deadline for responses, originally 9\(^{th}\) May 2001, was extended to 31\(^{st}\) May 2001.

1.2 Responses

There were 185 responses to the discussion paper (9% of those surveyed). Responses were received from all of the groups listed above\(^3\). The majority of responses were from housing associations, however it is important to note that the responses do not constitute a representative sample of the sector as a whole. Analysis of housing association respondents shows that:

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1 Housing Corporation (March 2001)
2 Throughout this document we use the term ‘housing association’ as a generic form for the organisations legally known as registered social landlords
3 Appendix 3 provides a full list of respondents. A copy of this appendix can be found on the Housing Corporation’s website (http://www.housingcorp.gov.uk)
Size - Half of responses were from medium sized housing associations\(^4\)

Activity - Over half were housing associations with significant supported housing stock;
- Only 3 responses were received from black and minority ethnic housing associations;
- A quarter came from LSVT housing associations;

Region - Relatively few responses were received from the North East, Yorkshire and the Humber, East Midlands and the East of England, compared with the rest of England.

\(^4\) Small (0-499) units under management, Medium (500-4,999) units under management, Large (5,000-9,999) units under management, Extra Large (10,000+) units under management
2 Principal findings

This section provides an overview of key trends from the responses received. A detailed review of responses can be found in Appendix 1.

2.1 Overview of responses

Although a range of views were expressed by the respondents, it is possible to draw out the following key themes:

Most respondents argued that changes need to be made to the overall way in which housing associations are governed;

Support from the Housing Corporation is required to help housing associations implement the proposals and maintain accountability;

Schedule 1 needs to be reviewed;

The legal structures under which housing associations operate need review;

The most vocal response concerned the question of payment of board members, with most people asking for some form of change to the current arrangements.

2.2 The overall governance arrangements of housing associations need to change

There was a high level of support for changes to the current governance arrangements of housing associations from all groups of stakeholders. 84% of respondents offered a view of whom only 13% felt that there was no need for change.

Respondents felt that change was needed, because:

The current ‘one-size-fits-all’ approach does not adequately address the complexity and diversity of the sector;

The process of governance itself is complex and becoming increasingly so;

There is a need to recruit and retain more high quality board members.

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5 A copy of this appendix can be found on the Housing Corporation’s website (http://www.housingcorp.gov.uk/)
There was also support for a move towards an outcome-based approach to the regulation of governance, that is a less prescriptive approach in which governance arrangements can vary more widely and are assessed on the basis of their effectiveness or added value. In an outcome based regime, housing associations are expected to demonstrate that the governing body has the ability to steer the organisation and monitor the extent to which it is achieving its aims. Respondents said that the benefits of this approach include enabling housing associations to respond flexibly and to provide governance arrangements that meet their individual business needs. There was, however, no consensus as to how this should work in practice. One respondent commented:

“The outcome centred process of management and control allows us the capability of considering innovative ways of delivering social housing whilst at the same time keeping a clear focus on our core objective.”

and another that:

“Good governance arrangements come in all shapes and sizes. They should be judged on their effectiveness at meeting our corporate needs, whilst ensuring collectively we do not breach some clear principles.”

In general, larger housing associations were more supportive of a flexible, outcome-based approach, while smaller housing associations tended to opt for a more cautious approach to change.

2.3 Regulators should support the implementation of change

A clear message from this consultation is that the Housing Corporation should support the process of implementing change in order to preserve:

- Standards of governance – to ensure that a few poorly governed housing associations do not affect the reputation of the sector as a whole;
- The social nature of the sector;
- Whilst offering guidance and models of good practice.

Although some respondents were concerned about the risks, most felt that the case for change is so strong that the Housing Corporation should minimise the dangers through guidance and regulation rather than see these dangers as impassable obstacles. The Council of Mortgage Lenders noted:

“Although outcomes may be one test of the effectiveness of the arrangement made by an individual RSL, the Council of Mortgage Lenders would urge the Housing Corporation to monitor and regularly review these arrangements”

Many respondents called for practical guidance showing how they could move towards, and measure, governance within an outcome-based approach. Some felt that
models such as the National Housing Federation’s Code of Governance provide a good starting point.

2.4 The operation of Schedule 1 is restrictive

There was concern that although Schedule 1 has provided a solid basis for restricting conflicts of interest, its operation has become restrictive. 39% of all respondents said more general exemptions were needed (of the 57% who offered a view). The National Housing Federation commented:

“The operation [of Schedule 1] can be unnecessarily harsh and restrictive, and it is now desirable to consider an alternative arrangement. There can be no reason why the board members of RSLs should be in a more difficult position than (say) local authority councillors, or indeed the trustees of charities.”

Alternative suggestions included:

A system for registering interests similar to that used by Local Authorities:

More general exceptions.

Only around 12% of respondents said that no change was needed and that change would risk the sector’s reputation.

2.5 The legal structures housing associations operate within may be limiting

57% of respondents offered a view on the legal framework that housing associations operate under. Some felt that the Industrial and Provident Society (IPS) and charitable models might not be adequate for all. It was argued that the Housing Corporation could support change by examining alternative legal frameworks for housing associations.

2.6 A more flexible approach to rewarding board members is required

Most respondents (90%) offered views on the question of payment to board members. There was little consensus as to the nature of the changes that would help, but it is worth noting that views were often expressed with considerable conviction.

Overall, there was support for adopting a more flexible approach to rewarding board members. The majority of respondents said there was a need to ‘lift the lid’ on the present arrangements and only 18% wanted no change. Suggestions put forward by respondents included:

Raising the payment limits (15%);
Removing the current payment limit altogether or paying similar amounts to those offered by other organisations such as NHS Trusts or Regional Development Agencies (22%);

Offering compensation for loss of pay or other recognition mechanisms (30%). However, there was no overwhelming consensus as to whether board members should receive payment beyond expenses. 27% of respondents were against any payments in excess of expenses. Some expressed concerns that payment might:

- Damage the social ethos and reputation of the sector;
- Lead to competition between housing associations for ‘high quality’ board members;
- Drain housing associations’ resources;
- Change the dynamics of relationships if ‘volunteers’ become ‘employees’;
- Be complicated to administer, particularly in relation to social security benefits.

Some commented that payment should not become compulsory and that housing associations should be able to decide for themselves. However other respondents thought payments would:

- Help develop more professional boards with a greater sense of responsibility;
- Make enforcement of duties and appraisal easier (including the joint response of extra large housing associations, represented by Devonshire’s Solicitors);
- Attract new skills and experience to housing association governance;
- Broaden the diversity of board membership;
- Recognise the commitment board members offer.

Finally, the Chartered Institute of Housing usefully noted:

“It is particularly important that the debate does not get bogged down into a narrow argument over payment of board members which detracts from wider consideration of modernising governance.”

### 2.7 Next steps for the Housing Corporation

In order for the Housing Corporation to take this agenda forward, it may wish to address a number of points:

1. Make decisions in principle on the issues discussed, i.e.:
How it can incorporate its move towards an outcome-based approach to regulation, in the area of governance;

Its overall approach to payment;

The scope for reviewing Schedule 1.

Although there is no consensus about the best ways forward, it is clear that the Housing Corporation needs to take a view, so that the ‘do nothing’ option is not simply adopted by default.

2. Develop the business case for each of the options for the payment of board members. If the Housing Corporation decides to give housing associations the freedom to select their own solution to reward, it should consider providing limits and insist each association makes its own business case for regulatory approval, in order to safeguard the sector's reputation.

3. Develop ‘good practice’ guidance to support the implementation of change. Many respondents felt they needed a greater level of understanding to consider how the potential changes might affect them.

4. Consider the case for revisiting the overall legal structures under which housing associations operate.