

25 NOVEMBER 2015

whg: Proposed Governance Changes (Paper provided by whg)

Ward(s) **All**

1. Executive Summary

- 1.1 whg is seeking the agreement of the Council to make changes to its governance arrangements. We have been invited to produce a report for the Scrutiny Committee setting out our proposals for the Committee to consider and make a recommendation to the full Council. This report sets out the changes that we are proposing, the reasons for the changes and the new arrangements to ensure continued effective engagement with customers and Councillors.
- 1.2 Our Corporate Plan 2014-2024 set out our strategic aims, one of which is to have in place a governance model that is fit for purpose to support the evolution of the Group. To achieve this we need to make some changes to our current arrangements.
- 1.3 Over recent months we have engaged with Councillors through a variety of ways to seek their views on our governance structure and the proposed changes. We want to make sure that the new arrangements provide more opportunities for customers to be involved in ways that suit them, as well as enabling us to engage effectively with more Councillors, sharing details of our performance and listening to their views.

2. Recommendation

- 2.1 The Scrutiny Committee is invited to consider the proposed changes to the governance structure and make a recommendation to the Council.

3. Reason for Scrutiny

- 3.1 The proposed changes require the agreement of the Council at a General Meeting of whg. The information provided for the Scrutiny Committee below sets out the details.

4. Governance review

- 4.1 Our Board commissioned an independent review of our governance arrangements. This was undertaken by Campbell Tickell, consultants with considerable experience of conducting governance reviews in the

social housing sector. The report made a number of recommendations that have been debated and agreed by the Board of whg. The reasons for the proposed changes are:

- the increasingly challenging environment in which we work and the risks we have to address mean that more than ever before we need to be led by a strong board, with the skills and experience relevant to achieving our corporate goals.
- whg has become an increasingly complex business. For example, the group structure now includes a PLC set up to receive the proceeds of the bond finance we succeeded in obtaining last year. The broader challenges set out in our Corporate Plan include providing support for local businesses, improving the health and well-being of customers and communities and contributing to and establishing and supporting local enterprises.
- Another driver for change is the need to meet governance standards set by our Regulator, the Homes and Communities Agency, which all Housing Associations (including whg) must comply with. The standards include requirements about independence, board size and the appointment of all board and committee members based on a skills and experience assessment.
- The Regulator also requires us to adopt and comply with a Code of Governance. Our adopted Code requires that our Board has a maximum of 12 members; our current structure provides for 13 members – three elected members, five customers and five independent members.

- 4.2 Failure to meet these standards would result in our regulatory judgment being downgraded, which would directly impact on our ability to obtain grant funding. It could also result in our credit rating being downgraded, making it more difficult and / or expensive to secure future funding. This would mean we would be unable to meet our growth target for building new homes in Walsall and we would be unable to continue to provide the range of services currently offered to customers.

5 Regulatory requirements

- 5.1 The current governance arrangements in place are outdated as they link to the Transfer Agreement and the role the Council had in monitoring the delivery of the promises made in the Big Switch document. Whilst these arrangements met the requirements of our Regulator in 2003 in respect of a newly transferred Housing Association, regulatory requirements have since changed.
- 5.2 Legal advice provided by Anthony Collins Solicitors, who have extensive social housing experience particularly on stock transfers, indicates that, the Regulator has some concerns about local authority influence over stock transfer associations, particularly after they have delivered their transfer promises. In relation to more recent stock transfers, transferring

local authorities are now expected to agree with their transferring Housing Association that their governance arrangements cannot operate to prevent the Housing Association from complying with the Regulatory Framework nor the Regulator exercising its regulatory powers over the Housing Association, if needs be. Councils now tend to “nominate” (ie propose) rather than “appoint” board members to their stock transfer Housing Associations, and through exercising their nomination rights must seek to achieve the skills and expertise that the Housing Association has assessed it requires of its board members.

- 5.3 The vast majority of Housing Associations have moved to skills-based boards and the Regulator has shown a propensity to downgrade Housing Associations that have not managed to achieve this, where this failure contributes to their poor governance. The Regulator’s changed position is in part a response to several rescue situations within the social housing sector over the past couple of years, where the blame for failure is generally laid at the board in question’s feet. It is expected that Housing Associations of the size of whg fully comply with the Regulator’s requirements.
- 5.4 Many Stock Transfer Associations that have not already made the sort of changes that we are proposing are engaged in discussions with their Councils as changes are needed, particularly in response to the Regulator’s sensitivities around Council voting rights (at Member level) and board nomination / appointment rights. The Regulatory Framework, and specifically the Governance Standard (and the Code of Conduct underpinning it) are clear that:
- We must be capable of managing our affairs ‘with an appropriate degree of skill, independence, diligence, effectiveness prudence and foresight.’ This means that the boards must be possessed of the skills and expertise to manage the business (including the core housing activities and “diversified” ones).
 - Board members are expected to be selected on the basis of their skills and expertise, and there is a further expectation that boards are capable of flexing to meet new and emerging needs, as well as reducing or removing skills that are no longer required by the Housing Association. The Regulator expects us to have sufficient independence from external influences in respect of the composition the Board to be able to control the skills and experience that our board members have.

6 Proposed changes

- 6.1 The proposed changes, which have been approved by whg’s Board, fall into two categories:
- those that can be implemented by a decision of the Board; and
 - those that require the agreement of the Council as a voting Member at a General Meeting. There are three groups of voting Members, with each group having a one-third share of the vote.

They are:

- the Council
- the independent board members
- the customer (tenant) board members.

6.2 Decisions implemented by a Board decision

6.2.1 WHG Board has made good progress with implementing the changes recommended, including:

- agreeing the new Committee structure, including the creation of a Customer Services Committee;
- approving a new skills strategy and a board and committee member succession planning, recruitment and retention policy;
- implementing new appraisal arrangements for board and committee members; and
- creating a new customer scrutiny panel.

6.2.2 These changes have strengthened our governance arrangements and created new opportunities for customer involvement, but the Board recognises the need for other changes, which require the agreement of the Council.

6.3 Decisions that require the agreement of the Council

6.3.1 Some of the changes proposed require amendments to our Memorandum and Articles of Association and therefore require the agreement of the Council:

- **To reduce the Council's Member voting share:** the Council voting share is one-third of the total. We want the Council to remain a Member of the company, so the proposal is that it retains one vote, with each other Member (being the board members) also having one vote apiece. The Council would still have a voice at Member level, but this arrangement would meet the Regulator's requirement for an appropriate degree of independence, whilst continuing to involve the Council at a high level, in any decisions requiring a General Meeting, as well as in other ways set out below.
- **To reduce the size of the board:** our proposal is to reduce the board to between eight and 12 members.
- **To appoint all board members for their skills and experience:** our Regulator requires all board member appointments to be based on a selection and assessment process. We will encourage and seek applications from Councillors and customers and there is no reason why they could not be appointed to the board or committees, but it means that no places will be reserved for those groups. The range of other customer involvement opportunities

and the training and development offered will ensure that customers continue to have an important role in our governance arrangements. More details are set out under the section below on 'Engagement with Customers'.

- **To replace Local Committees:** with stronger arrangements including:
 - a Customer Services Committee that will report to the Board. The Committee's remit includes monitoring our performance and ensuring that high standards of customer service are delivered; and
 - a Customer Scrutiny Panel whose role is to carry out in-depth reviews of services and monitor delivery of actions to address any recommendations made. Customers are leading the work to create this panel and define its role and membership and the way that it links to the Board.

Two other proposals requiring amendments to our Memorandum and Articles are:

- **To appoint the Chief Executive as a board member** reinforcing the key relationship between the Chief Executive and the Board.
- **To introduce board member remuneration**, subject to the consent of the Charity Commission. This will help with recruitment of appropriately skilled and experienced members and increase the level of accountability and commitment expected of board members.

7. Continued engagement with Councillors

7.1 In our recent discussions with Councillors we have sought to explore how we can build on the existing partnership arrangements between whg and the Council. Our proposals will provide new opportunities for more Councillors to know more about our work, the services delivered and our plans for the future. We will ensure that Councillors have the opportunity to engage with us at a senior level in a way designed to meet their needs so as to contribute their views and influence our plans.

7.2 The new arrangements we are proposing could include:

- **a quarterly Panel of nominated Councillors** that would meet with senior colleagues from whg to monitor performance, review complaints handling arrangements etc.
- **half yearly update briefing sessions for all Councillors** in conjunction with our board members, providing details of our current and future work including our investment in Walsall. This would give Councillors direct access to board members.
- **regular surgeries for our customers and Councillors** in various locations around the borough, involving whg estate management

and other colleagues.

- **referral of issues by Councillors to the Customer Scrutiny Panel** outlined below.
- **an annual performance report** produced specifically for Councillors.

8. Engagement with customers

8.1 We want to continue working closely with our customers so that they influence the way that services are delivered.

- The Customer Services Committee will be part of our governance structure and will include customers. It will have greater responsibility than the Local Committees as its role is to provide assurance to the Board that whg is providing services in an efficient and effective way and takes every opportunity to delight its customers.
- The Customer Scrutiny Panel will be made up of customers. It will have an important role in scrutinising whg's services – carrying out in depth reviews and holding us to account. It will report directly to the Board and the Customer Services Committee will sign off delivery of the Panel's recommendations. Recruitment to the Panel is well advanced.
- The Customer Network will ensure that any customers who wish to engage with us less formally can do so in a way that suits them, including regular surgeries referred to above. We will capture intelligence and suggestions from our customers in a variety of ways including the surgeries referred to above. This will help to add value to the business and improve service delivery.

9. Conclusion

9.1 The proposed new arrangements will improve our governance arrangements and provide opportunities for more customers and Councillors to engage with us in a way that influences our work and holds us accountable. To not change is not an option. Failure to implement the governance review recommendations would ultimately place us in breach of the regulatory requirements.

10. Recommendations

10.1 The Scrutiny Committee is invited to consider the proposed changes to the governance structure and make a recommendation to the Council.

11. Resource and legal considerations

11.1 The changes proposed require the agreement of the Council, as a voting Member of whg at a General Meeting.

12 Citizen impact

- 12.1 Customers of whg will continue to be involved through a variety of ways as set out in the report under the section on Engagement with Customers.

13 Performance management

- 13.1 The Council and customers will continue to hold whg to account through the arrangements proposed for monitoring performance and reviewing the way that services are delivered

14 Equality Implications


- 14.1 As a Housing Association we are required to ensure that our Board demonstrates a commitment to equality and diversity and inclusion as outlined in the Equality Act. Board and committee members are required to comply with a Code of Conduct that includes a section on equality and diversity as well as a requirement to treat others with respect. As required by the National Housing Federation Code of Governance we are considering a range of recruitment techniques to secure as wide a choice as possible of board and committee member candidates, from diverse backgrounds and with diverse attributes.
- 14.2 An Equality Analysis will be carried out on the new arrangements once the proposals have been considered further.

15 Consultation:

- 15.1 We have engaged with customers and Councillors through a variety of ways to seek their views on the proposed new arrangements. This began when the consultants commissioned to carry out the independent governance review interviewed customers and Councillors as part of their work to establish what changes were needed. Since then customers have driven the work to create a Customer Scrutiny Panel and have been consulted and involved in developing and shaping the other Customer Voice opportunities.
- 15.2 Councillors have been consulted through a range of means, including one to one meetings, a workshop, a drop-in session and presentations at the Area Panel meetings. Feedback from these sessions is helping us to shape new arrangements for engagement with Councillors.

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