

**Corporate and Public Services Overview and Scrutiny
Committee**

**Agenda
Item No.**

25th November 2015

5b

WHG Governance Proposals

Ward(s) All

Portfolios: Cllr A Andrew - Deputy Leader Economy, Infrastructure and Development

Executive Summary:

The purpose of the report is to:

- 1.) Outline proposals being made by Whg which seek to change the existing governance arrangements contained within their Memorandum and Articles of Association.
- 2.) Explore the implications of the proposals to Walsall Council, Whg Tenants and local citizens.

In accordance with the 2003 Transfer Agreement between Walsall Council and Whg, Whg are required to request approval from the Council, to make any changes to the governance arrangements. Accordingly, the proposals will be considered at full Council on 11th January 2016.

The cumulative effect of the Whg proposals are that:

- The Council would have significantly reduced voting rights at Annual General Meetings or any other Special Meetings;
- There would be no provision for the Council to nominate any local authority representatives onto the Whg Board of Directors;
- The five Local Committees would no longer each nominate a tenant representative onto the Whg Board of Directors, and they would be disbanded and replaced with new arrangements for tenant engagement.

It should be noted that although the Council currently approves nominations of up to three Councillors onto the Board, they are required to act independently from the Council, taking all decisions in the best interests of Whg (in the same way as any other board director).

The proposals seek to gain approval for future board members to be appointed through an open recruitment process, enabling anyone to apply (including Councillors or Tenants), with successful candidates being appointed based on their skills and suitability as board director.

The new tenant engagement arrangements will take the form of a Customer Services Committee and Customer Scrutiny Panel. The structure of these are currently being consulted on by Whg. In addition, Whg are currently consulting with Councillors to identify how best to engage with Councillors in the future to provide them with an opportunity to influence service delivery.

This report is being presented in order to enable Scrutiny to make informed recommendations to Council about the proposals being made by Whg.

Reason for scrutiny:

The report has been requested by the Chair of the Corporate and Public Services Overview and Scrutiny Committee to enable Council members to make recommendations about whether to adopt the proposed changes to the Whg governance arrangements.

Recommendations:

That:

1. The Scrutiny Committee agrees any recommendations they wish to make to Full Council ahead of the meeting on 11th January 2016

Background papers:

Whg Board skills Matrix

Whg Customer Services Committee Terms of Reference

National Housing Federation Code of Governance Feb 2015

Homes and Communities Agency Regulatory Framework requirements March 2015

Walsall Council and Whg Transfer Agreement

Memorandum and Articles of Association

Resource and legal considerations:

Whg stated in their letter to the Council on 21st June 2015, that if these Governance changes are not made, it could result in a downgrading of Whg's Regulatory Judgement, which in turn could reduce the amount of development grant funding awarded to Whg in the future (a copy of the Housing and Community Agency Guidance has been included in the background papers).

The legal process to agree changes or amendments to Whg's current Memorandum and Articles of Association are specifically provided in the 6th Schedule Part 2 of the Principle Agreement (the 'Transfer Agreement') with Whg.

Under the agreement Whg require the Council's written consent to make any changes to their governance arrangements. If any changes are agreed, the Council, in its capacity as a member of Whg, shall vote in favour of the amendment at the relevant General Meeting of Whg. If not agreed, WHG may not make the amendments to their Memorandum and Articles of Association without potentially being in breach of the covenant (which was given to the Council 6th Schedule Part 2 of the Principle Agreement detailed above).

The Council has agreed (in clause 2.3 of the 6th Schedule Part 2) not to commence action to enforce the covenants where Whg have demonstrated to the satisfaction of the Council (acting reasonably) that compliance with the said covenants would occasion an event of default, or would have a material adverse effect on the business, assets, or financial standing, of the Parent or the Group, or any member of the Group, or their ability to perform their obligations under the Loan Agreement, any Refinancing Agreement, or any other finance document. It would be for WHG to prove if this is the case in the event that such an issue arose.

The Council must consider all reasonable advice issued by the Homes and Communities agency (HCA) concerning the governance of all classes of Registered Social Landlords according to Schedule 6th Schedule Part 2 of the Principle Agreement.

The proposals to change the governance arrangements would significantly reduce the Council's ability to influence the membership of the Whg board of directors, and dilute their voting rights in Annual General Meetings or other Special Meetings. The proposals also mean that Whg tenants would be prohibited from directly nominating tenants representatives onto the board of directors via the five Local Committees.

It may be prudent for the Council to consider whether there are any alternative proposals which would allow Whg to meet the HCA Governance Standards, without weakening the Council's ability to influence board membership, or that of Whg tenants via the Local Committees. It is recommended that all options are explored fully before the Council determines whether to agree or refuse Whg's proposals.

Citizen impact:

Local councillors are elected to represent the interests of local people in Walsall. Acceptance of the proposals would mean that the Council would no longer be able to stipulate which three local authority representatives are nominated to the Whg board. There would also no longer be an automatic right for five tenants to be nominated to the Whg board via the five Local Committees.

Although the proposals would allow Councillors and Tenants to apply for a board position via an open recruitment process, there is no guarantee that they would be successful in becoming members of the Whg board in the future. It is possible therefore that the views of board may not adequately reflect the needs of local people and tenants.

The Homes and Community Agency is required to regulate Registered Providers. If

no changes were made to the governance arrangements, the Whg board would not meet the standards set out by their regulator. If Whg are downgraded by their regulator they are likely to experience problems in obtaining future finance for development. The proposals would also require all board members to evidence that they have the right skills-set needed to manage the organisation appropriately. It is possible that recruiting a board of directors based on their skills could enhance the ability of the organisation to meet the needs of tenants and local people.

Environmental impact:

No environmental implications

Performance management:

No Performance Management implications.

Equality Implications:

An Equality Impact Assessment is currently being undertaken by Whg and Council Officers have been advised that this will be made available to Councillors prior to the Council meeting on 11th January 2015.


Consultation:

Whg are currently undertaking a programme of consultation which includes:

- Engagement with councillors and other stakeholders at an event on 4th November;
- Presentations to all 6 Area Panels during November and December 2015;
- Drop in session for councillors on 16th November 2015;
- Presentation to Corporate and Public Services Overview and Scrutiny Committee on 25th November 2015;
- Engagement with existing board members and the five Local Committees.


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1. Report

1.1 Regulatory requirements and Governance Review

1.2 Whg is a registered provider (RP) and is regulated by the Homes and Communities Agency (HCA). The Regulator requires Whg to comply with:

- Standards set out in the Regulatory Framework, which includes a Governance Standard; and
- A recognised code of governance. Whg has adopted the National Housing Federation (NHF) Code of Governance, which has been adopted by many other RPs.

1.3 As required by the NHF Code, Whg commissioned an independent governance review carried out by Campbell Tickell, which concluded that:

- Board and committee members should be selected based on their skills and attributes, with no nominations or elections from outside bodies;
- local authority voting rights should be reduced'

1.4 The HCA is the regulator of social housing under Housing and Regeneration Act 2008 (as amended).

1.5 Registered providers of social housing in England must meet the regulatory standards which are either classified on the HCA website as either 'economic' or 'consumer' related. The Governance and Financial Viability Standard ('G&F') is economic and must be complied with by WHG. (The economic standard does not apply to local authorities). The G&F is set by the HCA under Section 194(1) of the Housing and Regeneration Act 2008 (as amended). HCA are charged with ensuring that the G&F amongst other standards have been met by Registered Providers of Social Housing. WHG need to adhere to the HCA Standards in the Regulatory Framework which includes the G&F.

1.6 WHG state in the 21st July 2015 letter that if the proposals are not agreed to it may lead to non compliance which may lead to downgrade of WHG regulatory grading which may in turn impact negatively on their reputation and damage their ability to secure future funding.

1.7 Legal services have recommended that alternative proposals are explored to establish whether the requirements of the HCA G&F can be met without diminishing the Council's power to influence board membership.

1.8 The Council is required to consider all reasonable advice issued by the housing regulator concerning the governance of all classes of Registered Social Landlords according to Schedule 6th Schedule Part 2 of the Principle Agreement.

1.9 Whg and Council officers have discussed alternative arrangements such as the Council retaining its powers to nominate to 3 board members and retain the block voting rights, but agreeing that all our nominees must meet the new Skills Matrix

so that it can be demonstrated to the regulator that Whg have a fit and proper board. Whg have stated that this would not be a suitable alternative, as the aim of their governance review is to achieve an appropriate degree of independence which could not be achieved whilst the Council still has the same level of voting rights, and retains nomination rights to the board of directors.

2.1 Summary of Proposals to Board of Directors and Company Membership

2.2 Currently the Council is a member of the Whg board and has one third of the votes, the other two voting groups are the Independent board members and the tenant board members (who each have one third share of the votes too). The Whg proposal means that the Council would remain a member, but would only have one share of the vote. Other Members would be Board Directors, who would be appointed through an open recruitment process and matched to a skills matrix. Each Board Director has a vote. This would mean that the total number of members would equal the Council plus each Board Director, so if there were 8 Directors the number of Members would be 9, and so in this example the Council would have 1/9th of the vote.

2.3 At the moment the Council nominates up to 3 board directors. There are a minimum of 7 board directors and a maximum of 13 directors, which includes up to 5 tenants nominated by the Local Committees. The Whg proposal is that the board is reduced to between 7 and 12 members (including co-optees), and that all directors are appointed based on skills and experience, with no places reserved for council or tenant nominations. Whg's Chief Executive would also be appointed as a board director.

3 Implications of Proposals to Board of Directors and Company Membership

3.1 By accepting the new proposals the Council will be:

- Losing its decision making power on the Board of Directors and therefore its ability to influence day to day decisions delegated to the Board;
- Significantly reducing its decision making power as a Member of the Company i.e. other decisions that cannot be delegated to the Board (such as appointment of Board Members at the Annual General Meeting).
- Currently the Council Member may demand a Poll but via the new proposals this may not be available to the Council

3.2 Article 3 of the agreement provides that subscribers to the M&A of WHG and such other persons as are admitted to membership shall be Members of WHG. Currently the Council does not have to be approved to be a Member. Via the new proposals the Council Member will not be automatically admitted as Member of WHG. This may/will diminish the Council's decision making powers as a Member further if not completely.

3.3 Article 29 provides that 'Not more than three Board Members may be local authority persons'. Via the new proposals the Council will not have the automatic 3 Board Member appointment. Please see advice in Article 17 above for the implication

4 Implications of Proposals to Local Committees

4.1 There are 5 local committees whose membership includes tenants, and the Council has the right to nominate a local councillor to each committee. Each committee nominates one of its tenants for appointment to whg's board. These arrangements will be replaced by a new customer Services committee, which will have an open recruitment process with appointments based on skills and experience required. There will be no nomination rights for tenants. There will also be opportunities for customers to be involved through the creation of a Customer Scrutiny Group, which is currently being developed in consultation with customers.

4.2 Article 38 in the M&A itself provides that Board may appoint 1 member to each Local Committee. Article 37 states that the Board may delegate any power to any committee in Article 38. Via the new proposals WHG have proposed to disband the Local Committees. There is a risk that tenant representation and influence on whg policy and practice may be reduced, however whg intend to mitigate and improve tenant engagement through its proposal for a new Customer Services Committee.

5 Impact on the Council's obligations to meet statutory obligations

5.1 WHG are bound by contract to perform specified statutory duties that transferred to WHG in housing transfer. The Principal Agreement provided that the Council and each of the named trusts must enter into a Nomination Rights Deed for the purpose of enabling the Council to fulfil its Statutory duties to the homeless and those in housing need.

5.2 The Nomination Rights Deed summarises the statutory duties and powers under specified relevant Acts and the specific nomination rights. WHG agreed to assist the Council to perform its duties under the specified legislation.

5.3 Each Company grants to the Council the right to nominate nominees for the housing as tenants provided always that the Council's right to make nominees under this deed shall extend to two out of every four dwellings

5.4 Schedule 18 Part 1 of the Principle Agreement contains a Partnership Agreement between the Council and WHG, setting out many obligations, some of which relate to joint objectives towards achieving the Council's policies.

6 Board member remuneration

6.1 The Governance review recommended that Board members should receive payment in future. The details of this proposal are currently being considered by whg.