

**Walsall Housing Group governance proposals**

**1. Report detail**

- 1.1 Walsall Housing Group (whg) has requested the approval of Council to make changes to their Memorandum and Articles of Association as follows:
- reduce the Council's member voting rights at General Meetings of whg, from 1/3<sup>rd</sup> of the vote, to between 1/7<sup>th</sup> and 1/12<sup>th</sup> of the vote dependent on board size
  - reduce the size of the board to between 7 to 12 directors, which will include the whg Chief Executive as a non voting director
  - remove the Council's right to nominate to 3 board director positions,
  - disband the five local committees, resulting in the removal of nomination rights of 5 tenants to the Board
  - introduce board director remuneration, subject to the consent of the Charity Commission.
- 1.2 whg state that the proposed changes are necessary to meet the requirements of their regulator (Homes and Communities Agency). They are required to comply with a Governance and Viability Standard and adopt a recognized Code of Governance. whg have adopted the National Housing Federation Code of Governance, and they have commissioned an independent governance review by Campbell Tickell. This review concluded that board directors should be selected based on their skills and attributes, with no nominations, and local authority voting rights should be reduced. whg state that if the proposals are not agreed to it could result in the downgrade of whg's regulatory grading which may in turn impact negatively on their ability to secure future funding.
- 1.3 These changes will mean there will not be any reserved positions on the Board for either local authority representatives or tenants. In future all board director positions will be appointed through an open recruitment process based on skills and suitability for a board director position. All board directors, both current and future, will be expected to act independently, taking all decisions in the best interests of whg, in the same way as any other board director.
- 1.4 whg have proposed new arrangements for engaging with customers, including a Customer Services Committee and Customer Scrutiny Panel. In addition, they are also exploring and implementing a variety of ways to increase engagement opportunities for local councillors.

- 1.5 This request was presented to Corporate and Public Services Overview and Scrutiny Committee on 25<sup>th</sup> November 2015. Scrutiny received separate reports from whg and Council officers, which are attached at Appendix A and B respectively. Scrutiny recommended that Council were made aware of the details of the discussion held at that meeting, which is attached at Appendix C. As a result of the Scrutiny process, the whg Board has subsequently resolved to increase the level of local and customer knowledge required by board directors. At least one board director will need to be an expert on local and customer knowledge, with the majority of the board having good knowledge of these issues and all of the board having a working knowledge. In addition, whg have agreed to the Council having an involvement in future board director appointments, and the Council will be invited to nominate a representative to be a member of the recruitment panel to recruit new board directors.
- 1.6 Further to the Scrutiny report, whg have completed an Equality Analysis Assessment on the governance proposals, which identified:
- Direct recruitment rather than nomination appointments offers greater scope to achieve a diverse board. whg will embark on a proactive recruitment process targeting a wide diversity of potential applicants.
  - A focus on skills may mean that fewer customers are recruited. whg will establish enhanced customer involvement pathways, encourage customer participation, and support customers with training and capacity building.
  - Payment to board directors would have an overall positive effect, but also could have a negative impact for those on benefits. whg will provide advice to existing and potential board directors on how payments may affect them.

## **2. Recommendations**

- 2.1 That Council give consideration to approving the change of governance arrangements proposed by whg, as set out in this report.

## **3. Legal Implications**

- 3.1 The Council's consent is required to changes to whg's Memorandum and Articles of Association, both as Council Member in accordance with the Articles of Association of whg and in accordance with the 6<sup>th</sup> Schedule Part 2 of the Stock Transfer Agreement dated 22<sup>nd</sup> March 2003. The 6<sup>th</sup> Schedule Part 2 of the Stock Transfer Agreement dated 22<sup>nd</sup> March 2003 contains the following covenant given by whg to the Council:

**"PARENTS MEMORANDUM AND ARTICLES OF ASSOCIATION** Not to change the Memorandum and Articles of association of the Parent so far as they relate to the Parent's objects and powers and to local authority or tenant

representation without the Council's prior consent in writing such consent not to be withheld or delayed in relation to all reasonable advice issued by the Housing Corporation concerning the governance of the classes or Registered Social Landlords **PROVIDED ALWAYS** and it is agreed by the Council that, where the Council shall have given consent in writing to such a change to the Memorandum and Articles of Association of the Parent, the Council, in its capacity as a member of the Parent, shall vote in favour of that amendment at the relevant General Meeting of the Parent"

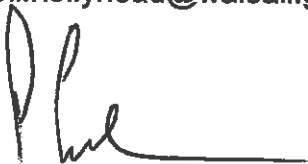
- 3.2 If consent is not given by the Council as a member of whg to any proposed changes, the necessary Special resolution required to effect such changes cannot be passed by the members of whg.
- 3.3 If any of the proposed changes are agreed, the Council, in its capacity as a member of whg, shall vote in favour of the amendment at the relevant General Meeting of whg.
- 3.4 It is important to note that the Council must consider all reasonable advice issued by the Homes and Communities Agency (HCA) concerning the governance of all classes of Registered Providers according to the 6th Schedule Part 2 of the Principle Agreement.

**Author**

Neil Hollyhead, Senior Housing Strategy Officer

☎. 01922 655411

neil.hollyhead@walsall.gov.uk



**Paul Gordon**

Head of Business Change

Tel: 07792920257

Email: Paul.Gordon@walsall.gov.uk

## **CORPORATE AND PUBLIC SERVICES OVERVIEW AND SCRUTINY COMMITTEE**

**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.

#### **Contact Officer:**

Gary Fulford, Group Chief Executive whg  
 01922 426300  
[Gary.fulford@whgrp.co.uk](mailto:Gary.fulford@whgrp.co.uk)

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

**25<sup>th</sup> November 2015**

**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 11<sup>th</sup> 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 11<sup>th</sup> 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 21<sup>st</sup> 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 11<sup>th</sup> January 2015.

**Consultation:**

Whg are currently undertaking a programme of consultation which includes:

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

**Contact Officer:**

Elise Hopkins, Systems Leader (Head of Service) – Money, Home, Job

☎. 01922 650968

[Elise.hopkins@walsall.gov.uk](mailto:Elise.hopkins@walsall.gov.uk)

Neil Hollyhead, Senior Housing Strategy Officer

☎. 01922 655411

[neil.hollyhead@walsall.gov.uk](mailto:neil.hollyhead@walsall.gov.uk)

## **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 21<sup>st</sup> 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 6<sup>th</sup> 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 1/9<sup>th</sup> 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.

### **Note of discussion from the Corporate and Public Services Overview and Scrutiny Committee when considering proposals to change Walsall Housing Groups governance arrangements**

At its meeting on 25 November 2015 the Corporate and Public Services Overview and Scrutiny Committee considered proposals from Walsall Housing Group (WHG) about amending their governance arrangements.

The meeting was attended by the following representatives from WHG:

Paul Murray – Chairman of the Board

Gary Fulford – Chief Executive

Linda Cole – Tenant Board Member and WHG customer

Karen Marshall – Governance Manager and Company Secretary

The Committee held a long question and answer session with the representatives of WHG. The following is a summary of the questions by theme along with a summary of the answers reported at the meeting:

#### *Why are these changes being proposed?*

The Committee were told that the changes were proposed following an independent governance review. The recommendations would ensure that WHG met the governance guidelines set out by the Homes and Communities Agency (HCA). The HCA regulated and funded Registered Providers (RPs).

It was explained that, nationally, some RPs had got themselves into difficulties. HCA investigations had shown that ineffective Boards were often the cause of these problems. Therefore they were keen to see changes across the country in the make-up of the Boards of RPs. The HCA wanted to increase skills and professionalism on the Boards of RPs.

#### *What will happen if the changes to the governance arrangements are not approved?*

It was explained to the Committee that the Homes and Communities Association could force a merger with a larger RP.

#### *How will the views and needs of local people be taken into account under the new proposals?*

Members were informed that the proposals would maintain the customer at the heart. A customer services committee and a tenant scrutiny committee would be established to engage tenants in positive roles. The two committees would be able to make reports and recommendations to the Board. A customer network would feed into the two committees.

Enhanced methods to engage Councillors would be developed. Councillors would be welcome to visit WHG at anytime and the organisation would be prepared to send representatives to Councillor surgeries if requested.

*Do tenants understand they are losing decision making powers?*

The Tenant Board Member explained that the impact of the changes were fully understood by tenants. She explained that there had been difficulties in the past in recruiting tenant board members. She added that tenants like the idea of a tenant scrutiny committee and felt that they would still have a voice under the new proposals.

The Committee were keen that, should the proposals be implemented, the WHG Board saw the tenant committees as critical friends and were receptive to their reports and recommendations.

*Can changes be made to the governance proposals and the council maintain its voting and board member appointment rights?*

It was explained that the HCA guidance did not allow Board places to be reserved. Councillors had the right skills to be considered as Board Members but would be required to apply and be interviewed through competitive interview under the proposals. A skills matrix would be developed to ensure that the Board was made up of individuals with the right mix of skills and experience.

Members were concerned that the Council and WHG could become disconnected. Currently the two organisations were good partners and Members wanted this to continue.

*Will WHG lose sight of Walsall and seek to become a national housing provider?*

Members were reassured that with 20,000 homes in Walsall, along with its Headquarters, it would be difficult for the organisation to ever lose sight of the borough. WHG already had a small amount of housing stock outside Walsall.

An understanding of the borough would be a part of the skills matrix used to select new board members.

*How will WHG ensure a diverse board is appointed?*

The Committee was told that the current board was not representative. One of the causes of this was the current appointments process and 8 of the current board were appointed either via the Council or tenant committees. The changes would allow a more representative board with vacancies targeted where there were gaps.

Members were concerned that the proposal to pay board members would prevent tenants that received benefits from applying to sit on the new board. It was explained that the remuneration was not a significant amount of money.

### *View of Deputy Leader and Portfolio Holder for Economy, Infrastructure and Development*

The Committee sought the views of the portfolio holder for economy, infrastructure and development. He explained that he was supportive of the proposals. He saw it as the next stage in the development of WHG in line with HCA guidelines.

### *Systems Leader – Money, Home, Job*

Members asked for advice from the Systems Leader (Money, Home, Job). She advised the Committee that the proposals were in line with HCA guidelines that recommend RPs manage themselves. The guidance also suggested that board members must have the required skills. Nominated members were permitted.

### *Conclusion*

The Committee were in agreement that since its creation WHG had played a positive role across Walsall and its achievements were recognised. Whilst Members understood the rationale for the proposed governance changes there was a general feeling that it would be a 'leap of faith' to agree them.

Members noted that the decision would be taken by Council and requested that a note of the discussion that took place at the meeting be prepared for information.