

NHF Code of Governance Review

16 March 2020
Via email

Dear Paul,

NHF Code of Governance Review

On behalf of The Chartered Governance Institute (the Institute) I am pleased to provide feedback on the NHF Code of Governance review.

The Institute is the international professional body for governance, with more than 125 years' experience and with members in all sectors. Our purpose is defined in our Royal Charter as 'leadership in the effective governance and efficient administration of commerce, industry and public affairs' and we work with regulators and policy-makers to champion high standards of governance, providing qualifications, training and guidance.

We are the professional membership and qualifying body supporting chartered secretaries and governance, risk and compliance professionals in all sectors of the UK economy. Members are educated in a range of topics including finance, company law, administration and governance, which enables them to add value to any organisation.

The Institute has an extensive pedigree in the governance arena, advising governments and regulators on company law, charity law and governance issues. The breadth and experience of our membership enables the Institute to access a variety of applied experience in order to provide insights into effective practices across a range of organisations. Our wealth of expertise and experience has informed our response.

General comments

Good governance is not an end in its own right and it is only appropriate that the NHF Code is reviewed regularly to ensure it continues to reflect good governance practice. That practice should be drawn from both inside and outside of the sector to ensure the provisions adopted further stretch those institutions in a position to develop their governance arrangements while not leaving other institutions behind. The Institute therefore urges you to look at other governance codes and standards to develop a revised code that best suits the needs of the sector and its future governance challenges.



Specific questions

The Institute has limited itself to responding to those questions pertaining to principles of good governance and we have detailed those questions and our responses below.

Q8. Do you think there is an understanding of what governance is, and the purpose of good governance for housing associations, amongst tenants, residents and other interested parties?

In general, governance literacy can be limited amongst those that are not already exposed to it as part of an established board, governing body or management committee. This situation can be exacerbated when discussions about the differences between governance and management are nuanced and seen as irrelevant. Arcane terminology and overly complex definitions can further cause confusion. As such, governance being introduced initially as 'the way an organisation is directed and controlled' can help the uninitiated to understand what it is and how it delivers for users and wider society.

Q9. How should the Code of Governance address the issue of overall accountability?

The issue of accountability is growing in interest and will not recede overnight. It is also an issue that can mean different things to different stakeholders. Consequently, the board of any organisation is required to spend more time identifying its stakeholders and the key issues and priorities of each. Accountability will therefore take on many forms and the organisation will have to commit resources to ensuring each significant group is engaged with meaningfully, and the board held to account in a proportionate but effective manner.

These measures also have to be balanced with legal and regulatory requirements and the need to use resources effectively. Ultimately, the board will be held to account by the regulator which has the stronger powers, but stakeholder dissatisfaction can play an equally influential role in changing behaviours and direction.

A clear, written accountability framework (linked to the stated objects and aims of the organisation) published and widely available (in a range of formats) will help stakeholders understand how the board is held to account and their role in that process.

Q10. To which people and bodies should governing bodies be accountable?

To some degree the governing body should be accountable to all parties which interact with the organisation and the wider public who will have an opinion on the way housing associations should operate and behave, including in areas of safeguarding, climate change and environmental sustainability. The more relevant question is one of what balance and proportionality is required to deliver meaningful accountability to those different stakeholders while ensuring resources are used effectively. That is likely to be a question that only individual boards can discuss and decide in relation to their own circumstances.

Q12. Organisations that sign up to the code are expected to report against it annually. To whom and in what way should this information be reported?

The audience for such annual reports is likely to be divided between those that use the reporting formally and informally. Formal users are likely to be regulators, auditors, those lending the organisation money and others undertaking due diligence ahead of any formal working



relationship. Informal users will be those with an interest in the performance of the organisation, and can include tenants (existing and future ones), other providers, the public with a specific interest (such as those affected by a proposed or existing development), staff and potential staff or others looking to engage with the organisation.

It may well be appropriate for reporting to take different approaches to meet the needs of each kind of user. A dedicated section on a website is one step to help disseminate relevant information to a range of stakeholders – from the mildly interested to those with a more dedicated need for information. The regulator, auditors and lenders will be more specific about their reporting needs.

Q13. Should the Code of Governance require organisations to demonstrate how they have complied with it?

Yes, otherwise the ‘comply or explain’ approach is rendered ineffective.

Q14. The ‘comply or explain’ approach has been widely adopted in UK corporate governance, and it is the approach adopted by the current Code of Governance. It is an approach which recognises that there may be sound reasons for non-compliance with the Code of Governance. It obliges organisations to be transparent about their rationale in coming to that view. An alternative to following a provision may be justified, for example, if it is still judged to achieve good governance. Do you think that the current ‘comply or explain’ approach used by the Code of Governance should continue to be used?

Yes, although it could be argued that the ‘comply or explain’ approach has morphed into ‘comply *and* explain’ as those with an interest in governance demand more meaningful information about how an organisation is run, whatever the sector.

Good governance approaches should not be seen to encourage a ‘tick-box’ mentality as it does not necessarily lead to robust and effective governance. The added value comes from a board discussing the governance requirement and its application to the organisation. The discussion will take into account the specific circumstances the organisation faces and should deliver an approach that is more proportionate and effective for the organisation. The discussion will therefore help to inform the rationale provided to stakeholders as to why they have taken a different approach to a particular governance issue.

Q16. Do you think the principles laid out above are the right ones? Do they adequately reflect the changing environment, the challenges facing the sector, and current best practice?

It could be argued that 11 principles are too many and that some could be combined to reduce complexity and add value. It should be borne in mind that many governance failures stem from the behaviours of those involved or organisational culture. These are facets that need to be marbled throughout the updated Code.

The review might want to consider the growing importance of ESG (environmental, social/sustainability and governance) matters in other sectors and incorporate those aspects relevant to the housing sector within the revised Code. In addition, principles relating to the use of big data, digital and privacy might be worth considering.



Q17. Following the tragic fire at Grenfell Tower in 2017, greater profile has been given to issues of health and safety within the sector. How should the Code of Governance reflect this?

The housing sector may draw some valuable insights and suggestions from the safeguarding failures in the charity sector, and the subsequent rise in the importance of safeguarding all those who come into contact with the organisation.

Doing things right and doing the right thing can be fundamentally different and so ethics, culture and behaviours must be given equal prominence to traditional hard governance measures such as policies, procedures and protocols.

Legal requirements should not be seen as 'optional extras' and a board not cognisant of their legal duties should know that ignorance is not a defence. The requirement for a governance professional and compliance expert might therefore be useful additions to the Code to help boards focus on their legal responsibilities alongside their strategic and ethical roles.

Q20. What potential conflicts of interest should the Code of Governance anticipate, and help boards resolve?

Conflicts should not just be limited to interests but also loyalty, and both should be included in the Code.

There will also be conflicts of priorities between different stakeholder groups. It is likely that a stakeholder map will be supported by a document which details the priorities of each group's interests with the regulator and tenants being at the top of that list. Others may then change in priority given the issues under review.

Q21. How should the code address housing association board and senior executive remuneration?

The approach taken within the UK Corporate Governance Code could be viewed as the 'gold standard' given the number of times it is replicated and adapted by other sectors. The need to adapt principles to best support the housing sector should not be underestimated, as a 'cut and paste' approach will not necessarily deliver the intended governance outcomes.

Q22. Should the code give guidance on ensuring that the needs of different stakeholder groups are met?

The Code should reference the need for the board to have due regard for the interests of different stakeholders, akin to s172 of the Companies Act. Further guidance could be supplied to help boards decide how best to fulfil those needs. For example the Institute has produced guidance on this matter which you may find of interest -

<https://www.icsa.org.uk/knowledge/resources/stakeholdervoice> and we would be happy to provide further insights if that would help in the development of the Code and any supporting documents.



Q23. Should the code set a limit on the number of external board positions a board member can hold?

‘Overboarding’ has been an issue within the corporate sector for some time. Linking the rise of that issue with the increasing responsibilities, and liabilities, placed on non-executive directors it might be sensible to suggest a limit on the number of board positions an individual can have. This may result in individuals demanding enhanced remuneration packages given the reduction in earning opportunities. However, increased remuneration will bring its own additional risks to manage.

Q24. Should the code set a requirement for the chief executive and/or other individuals to be a board member?

This is another governance issue that can cause a polarity of views within social purpose entities. Without wishing to rehash arguments for and against such moves, the Institute would urge the Code to focus on those mechanisms which will help to ensure the arrangements in place are effective and meet the needs of the organisation. The board should be regularly encouraged to review its board composition, including executive members, and record their rationale for their decision: what problems do executive members seek to resolve, has it had that desired impact, if not, why, and what should change if the underlying reasons are no longer relevant. In short, if executives are appointed to the board the decision should be reviewed regularly to ensure this still solves the problems identified.

Where an executive is a board member, the Code should be clear that their performance as a board member should be reviewed regularly (alongside the non-executives) and that this is different from appraisals as an employee of the organisation.

Q25. Should the code set a requirement to appoint a SID to the board?

Yes, the role can be very useful in wider stakeholder engagement, especially where the chair is viewed unfavourably by a particular group. It can also be a useful conduit for ensuring the relationship between the chair and chief executive remains functional.

Q26. What non-financial outcomes should the code require reporting on?

The social purpose of the organisation should provide key lines for reporting non-financial outcomes. These will be unique to the organisation but are likely to include the impact the organisation has had on achieving its stated aims. ESG factors might be one area which generates further non-financial reporting matters. Others could include government initiatives relating to gender pay reporting and potentially BAME pay gaps, anti-modern slavery processes including supply lines, and the commitment to net-zero targets in 2050.

Q27. How should the code address environmental and sustainability issues?

Along with the issues mentioned above, the sector might want to look at how the corporate sector is dealing with ESG reporting, or the Scout Association’s approach to implementing the UNDPs Sustainable Development Goals.





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I trust the above comments help with the development of the NHF Governance Code. Should you require any clarification or have questions, please do not hesitate to contact me directly.

Yours sincerely,

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