



**National Housing Federation consultation on Code of Governance
review**

First phase

G15 response

About the G15

The G15 is the group of London's largest housing associations. Our members house one in ten Londoners and own or manage more than 600,000 homes across the country. We're independent, charitable organisations and all the money we make is reinvested in building more affordable homes and delivering services for our residents. Each G15 member is different, but we're all striving towards the same goal – to solve the capital's housing crisis and improve the lives of Londoners.

<https://g15.london/>

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Code of Governance questionnaire

General questions 1

1. Which, if any, of these codes of governance is your organisation signed up to?

Nearly all of the current G15 members have signed up to the NHF Code of Governance (2015) and it is believed that the majority have also signed up to the NHF Code of Governance (2015) for subsidiaries within the Group.

2a. Do you feel the current NHF Code of Governance is fit for purpose?

The 2015 Code of Governance has certainly been useful in providing direction and flexibility to enable varying sizes and 'types' of housing associations to drive improvements in governance. This is evidenced by the application of the Code to subsidiaries as well as parent housing associations.

However, we believe that the current Code does not yet illustrate a comprehensive model for good governance to be adopted across the sector. A reviewed Code should set a clearer and overarching vision of what good governance looks like, providing a route map for housing associations to achieve high standards in governance. The FRC Code, the Charities code and the UK Sports code all have principles and recommendations that are applicable or could be adapted to housing associations which provide a stronger basis for governance.

We agree with the NHF that a refresh of the Code now provides a timely opportunity to ensure that accountability, trust and transparency needs are enshrined within housing association governance arrangements. Crucially, we agree that there is a need to broaden the requirements upon housing associations in relation to equality, diversity and inclusion into something which makes governance and decision making more representative of our residents and customers.

We note the proposed timetable of this review and ongoing consultation and would invite the NHF to ensure the final draft considers and is mindful of the forthcoming Social Housing White Paper.

[Please note the reference to 'tenant' in this response includes leaseholders and tenants equally]

2b. What needs to be addressed in order to make sure the Code of Governance is fit for purpose?

To support the Together with Tenants agenda, we believe the Code should be amended to include clearer requirements for Boards to take responsibility for transparency and involvement. We believe that this will incentivize strong leadership by boards and encourage them to both push these priorities and provide greater challenge to executive teams to deliver them.

In keeping with the Together with Tenants Charter, the revised Code should seek to be **simple and not prescriptive**, enabling housing associations to adopt local variations and different language according to the culture and needs identified by residents. The Tenant Involvement

and Empowerment Standard already requires Regulated Providers of social housing to ensure appropriate consultation, choice and engagement with residents on matters that affect them.

It is also critical to note that existing regulatory reporting and obligations on housing associations does not necessarily reflect the plethora of overlapping codes and regulators associations must now comply with. **Housing associations are moving into more diverse business models and regulated areas**, such as the provision of Care or leisure services, the revised Code must have sufficient 'flex' to recognize their diverse needs and different characteristics. The Code must enable housing associations to have regard to the appropriate requirements of the activity being undertaken, where the governance arrangements may better suit another Code for example.

Review of Part B – Constitution and Composition of the Board – Demonstrable diversity of thought, background and experience

Having **diversity of thought, background and experience** in decision-making makes for better decisions. There is a danger for housing associations in having too many people from the same background or with similar experiences not fully thinking through potential implications of decisions. Diverse boards address this but it is important this is not just box-ticking.

Requiring a 9-year maximum term ensures there is fresh-thinking on the Board, but an **active dialogue and review of the demonstration of skills and understanding** could be undertaken. The expectations of the Board appraisal process is a good area to seek to establish more guidance on expectation. Having an expectation of quality individual and collective contributions as well as engagement of the Board/Committee members with residents will ensure all Board members are actively involved in the organization's business outside of the Board room. Through that engagement they will more fully understand the tenants they represent.

Appraisals should give rise to a set of objectives or action points; noting that smaller housing associations may engage Board members on a voluntary basis, the Code must be careful not to be too prescriptive and risk putting prospective members off joining a Board. This is where the NHF could help smaller associations, running training programmes or workshops to enable improved governance and understanding of the role and expectation.

The question as to whether a **resident Board member** should be required has been considered historically, noting that it provides an opportunity to give a 'direct tenant voice'. Equivalent comparators include 2018 UK Corporate Governance Code requirement for a 'Senior Independent Director' (SID), providing independence and objectivity, or requirement for engagement with the workforce through one or a combination of a director appointed from the workforce, a formal workforce advisory panel, a designated non-executive director or other arrangements. We do **not** feel that requiring resident membership on the Board is the solution and rather would give rise to 'tokenistic' appointments. The skills, experience and make-up of the Board is critical in effective housing provision; the recruitment or development of the Board to meet requisite skills and experience must be the priority, not the residential status of an individual. Having said this, there are housing associations who have appointed residents to their Boards and/or are succession planning to enable such appointments. Ensuring that there are specific means by which the Board can reflect on and engage the diversity of the communities they work with in the way that suits that association is key; this helps to build trust in what housing associations do and say and makes it easier for those communities to engage.

This also fits with the stated aims of accountability, transparency and residents first. Amending the Code to require Board members to more specifically demonstrate and report on how they have achieved tenant involvement and empowerment will ensure appropriate focus and action is taken in achieving this aim. Involving residents in every layer of governance truly enables resident engagement and allows relevance in those matters.

Reviewing the current Code, we note the opportunity to bolster this 'requirement' under Part C, Essential Functions of the Board, Part H in relation to openness, but potentially a new Part, focusing on how the association:

1. Enables tenant choice
2. Responds to tenant complaints
3. Involves and empowers tenants
4. Understanding and responding to diverse needs

This should also support the expected aims of the forthcoming Social Housing White Paper.

Finally, organisations should be asked to publish performance on diversity in their financial statements and annual reports, covering all aspects, including gender, race and disability and put them on their website.

As an example, the Sport Code states: "The Board shall ensure that the organisation prepares and publishes on its website information (approved by the Board) about its work to foster all aspects of diversity within its leadership and decision making, including an annual update on progress."

Reporting & Improved Explanation

Recognising the UK Corporate Governance Code 2018 guidance and the FRC Guidance on what constitutes an explanation under 'comply or explain'¹ this should not necessarily rest upon a question of more disclosure but of better-quality disclosure. It is important to report meaningfully on how the Code is being complied with, avoiding boilerplate reporting. The focus should be on how the essential functions or revised Code provisions have been applied, articulating what action has been taken and the resulting outcomes. Signposting and cross-referencing to the annual report or corporate strategy which should describe how the functions or requirements have been identified, developed or applied will ensure accountability but also transparency.

Stewardship of Tenants

Clearer and more specific expectations on housing associations should also be applied to tenants; the recommendation to an association of engaging in some form of tenant charter to ensure residents understand the expectations on them is a means by which true mutual stewardship of social housing assets could be achieved.

¹ *What Constitutes an Explanation under 'Comply or Explain'?* Report of Discussions between Companies and Investors (2012) FRC, [available here: <https://www.frc.org.uk/getattachment/a39aa822-ae3c-4ddf-b869-db8f2ffe1b61/what-constitutes-an-explanation-under-comply-or-explain.pdf>]

3. How could we improve the guidance which accompanies the Code of Governance?

The guidance is and has been helpful, but we would suggest it offer greater clarity about the required outcomes 'look like' with reference to more and more detailed examples.

Further, the 'what's changed' sections which refer to the previous version of the code, date it. They are not relevant to the review and adoption of the code in its own right and so we would suggest any guidance as to amendments made, sit in a standalone document for those who wish to deep dive or undertake a comparison, having adopted the previous version of the Code.

The 'useful resources' at the end of each section is helpful but again dates the guidance. It would be helpful for the NHF to review and update these reference materials more regularly perhaps through a link on its' website rather than in the guidance text itself.

4. How do you think best practice in governance should be reflected in the new code?

There are certain key other Codes of Governance which are considered for adoption by housing associations when considering their position, namely the 2018 Corporate Code of Governance and Charity Governance Code. These both adopt a model of high-level principles, supported by provisions or expected outcomes/recommended practice. This model is visible in other regulatory codes (Solicitors Regulation Authority Code of Conduct for Solicitors, International Code of Ethics for Professional Accountants, etc). We would recommend:

- The revised Code reflect relevant principles from other best practice codes (the Corporate Code),
- But also follow the approach of Principle with expected Outcome approach, providing necessary clarity identified as needed while not being prescriptive.

5. Are you aware of any practical measures which housing association boards can take in order to ensure the board, and the organisation's senior team, reflect the diversity of the tenants, residents and communities they serve?

Yes – see below. Please also note the references and suggestions as to stewardship of Board members and 'Tenants' given in the answer to question 2 above.

Please specify

Local and collection review and action – development and cultural changes

Members of the G15 have confirmed that they regularly compare the demographic characteristics of their governance structure and senior teams against those of the communities in which they operate and seek to address any identified 'diversity gaps' by targeting recruitment at under-represented groups. This isn't just restricted to Board and Exec team but also to committees and subsidiary boards. In the past this has taken the form of:

- setting aspirational targets to increase the number of BME, female and disabled employees shortlisted for senior positions
- ensuring we shortlist at least one candidate from under-represented groups when recruiting to management-level positions
- joining diversity networks and promoting jobs on specialist job boards

A number of G15 members are also part of the Leadership 2025 initiative. As a result, and as part of the commitment to the 5-point plan, engaged housing associations:

1. Report annually on key diversity statistics,
2. Set aspirational targets to seek to encourage and address any cultural (conscious or unconscious) issues within the association or sector,
3. Interview more diverse pools of candidates adopting the Rooney Rule for example,
4. Develop the leadership pipeline through succession planning to senior roles and establishing corporate development programmes,
5. Lead by example to ensure the cultural shift that is needed, not just the approach of 'supporting the individual'.

Procurement and using the supply chain

Housing associations often achieve significant success in engaging their contractors to be transparent on and commit to diversity information and measures. However, after the procurement exercise is complete, ongoing review or control over the diversity of the supply chain tends not to be maintained. Housing associations have a significant influence over their supply chains and ensuring this is exerted to support diversity and inclusion will ensure that the sector continues to reflect the communities served.

Practical measures to ensure adoption and maintenance of such arrangements could be the requirement to ensure there is a framework of control and monitoring over diversity and inclusion arrangements considered necessary and appropriate on contracts over a certain value or of a certain type. This should not be prescriptive but for the housing associations to determine, recognizing the ability for associations to carry out equality impact assessments or adopt other toolkits to enable local issue identification and variation to meet community needs.

6. What are the main issues that need to be addressed in a revised code in order to make it work well for group structures? Can you provide examples?

In keeping with the responses above, recognizing the increasing diversification of housing associations and their business models, it is important not to be prescriptive over what requirements apply to parents as to subsidiaries. It may be that the parent and subsidiaries need to adopt different approaches and/or enable delegations between the subsidiaries to meet the business and/or regulatory requirements of that activity. Further, it will be for that association to best understand the requirements of their group and Boards.

As such, we would encourage there not to be a presumption that the Code apply equally to the parent as to the subsidiaries and where there is such an expectation, this be clarified.

7. What are the main issues that need to be addressed in a revised code in order to make it work well for joint ventures? Can you provide examples?

As above for question six, flexibility to enable appropriate arrangements to be adopted to meet entity needs, but also clarity where the application of provisions to the parent and joint venture would be expected. Joint ventures will fall farther outside of housing associations governance arrangements and may have competing governance codes to take into account. Care must be taken to not undermine those contractual relationships through any intra-group governance expectations.

General questions 2 - Accountability and reporting

8. 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?

Yes - Through the IDA process and governance rating, the understanding and importance of governance has become more pronounced. It is a core principle of the existing code that the Board / association ensure appropriate governance and compliance and therefore understand it and its' purpose. The information available to the Board/association is equally available to tenant and other interested parties.

How tenants, residents and other interested parties interpret these findings is difficult to assess. But this should not necessarily be a relevant factor in that compliance assessment; the focus should be on ensuring residents can engage and comment upon matters that affect them.

If there were to be a change in the requirements, it would be helpful for the NHF to issue appropriate guidance to support tenant and stakeholder understanding.

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

Please see answers to question 2.

The code should seek to avoid being a tick-box exercise and ensure clear, meaningful reporting to stakeholders such as through the suggestions of further focus on an 'Improved explanation' position and stewardship.

10. To which people and bodies should governing boards be accountable?

To residents, staff, the Regulator and other third parties with an interest in the organisation e.g. lenders.

Critically also to itself, individually and collectively, visibly holding itself to account as it is best placed to understand its' obligations and area where focus is needed. Being able to demonstrate such challenge (alongside challenge to the Executive) is relevant in respect of the focus on accountability, trust and transparency. An explicit expectation of such in the revised focus could seek to enable a change in the Culture of Boards and ensure that Boards consider its activities over time but also against its peers.

Finally, to the sector more generally although practically we do not suggest this be specified in any particular way, rather a move in respect of the outlook and culture of housing associations to identify with and recognize the need for diversity. Recognizing the impacts that the activities of one housing association may have on the sector position considering recent developments (fire remediation activities and following the Grenfell tragedy) is important so that housing associations work together to protect social housing assets.

11. Are you aware of any good practice in governance that particularly focuses on accountability to residents?

Yes

Please specify

Optivo, Network Homes and One Housing have offered to provide further information on their resident governance structure as needed.

Network Homes has recently adopted a 5th strategic objective on openness and transparency and resident engagement is at the core of this work. All policies are published to residents and resident consultation is considered throughout our decision making and assurance frameworks. Objectives and measures for the 2020/21 year are being finalized and we would be happy to share these with you in due course.

12. 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?

We feel that the current means are appropriate; reporting to the Board and through financial statements suffice. The new model should be similar to the current checklist, but ideally more concise (as the current checklist is long).

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

Yes – see response to question 2 on the ‘Reporting and Improved Explanation’ suggestion.

14. The ‘comply or explain’ approach has been widely adopted in UK corporate governance, and 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 – but please note the suggestions above under question 2 in respect of further accountability on the board and transparency through further explanation.

15. How do you think information on an organisation's governance can be made as accessible and understandable as possible to any people who wish to access such information?

It should feature prominently on an organisation’s website and in its financial statements in keeping with the ‘explain’ position. There should be transparency on how and when ‘tenants’ are engaged and the effectiveness of that engagement. As referenced above, appropriate guidance should accompany this from the NHF but also as appropriate from the association (for the association to determine how and what this looks like, led by their residents and communities).

Principles of good housing association governance

In setting out the principles below, we have drawn from those in the 2015 Code of Governance and sought to strengthen and enhance them.

Clarity of purpose: *The board is clear in its role and purpose in setting strategic direction and defining the culture of the organisation.*

Ethics: *The board operates to high ethical standards, explicit values and appropriate codes of governance and conduct.*

Accountability: *There is full accountability to, and involvement of, residents and other stakeholders. Particularly – and where appropriate – in making decisions that affect residents' homes and communities.*

Residents first: *The board acts in a way that empowers residents and facilitates a strong relationship between the organisation and its tenants, residents and service users.*

Transparency: *There is an active and open approach to communicating governance decisions and activities. Full and frequent disclosure of governance matters and other significant information is standard practice.*

Ambition: *Opportunities are actively identified and reviewed considering the need for sustained organisational success.*

Equality, diversity and inclusion: *There is a fairness of equality and opportunity and an active demonstration of diversity in all aspects of the organisation's governance – people, roles and approaches.*

Review: *There are formal processes for the periodic review of the board's own performance and decision-making, which actively encourage scrutiny by residents and service users.*

Clarity: *There is clarity of roles and responsibilities and an appropriate division of responsibilities between the organisation's board members and staff.*

Control: *There is an effective approach to audit, risk management, internal control and financial oversight.*

Structures: *There are effectively resourced staff and committee structures to support the organisation's ambition.*

16. 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?

Mostly yes, although there are a few things which might be added, clarified or amended:

- In common with the Corporate Code, the Accountability principle should additionally mention engagement with staff
- The Residents First and Transparency principles could be re-worded so there is greater read across between the equivalent requirements in the Transparency Charter
- The Ambition principle is a little ambiguous – it is unclear what kind of opportunities are imagined
- The Review principle should mention the need for continuous improvement rather than simply ongoing reviews
- Equality diversity and inclusion could go further to seek to achieve diversity of thought, background and experience as well as the protected characteristics under the EA 2000 (see answer to question 2).

17. Are these principles described in a way that is useful and clear?

See comments above

Please suggest ways in which they could be improved

See comments above

18. Are there any additional principles that should be included?

Yes – please see answer to question 2 and below

What are they?

These are not necessarily additional principles, but should nonetheless be referenced:

- The Board's role, its alignment to the organisation's culture, the active accountability of the Board individually and collectively
- Remuneration – to reflect public concern on pay
- Co-creation / Stewardship – the principle of staff working in genuine partnership with residents to co-create solutions/services and residents understanding their role as tenants with a view to protecting social housing assets. Please also note the answer to 18 below in relation to how 'tenants' must equally act to meet their obligations when housing associations are doing all that is required of them and are reliant upon tenants reciprocating.

Specifics of the Code of Governance 1

19. 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 new Code should be aligned with any new consumer standards emerging following the Government's social housing white paper while recognizing the need for flexibility and housing associations to lead their arrangements subject to regulatory / legal requirements.

Housing associations are currently facing significant issues and costs associated with building remediation. We are prioritizing the health and safety of our residents but recognize that when/if costs are transferred onto leaseholders through the section 20 process, they may refuse to pay. This will give rise to further issues hindering our ability to carry out necessary activities which are fundamental to preserve the health and safety of 'tenants'. Although there are clear remedies for associations in this position, we would invite the Code to note the obligation on housing associations and 'tenants' alike to protect and preserve health and safety (referring to the stewardship principle referenced in the answer to question 2) and that housing associations can only do all that is reasonably practicable (judged at their discretion) in light of recent issues and developments. Otherwise, housing associations risk being held to account for non-compliance with the code despite best efforts.

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

These will be specific to each organisation – the Code should continue to require organisations to capture and manage conflicts.

Specifics of the Code of Governance 2

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

This should be incorporated into the principles, such as through transparency.

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

Yes

How important do you think it is that the needs of each of the following groups of stakeholders are addressed specifically - as opposed to just being considered as general stakeholders?

- Residents – very important
- Workforce – very important
- Investors/funders – very important
- Shareholders – somewhat important recognizing the community benefit society model and NHF revised Rules are somewhat different to the private corporate entity arrangements.

Specifics of the Code of Governance 3 - Final page

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

No – the type and nature of a board position can vary substantially. It can have no bearing on an individual's ability to undertake a further board position. Restrictions should only be placed if they affects the individual's ability to undertake the role and there is no direct correlation between the *number* of external positions and their ability to perform given the varying nature and type of roles.

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

No – there needs to be flexibility according to the needs of the organization.

25. Should the code set a requirement to appoint a Senior Independent Director (SID) to the board? If you are unfamiliar with the role of a SID please refer to section 66 of the FRC Guidance on Board Effectiveness (opens in new window)

No – see answer to question 2 above.

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

See answers to question 2:

- Diversity / Inclusion
- Board accountability / succession planning (Reporting and Improved Explanation suggestion)

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

In a way that reflects Board's role and responsibility in taking action to respond to and address these issues as they relate to the activities of the association (as determined by legislation / regulation).

28. Are there any technical aspects in relation to the code that you believe need addressing or updating?

One of our G15 members suggested that maximum terms for non-executives could be reduced to six years, with transition arrangements for the next three-year period to allow succession planning to take place. This would align to the NHF Model Rules.

There is an expectation that this would extend to Committee members too and/or for the Code to give direction on this.

29. Are there any reports or other resources that you feel may be useful to the development of the new code? These do not have to be written reports, books or articles but could also be other resources such as social media accounts, blog posts or YouTube channels.

Please see above otherwise n/a

30. Do you have any other comments, suggestions or observations on the Code of Governance?

n/a

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