# **Hexagon Housing Association Ltd**

# **Board of Management**

**24th November 2015**

###### Agenda Item 3

**Chief Executive’s Report**

**Report by the Chief Executive**

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| ***1.0*** | ***Summary*** |
| 1.1 | This report provides an update across a range of issues and makes 6 recommendations. |
| ***2.0*** | ***Recommendations*** |
| 2.1 | That the Board agree the recommendation to rule out a dismissal and re-engagement implementation option should the Board agree in January to close the Final Salary Pension Scheme to existing members, as outlined in Section 6. |
| 2.2 | That the Board approves the Board Away-Day Action Plan as outlined in Section 8. |
| 2.3 | That the Board agree the Terms of Reference for the Development Innovation Working Group as outlined in Section 9. |
| 2.4 | That the Board nominates up to two members to attend the NHF Board Members Conference as outlined in Section 10. |
| 2.5 | That the Board notes the remainder of the report. |
| ***3.0*** | ***NHF Vote Results on Right to Buy*** |
|  | Members will recall that at the September meeting, the Board considered the NHF proposal on the ‘Voluntary’ Rights to Buy. I am sure many of you would be aware of the outcome, but for the avoidance of doubt, voting closed on Friday, 2nd October and of those voting there was substantial support for the proposal.  86% of NHF members who responded supported the offer. This represented 93% of the sector’s total rented homes.  The critics of the process and the outcome point out that 39% of the members either abstained or did not respond to the proposal given the rather tight timescale which was particularly an issue for small housing associations whose board timetables did not allow for active consideration.  Nevertheless, the NHF view the outcome as a significant mandate and they have put the offer forward for government to consider. My understanding of the current situation is that the details are currently being worked out and the announcements will be made in due course.  Since the last meeting, one interesting development is that the government now appear to be concerned about rolling the Voluntary Right to Buy out all at once, given the high demand there would be for paying discounts to housing associations. It now appears that the Treasury are pushing ministers to phase the scheme and the Housing Minister has confirmed that this is in fact how it will be rolled out. It is not yet clear what the criteria will be, but there is some speculation that it will be related to length of occupation with those long standing tenants being given initial priority. |
| ***4.0*** | ***ONS re-classification*** |
|  | On 30th October, the Office for National Statistics decided that private registered providers (PRPs) (both for profit and not for profit) should be re-classified as ‘Public – Non Financial Corporations’. This re-classification was backdated to the implementation of the Housing and Regeneration Act 2008. Shortly thereafter I emailed Board Members giving the headline, but I thought it might be helpful if I provide a little bit more information as there has been further clarity on some of the issues since the announcement.  On 2nd November, the government released a material statement which made it extremely clear that the government considers that it is still business as usual for housing associations at the moment with the Secretary of State promising urgent steps to take housing associations back into classification as private bodies.  The NHF have said that they are disappointed with the ONS decision, but they very much welcome the government’s decision to take the necessary steps through de-regulatory measures and the Housing Bill to address the issues raised in the decision.  Some critics of the Voluntary Right to Buy deal saw the decision as removing the main rationale for the NHF agreeing to the deal, namely to protect the independence of housing associations. The NHF take an alternative view, namely that the Voluntary Right to Buy deal strengthens the government’s position in respect of taking action to reverse the re-classification.  Immediately following the re-classification, there was quite a lot of press coverage speculating on the possible impact much of which seemed incorrect. Therefore it might be useful to clarify what the decision does not mean.   * The decision relates only to the statistical classification of housing associations for accounting purposes. It does not nationalise housing associations; * It does not limit the ability of housing associations to carry on borrowing to build new homes; * It does not mean that housing association staff are public sector employees; * It does not mean that housing associations are now subject to the Freedom of Information Act as this would require an explicit move from government to make them subject to the FOI. As they have indicated their desire to legislate quickly to reverse the decision, it is not anticipated that they will not include HAs in the list of bodies subject to the FOI.   The National Housing Federation put out a briefing note shortly after the decision. It made it clear that there was no need for housing associations to take any specific actions right now.  The NHF do, however, take the view that some of the policy proposals in both the Welfare and Work Bill and the Housing & Planning Bill could be seen as the government having more control over housing associations’ businesses including, for example, introducing a compulsory ‘Pay to Stay’ and legislating to set rents. The NHF are currently working to get some clarity around the de-regulatory clauses in the Housing & Planning Bill in that context.  In the context of re-classification, it is important to point out that boards remain independent and that the legal status of housing associations remains unchanged. Furthermore, there have been no changes to the regulatory interaction.  With that in mind, I attach under **Appendix A**, a letter from Julian Ashby, the Chair of the Regulatory Committee of the HCA which reinforces the point that board responsibilities have not changed following the decision and that the HCA’s regulatory role and status remains the same. It remains to be seen whether there will be changes proposed by the government in the future if indeed they do intend to deregulate to address the issues.  In terms of timing, the government has made it very clear that they intend to act quickly to take the necessary steps to lead to re-classification of housing associations as private bodies and the current thinking is that these measures will be introduced into the Housing & Planning Bill as it progresses through the Parliamentary process. |
| ***5.0*** | ***Housing & Planning Bill*** |
|  | On 27th October, at the request of John Healey, the Shadow Secretary of State for Housing & Planning, I forwarded an email to the Board providing his commentary on the recently published Housing & Planning Bill.  In that context, I thought it might be useful to provide you with a bit more information about some of the key aspects of the Bill, particularly as they will impact upon Hexagon.  Starter Homes  Starter Homes, which will be sold at a 20% discount to market value (and capped at £450,000 in London) will now qualify as ‘affordable’ housing under Section 106 Agreements. The concern is that these Starter Homes will come at the expense of high quality sub-market rented homes. As Starter Homes should give developers a higher return than traditional forms of affordable housing, the result is likely to be a reduction in affordable rented housing.  The reason that this is significant is that across the country, Section 106 Agreements account for about 40% of all housing association production. Hexagon has not been particularly reliant on Section 106 and it has been fairly marginal to our output, but the change will have some impact on S106 schemes. The bigger impact will probably be on increasing land values with developers in a strong position to compete with HAs for sites.  Right to Buy  The Bill says that the Secretary of State may make ‘grants’ to private registered providers in respect of Right to Buy discounts.  Some, including the NHF, say that the clause is there simply to enable a mechanism for discounts to be paid to housing associations, others believe it might be a mechanism for the Secretary of State to introduce certain, non-specified conditions which have not been made explicit.  The Bill also says that the regulator of social housing must, if requested by the Secretary of State, monitor compliance with new home ownership criteria. On the surface of it, this appears to be a fairly weak power in that those not pursuing the Right to Buy as per the voluntary agreement, can be “named and shamed”.  The NHF response to this is that they are working to get the policy detail and implementation plan in place that will underpin the agreement to be sure that the principles they have established, translate into practice.  Reducing regulation  There is a clause in the Bill which provides general powers for the Secretary of State to reduce regulatory control over private registered providers of social housing.  The NHF take the view that this is a helpful provision as it provides for a discussion with government about the de-regulatory measures which would underpin HA independence.  Other observers note that it is so vague and non-specific as to be unclear in its intent.  Vacant high value local authority housing  The Bill includes a requirement for local authorities to make a payment to the Secretary of State based on the value of their high value assets rather than their actual sales receipts. That is a slight change to what was expected, namely a payment based on actual sales. In practice, it will amount to the same thing in all likelihood.  The NHF continue to take the position that they have never suggested or advocated that the extension of the Right to Buy should be funded by the sale of high value local authority stock and that this is a question for government, not the Federation or its members.  Pay to Stay  The Bill includes provision that London tenants with household incomes exceeding £40,000 will be required to pay a market, or near market, rent. Much of the detail of this is not set out in the Bill and will be later set out in regulation and statutory guidance.  Measures included in the Bill include allowing HMRC to share information with landlords for the purposes of verifying tenants’ incomes. Further details will be published in guidance rather than in the Bill.  Since the last meeting, the Government issued a consultation paper on Pay to Stay. Unfortunately, it had to be submitted prior to our board meeting cycle, but I attach under **Appendix B**, a copy of our response developed by Directors’ Group for Members’ information.  Lifetime tenancies  In the Summer Budget, the Government announced an intention to review the use of lifetime tenancies in social housing with a view to limiting their use, but it is interesting to note that the measures have not been included in the Bill. The NHF are opposing the mandatory introduction of the banning of lifetime tenancies as part of their negotiations on re-classification.  **Conclusion**  The Housing & Planning Bill 2015 does not appear to provide the clarity that some were seeking following the emergency budget announcement earlier in the year. Many think it raises many more questions than answers in relation to the Voluntary Right to Buy, for example. The de-regulation measures are not set out in any detail at all and are briefly referred to as “additional powers that will be delegated to the Secretary of State”.  Perhaps most crucially, now that housing associations have been re-classified as public bodies, it remains to be seen how some of the measures in the Bill, including for example, the mandatory introduction of Pay to Stay, would be squared with the government’s stated intention of allowing housing associations more independence. I will of course keep the Board informed as these measures progress. |
| ***6.0*** | ***Pensions consultation*** |
|  | Members will recall that at the last Board meeting, the Board approved a proposal to consult staff on a proposal to close the Defined Benefit Scheme to existing employees. The scheme has been closed for the last 5½ years to any new employees.  We reported at the time, on some of the human resources risks in closing the scheme. A key risk relates to the contractual position held by the 58 staff active in the DB scheme. We suggested that following careful consideration by the Pension Working Group, the implementation options available had been discussed and that the Group concluded that in the absence of feedback from the staff consultation, it was slightly premature to decide then and exactly how the pension arrangements should progress.  Broadly speaking, the three options available were:   * Mutual agreement, * Dismissal and re-engagement, or * Unilateral imposition   The chosen path would depend to some extent on the results of the consultation.  I therefore now attach under **Appendix C**, a note from the HR Manager describing the feedback received to date and her recommendation about the way forward. Her recommendation has been considered carefully by the Directors’ Group and approved for recommendation to the Board.  What this means in practice, is that the Board do not need to agree now any proposals for dismissal or re-engagement for the 58 affected staff, as we have ruled that option out, following the consultation. If that path were to be pursued, a decision would be needed before the January Board meeting due to notice periods required.  I should remind members that the consultation has a little while longer to run and will finish on 30th November.  With that in mind, my suggestion on the way forward is that the Board note the recommendation from the HR Manager and the approval from the Directors.  There will be a full report from the HR Manager to the January Board which will provide a final report on the outcome of the consultation and this will include the proposal to a unilateral variation to employment contractors to effect the pension changes.  I would remind Members that there will remain a risk of staff responding to the change in employment contracts by resigning and pursuing a claim for constructive dismissal. Devonshires assess that risk to be small and the HR Manager shares that view. However, the board should be aware that any awards made for constructive dismissal could be higher than those made for unfair dismissal.  For the avoidance of doubt, the Directors remain of the view that the financial benefits of closing the scheme will in the long run, outweigh any short term costs in the unlikely event that costs arise from the closure decision. |
| ***7.0*** | ***Southwark & London Diocesan Housing Association*** |
|  | At the last meeting, I provided Members with a verbal update on an approach we had received from a small housing association called Southwark & London Diocesan Housing Association (SLDHA) who were seeking a merger partner.  SLDHA own 277 homes, the majority of which are in Southwark and Lewisham. Hexagon has worked with SLDHA in a development partnership in the past and they are reasonably well known to us.  I reported at the last meeting that following liaison with the Chair, we made a short submission to SLDHA expressing our interest and that we were awaiting the outcome.  Since the last meeting, as Members will be aware from my email of 23rd October, which included our initial submission, Hexagon has been selected as one of just three HAs of the 11 invited, to proceed to the next stage. At the time of writing, we are working on our final submission which has a deadline of 18th November.  On Tuesday, 10th November, we hosted a day for a small delegation from SLDHA at our offices. This included their Acting Chief Executive and three board members. They requested specific representatives they wanted to speak to and we were able to accommodate this. My thanks go to Jeanette Kenyon, who ably represented the Board, during the initial meet and greet/Q&A session.  Following the submission on 18th November, the final stage in the selection process will involve Hexagon doing a presentation to SLDHA’s board on Saturday, 5th December. Unfortunately, Roy Coulter will be unable to attend, but Debbie Bankole-Williams will deputise on his behalf.  We expect the SLDHA board to make a final decision following the board meeting and I will of course keep members informed as to the outcome.  In the meantime, I can confirm that the other two competitors are Amicus Horizon and Viridian Housing Associations. Interestingly, about three days after they were both shortlisted, they announced their intention to merge with each other to create a very large 44,000 unit housing association. |
| ***8.0*** | ***Board Away-Day Action Plan*** |
|  | At the last meeting, I provided some notes provided by Greg Campbell of the Board Away-Day, including a draft action plan.  I reported that the Directors’ Group would do a bit more work to identify who would take these matters forward and on what timescale and I now attach that under **Appendix D** for the Board’s comment and approval.  We have added two items shown in italics which were not in Greg’s draft, but which we think should be included as they have been subject to some discussion and need some follow up (sections 10 and 18). |
| ***9.0*** | ***Development Innovation Working Group*** |
|  | Following on from the Board Away-Day Action Plan, one of the things that was agreed at the Board Away-Day is that we develop a Development Innovation Working Group. It was suggested at the Away-Day that a small sub-group of the Board work closely with Kerry Heath, the Development & Regeneration Director, with a view to investigating possible innovations within our development programme.  To take that forward, I attach under **Appendix E** a draft Terms of Reference, developed by the Development & Regeneration Director in conjunction with Jeanette Kenyon, the Lead Board Member for Development.  This is very much a draft for consideration so board member input is very much welcomed.  The Board might also want to consider the exact composition of the Group as this was only briefly discussed at the Away-Day as outlined in the draft Terms of Reference. |
| ***10.0*** | ***NHF Board Members Conference*** |
|  | I attach under **Appendix F**, an agenda for the National Housing Federation’s Board Members Conference to be held 5th/6th February in London.  We normally like to send one or two board members to the conference to report back to members on emerging trends, etc, so I would be grateful if board members are interested in attending, that they contact either Val Sharpe or myself so that we can make the necessary arrangements for them to attend. |
| ***11.0*** | ***NHF Board report*** |
|  | I attach under **Appendix G**, the latest NHF report to Board Members which covers a number of key areas of their work. This report is for information only. |
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