



# NIFHA Response to Consultation

**Date:** 5 February 2010

**Consultation:** Housing Association Guide – Draft Governance and Regulation Guidance

## Introduction

The Northern Ireland Federation of Housing Associations (NIFHA) represents registered and non-registered housing associations in Northern Ireland. Collectively, our members provide 30,000 good quality, affordable homes for renting or equity sharing. Further information is available at [www.nifha.org](http://www.nifha.org)

## Background

NIFHA recognises that sound corporate governance is one of the main principles that should underpin all Housing Associations. The Board directs the affairs of the association in accordance with its objects and rules and ensures that its functions are properly performed. NIFHA have developed Model Rules for Housing Associations, which is referenced within the Draft Governance and Regulation Guide, to support our members in determining;

- Their Board functions
- The composition of their Board
- How people are elected to their Boards
- Eligibility of candidates for Board membership
- Establishment of a quorum for the Board
- Disclosure and management of Board members interests
- Schedule of Board meetings
- Board management and delegation
- Miscellaneous provisions.

NIFHA have also developed a series of training sessions that will improve the skills and provide practical help to Housing Association Board members. It is intended to use the material produced for these sessions to create an easily accessible resource which will offer good practice guidance for our members.

## General Comments

NIFHA welcomes the opportunity to respond to this draft consultation document. We recognise that this document is loosely based on the “Code of Good Governance”, produced by the Developing Governance Group and provides further detail to the broad outline included within the original document. This draft consultation document will usefully supplement the Board section contained within NIFHA’s own document “Model Rules 2006 for DSD Registered Housing Associations with Charitable Status”.

Also as a general comment we would ask the DSD to give consideration to the timing of the release of consultation documents for consideration and the

associated response times. This guidance note which directly affects Board members was released on the 7<sup>th</sup> December with responses originally due back on 26 January. The Christmas break occurred in between times. The consultation therefore missed most Board meetings and would not have been properly evaluated or debated by the key stakeholders in the housing movement whom it most affects.

As agreed with the Department, this paper updates the preliminary response the Federation submitted on 29 January 2010. It takes account of additional comment from our members and the views of NIFHA Council.

## **Specific Comments**

### **2.1 Board Leadership**

Our members consider that the role of the Board should also include: “Monitoring the effectiveness of the Association’s Chief Executive / Senior Officer and senior management team in the performance of their operational responsibilities”.

The section on Group Structures should include the following: “If an Association has a non-registered subsidiary the Board should ensure that the Association has effective control over such subsidiary and that the activities of the subsidiary do not conflict with or put at risk the achievement by the Association of its own objectives”.

### **2.2 Rule Changes**

The guidance should encourage housing associations to consider adopting or adapting NIFHA’s model rules but it is neither necessary nor appropriate for the DSD to insist that they be adopted by all registered associations. This would go well beyond what is laid down in Industrial and Provident law and the DSD’s Criteria for Registration.

Similarly, it would be an unnecessary new restriction for associations to obtain DSD approval **before** making any change to their rules.

### **Potential Legal Actions**

Housing associations operate in an increasingly litigious business environment where threats of legal action and legal actions can and do occur on a regular basis. These may relate to human resource issues, contract matters, matters of arrears etc. These should remain operational matters for the association to resolve and not require confirmation to the DSD. However we accept that where a housing association is involved in a major legal issue which may involve the DSD, then that association should notify the DSD. The current statement in the draft guidelines places an impractical requirement on associations. We also feel the reference to reputation is a matter for the housing association and this reference should be removed. Instead we propose the DSD focus on legal actions which might directly impact on the DSD and examples for guidance should be included.

## **2.6 Performing, reviewing and renewing the Board**

While fully accepting that Board renewal is vital, NIFHA believes it would be unwise for the Department to impose the proposed limitations on Board service. This is a matter for each individual Association to determine when drawing up principles for its own governance.

We feel that the robust appraisal system outlined in the document will ensure the quality and commitment of Board members; a resource which remains as invaluable to the Association in year ten as in previous and subsequent years.

We repeat that renewal of Board membership is necessary but believe cognisance needs to be taken of existing circumstances. The proposals as presented could threaten the viability and certainly the stability of some Associations' Boards, even though they may have systematically increased and renewed the number of members over recent years.

In the worst case scenario for Triangle Housing Association, for example, if it failed to secure renewal over the three year transitional period and in the best case avoid retirement, it would no longer have the minimum number of seven Board members required under the Rules of the Association, despite having recruited five new members over the past five years and currently having eleven serving members. Triangle would therefore be unviable for a period of more than six months; the maximum period allowable for less than seven members under the Rules of the Association. Securing new members is not easy in the present climate. Triangle presently holds 23 meetings per annum across the Board and its four committees. It ideally needs double-figure Board membership to sustain the activity that it believes necessary for effective governance.

There are also issues of confidence in undertaking responsible roles such as Chair etc. Normally individuals require a period of induction into the workings of a housing association and may be unwilling to undertake such posts early in their tenure. Implementing the proposed maximum period of membership could result in many Associations advertising to secure membership at the same time, drawing on the same pool of suitable potential volunteers. If Triangle introduced the maximum terms during the transitional period to minimise the impact after three years, there would still be issues about sustaining the level of Board activity at present rates despite currently having eleven Board members.

NIFHA understands the DSD's proposed system is applied in England and within the public sector but points out that Board members of many English non-charitable housing associations receive payment, and neither the DSD nor NIFHA is subscribing to this approach.

## 2.7 Board Delegation

### Effective Delegation

This section should include the following:

In the interests of timeliness and efficiency in entering contracts for expenditure that are within the limits of the authority delegated to the Chief Executive/Senior Officer a Board may, subject to any restriction in the Rules of the Association, delegate to the Chief Executive/Senior Officer authority to apply the Seal of the Association if the details have been reported to an Officer of the Board together with the nature of the document that it is proposed to seal and detail of the application of the seal is subsequently reported to the next Board meeting.

## Section 4 Inspections

### Departmental Monitoring

It is important that the DSD does not inadvertently dilute Board responsibility by “looking over the shoulder” of Board members as they discharge their duties. For this reason, and because the DSD already receives much more information than regulators in GB, we do not consider it appropriate for associations to routinely send all Board papers to the DSD.

Instead, we recommend that the guidance should:

- continue to ask associations to send their Board minutes
- be supplemented by a sentence requiring associations to supply such additional information as the DSD may **reasonably** request.

Given the fact that the Guide is being reviewed, we feel the DSD should revisit the Inspection Process with a view to ensuring the focus is on outputs and matters which more directly affect customers and stakeholders. We feel the current inspection is too process driven and biased towards technical issues in maintenance and development. We feel this is emphasised by the key four areas of inspection. The DSD should look at the changes being made in England by the Tenants Service Authority (TSA) to their inspection process and consider applying them in Northern Ireland.

The guidance note places governance in a Corporate Governance and Management Section. A number of our members found the DSD inspection team made references to matters of governance in all four areas of the inspection. Whilst guidance notes and terms of reference have been issued on the Inspection Process, they are not consistent with one another and the process still appears to be subjective in nature. For example one association may have offered a highly satisfactory maintenance service, with response rates well above targets set by the DSD but was deemed unacceptable due to compliance and process issues. However the maintenance service of another association may be regarded as exemplary despite its maintenance costs being as much as 30% more expensive than the other association.

Whilst we recognise that this consultation does not specifically focus on the Inspection Process we would welcome the opportunity to respond to a specific consultation on that area of the Housing Association Guide.

## **Conclusion**

We hope you find these comments useful and will be pleased to clarify any points and discuss any areas of disagreement with the Department.

**Submitted on behalf of NIFHA by:**

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