



# Group Policy: Board Membership Policy

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This policy is available, on request, in different languages and in other formats such as large print, audio format and braille as required.

## 1. Scope

- 1.1 This is a Group policy and therefore applies to Board and Committee members of The RCH Group of companies. As at April 2020, The RCH Group consists of River Clyde Homes and its subsidiary, Home Fix Scotland Ltd.

## 2. Introduction

- 2.1 The aim of this policy is to set out the criteria by which the River Clyde Homes Group will manage Board membership having regard to the Articles of Association of both companies.

- 2.2 This policy requires to be read in conjunction with:

- (i) RCH Articles of Association
- (ii) HFS Articles of Association
- (iii) Standing Orders, Delegations and Governance Code
- (iv) Code of Conduct
- (v) Payments, Entitlements and Benefits Policy

## 3. Policy Statement and Responsibilities

- 3.1 River Clyde Homes supports the principle that the Board should consist of members with a variety of skills and knowledge so as to establish better leadership and strategic direction which will help to ensure realisation of the organisation's vision, values and strategic outcomes. This reflects the organisation's responsibility to all customers and stakeholders

### 3.2 RCH Parent Company Board

- 3.2.1 In accordance with Article 32 of the Articles of Association, the River Clyde Homes Board comprises a maximum of 12 Board members who are appointed or elected on a systematic and continuous basis to avoid major changes in Board membership at infrequent intervals.

- 3.2.2 All Board members must meet the criteria detailed in Article 49 and also the requirements of the role profile which is contained within the Standing Orders, Delegations and Governance Code.

- 3.2.3 In accordance with Article 55 of the Articles of Association, the Board members shall appoint, at their first meeting after the AGM, a Chair, Vice-Chair and the Chairs of Standing Committees from among their number (office bearers). These appointments shall not extend, on annual renewal, beyond a five-year period and shall not be made from Executive Board members nor co-opted Board members.

- 3.2.4 When seeking to appoint to these roles, the Board shall appoint members who are most equipped to undertake the roles and shall ensure that individuals

meet the criteria of the Role Profiles for the Chair and Vice Chair which are contained within the Standing Orders, Delegations and Governance Code.

3.2.5 At the first meeting after the AGM or as required, the Board shall appoint a Company Secretary who need not be a Board member and may be an employee of River Clyde Homes or any other suitably skilled person.

3.2.6 All Board members must participate in the individual and collective annual appraisal process.

3.2.7 The eligibility criteria for Board members is detailed in Article 49 of the Articles of Association. The following guidance to definitions is given:

- **49 (i) “special leave of absence”**

Where the Board believe that, in the whole circumstances of the situation, it is appropriate to grant a leave of absence to an individual Board member, the Board can make a resolution to that effect for a specified period determined by the Board, which cannot extend, in any circumstances, beyond a 6 month period. Any responsibilities of the Board member, in terms of, for example, Standing Committee membership will be delegated for the period of the absence to another Board member.

- **49 (p) “in arrears, of an amount greater than the maximum level set by the Company in its Board Membership Policy”**

Where a Board member is in arrears to River Clyde Homes, whether in respect of rent or any other financial obligation, it will be possible for the Board member to continue as a Board member provided that:

- (i) the Board member is not party to legal proceedings raised by River Clyde Homes, and
- (ii) a Notice of Proceedings has not been served, and
- (iii) the Board member discloses an interest and does not participate in any discussion in relation to such arrears nor general arrears policy or target-setting, and
- (iv) there is an arrangement in place to meet the arrears which has been set and approved by RCH and is rigidly adhered to.

Failure to enter into or maintain the agreed arrangement will result in removal of the Board member.

- **49 (aa) “he/she is an employee of the Company or a close relative of such an employee or he/she “is a close relative of another Board member or co-optee”**

A person is a close relative if:

- (i) he/she is the spouse or civil partner or he/she cohabits with that person (whether of the same or different sexes), or
- (ii) he/she is that person's parent, grandparent, child, stepchild, grandchild, brother or sister.

3.2.8 In terms of Article 47 of the Articles of Association, Board members can be removed from office by resolution of a majority of the members of the company, voting at an Extraordinary General Meeting (EGM). Such EGMs will be dealt with in the same way as those called under Article 12 in relation to the consideration of the expulsion of a member of River Clyde Homes.

3.2.9 Separately, in terms of Article 49(k) of the Articles of Association, Board members can be removed by means of a resolution of (or written notice signed by) at least three quarters of all the other Board members.

3.2.10 Such resolutions of the Board will only be permissible where the Board member in question has been found to have:

- (i) failed to perform to the published standards laid down by the Scottish Housing Regulatory (SHR) or the Scottish Charity Regulator (OSCR);
- (ii) Failed to comply with or committed a serious breach of the Standing Orders, Delegations and Governance Code and/or Financial Regulations. A process for this is outlined in Appendix 1.

3.2.11 There may be circumstances where a Board member feels that the conduct of the Board or of an employee falls short of the high standards necessary and they should therefore refer to the RCH Group Grievance and Dignity at Work Policy and Procedures.

### 3.3 Home Fix Scotland

3.3.1 In accordance with Article 10 of the Articles of Association, the Home Fix Scotland Board comprises a maximum of 5 Board members appointed via the Parent Company who have the authority as per article 12 to appoint directors and remove them.

3.3.2 All Board members must meet the criteria detailed in Article 12 and also the requirements of the role profile which is contained within the Standing Orders, Delegations and Governance Code.

3.3.3 All Board members must participate in the individual and collective annual appraisal process.

3.3.4 The HFS Articles of Association are not prescriptive in relation to the appointment of office bearers and the following process should be adhered to:

- (i) The Chair of the HFS Board will be appointed via the Parent Company who have the authority as per article 12 to appoint directors and remove them. When seeking to appoint to this role, the Board shall appoint a candidate who is most equipped to undertake the role and should ensure that the criteria of the Role Profile for the Chair which is contained within the Standing Orders, Delegations and Governance Code is met.
- (ii) This appointment shall not extend beyond a five year period and shall not be made from Executive Board members, members of the RCH Board or Co-optees.
- (iii) If the Chair remains in place for five years and wishes to continue service on the Board, they will have the opportunity to do so, in line with Article 12, for a further four year period.

3.3.5 The eligibility criteria for Board members is detailed in Article 12 of the Articles of Association.

3.3.6 There may be circumstances where a Board member feels that the conduct of the Board or of an employee falls short of the high standards necessary and they should therefore refer to the RCH Group Grievance and Dignity at Work Policy and Procedures.

## **4. Equality Impact Assessment**

4.1 An EIA has been undertaken and no adverse impact on equality was identified.

## **5. Review**

5.1 This policy will be reviewed in its entirety every 3 years, unless an earlier review is required due to changes in legal, regulatory or best practice requirements, or because monitoring and reporting reveals that a change in policy is required sooner.

## Appendix 1 – Breach of Standing Orders, Delegations and Governance Code and / or Financial Regulations Process

### I) Identification of An Alleged Breach

1. If any person considers that the Standing Orders, Delegations and Governance Code or Financial Regulations has been breached, or not followed, by a member of the Board, the matter should be reported by that person to the Chair of the Board in question (or to the Vice Chair, if the Chair is not available, or if the Chair is the subject of the allegation).
2. The Chair will take advice from the Group's Chief Executive on how to proceed in terms of these procedures. The Chair will have delegated authority to instruct an investigation into the matter on behalf of the Board.
3. In the event that an investigation is instructed by the Group Chair for matters pertaining to the Parent Board, the Association will at this stage notify the Scottish Housing Regulator of the fact that the matter has been reported and is to be investigated. Where the Scottish Housing Regulator has been notified then there is no requirement to also notify the Scottish Charity Regulator (OSCR Publication: Notifiable Events (Jan 2020); section 10).
4. In the event that an investigation is not instructed because the Chair has decided that the matter is not sufficiently serious or is not well-founded, the Chair can still have a formal discussion with the Member(s) concerned and/or offer advice and assistance as appropriate, and/or offer training or other forms of support. The Scottish Housing Regulator would not be informed at this stage. However, the Chair will be required to notify the Board at the next meeting as to the matter, the conclusion arrived at and any action taken by the Chair. It will then be for the Board to decide whether that should be the end of the matter or whether any further investigation should be undertaken.
5. The Association will also, at this stage, report any serious alleged breach(es) to the Police if it involves possible fraud or criminal allegations.
6. The following pages describe how investigations and any subsequent Hearings will be conducted and reported and decisions made and provides examples of the sanctions that may be taken and rights of appeal.

## **II) Breaches of Standing Orders, Delegations and Governance Code at Board Meetings**

1. Minor breaches which occur during the course of Board or Sub-Board meetings will normally be dealt with by the person chairing the meeting, either during the meeting in compliance with the Standing Orders, Delegations and Governance Code or afterwards in compliance with these present procedures.
2. If misconduct at Board meetings is serious and/or persistent, the Board may instruct an investigation and Hearing as described in the following procedures or decide to call a Special Meeting of the Board to vote on whether to dismiss the Board Member from his/her position immediately in accordance with article 47 of River Clyde Homes' Articles of Association.
3. If the person behaving inappropriately is the Chair of the meeting, a majority of the remaining Board present may vote to:
  - a) Instruct an investigation and Hearing, as described in the attached procedures; or
  - b) Decide to call a special meeting to vote on whether to dismiss the Chair from his/her position in accordance with section 47 of River Clyde Homes' Articles of Association.

## **III) Decision to Appoint an Investigator**

1. These procedures describe the steps to be taken in relation to alleged breaches.
2. Advised by the Chief Executive (or substitute in his absence or due to a conflict of interest), the Group Chair (or Vice Chair, in the Chair's absence or if the allegation relates to the Chair) under delegated authority from the Board, will decide who should carry out an investigation.
3. The role of the Chair (or Vice Chair) is not to form a view on whether the allegation is justified, instead it is to make sure that immediate steps are taken to have the allegations investigated in an open and transparent manner.
4. An investigation may be initiated by the Chair without first advising the Board Member complained against.
5. Investigations may be carried out internally by a senior member of staff or by an independent consultant/advisor.
6. If the investigation is to be carried out internally, the staff member who is carrying out the investigation should not have had a direct involvement in the matter under investigation.

7. If the investigation relates to a complaint against the Association's Chair or Vice-Chair, an external investigator **must** be used.
8. If the investigation relates to a complaint against the Association's Chief Executive, an external investigator **must** be used.
9. The Chair (or Vice Chair) will report the results of the investigation made to the next meeting of the Board or to a Special Board Meeting called for that purpose. The Board Member(s) complained against must withdraw from the relevant part of an ordinary Board Meeting when the complaint is discussed or reported.

#### **IV) Conduct of an investigation**

1. Investigations should be completed promptly, taking account of the nature of the complaint, the information available to support the complaint, and the right of the person complained against to have a reasonable opportunity to make representations to the investigator.
2. The person designated as the investigator will decide what methods are necessary to examine the allegations that have been made.
3. The main purpose of an investigation is to establish the facts, so far as possible, and to report on these. The investigator may also state their view about matters where facts are disputed by different parties.
4. The scope of the investigation will reflect the circumstances of the case. For example, if factual and/or undisputed evidence about the allegations is already available, the scope of the investigation will reflect this.
5. All Board Members and staff must provide the investigator with their full co-operation. An investigator will be entitled to interview whichever Board members, staff members and other parties they consider necessary.
6. The Board Member complained against will be provided with a reasonable opportunity by the investigator to answer the allegations that have been made. The Board Member will be provided with a copy of any written complaint or a summary of the allegations prepared by the investigator. The Board Member may be accompanied by a representative if they wish, when meeting with the investigator.
7. In terms of seeking continuous improvement and best practice the Board Member being complained against will be given the opportunity by the investigator to raise any concerns they may have about the way the investigation process has been carried out. Thereafter his/her comments will

be included within the investigator's final report to the Board.

#### **V) Investigation report**

1. The investigator will prepare a written report and submit this to the Chair (or Vice Chair). The report will describe the evidence on which the investigator has based their findings.
2. A copy of the investigator's report will then be sent to all members of the Board, including the Board Member complained against.
3. The investigator may withhold individuals' names or other personal information from their report, if they consider this to be justified.
4. The investigator will be entitled to express a view in the report as to whether or not there has been a breach and/or failure to follow the Code of Governance.
5. The Investigator will circulate a copy of the Investigation Report, together with recommendation(s) and supporting documentation if appropriate, to the members of the Board within 14 working days.

#### **VI) Board Hearing**

1. The investigator's report will be considered by the Board at a Hearing held for this purpose no more than 14 days after conclusion of the investigation. The Board is responsible for deciding whether there has been a breach or failure to follow the Standing Orders, Delegations and Governance Code and / or Financial Regulations Process.
2. A Hearing is not a judicial process and the Board is not bound by any legal rules of evidence. Provided there is fair disclosure of information in the investigation report, the Board may consider whatever information it considers relevant in making a decision about the complaint.
3. The person chairing the Hearing is entitled to determine the procedures to be adopted. The Chair of the Board will be selected and may set a timetable for the Hearing and set limits on the time allowed for different parts of the Hearing.

#### **VII) Presentation of the investigator's findings at the Hearing**

1. A special Confidential Board meeting will be called according to article 56 of River Clyde Homes' Articles of Association.
2. The investigator will attend the Hearing to speak to their report and to answer questions.

3. The undernoted standard agenda will be followed to ensure fairness and transparency:
  - Chair's Remarks
  - Introductions
  - Investigator's Report
  - Discussion / Questions / Answers
  - If present, both the person making the complaint and the Board Member being complained of must then leave the meeting
  - Formal decision then to be made on the seriousness of the breach(es) – see below
  - Potential sanctions then discussed – see below
  - Formally declare the vote and confirm the course of action
  - Chair to then formally advise the Board Member(s) as to the decision
  - Chair to then formally write to the Scottish Housing Regulator advising them as to the decision of the Board.
4. The Board Member complained against is entitled to attend the Hearing, so that they have a reasonable opportunity to ask questions of the investigator and/or make representations and/or submit any other information to the Board.
5. The Board Member may be accompanied by a representative who may speak on their behalf. If the Board Member wishes to appoint a professional representative, they must do so at their own expense. The Board Member and/or their representative may only call third parties to speak at the Hearing with the permission of the person chairing the Hearing.
6. Where the complaint was made by another Board Member, that Board Member is entitled to attend the Hearing, so that they have a reasonable opportunity to ask questions of the investigator and/or make representation and/or submit any other information to the Board.

#### **VIII) Decision making**

1. Having heard the investigator's report and any representations made by the Board Member complained against, the Board Members will then decide whether a breach and/or failure to follow the Code of Governance has, in their judgment, been established.
2. The Board will reach a decision on **the balance of probabilities**. This means that the Board does not need to be satisfied that there is absolute, undisputed proof that a breach took place. Instead, the Board only needs to be satisfied that it is **more likely than not** that a breach took place.

3. If the Board concludes that a breach or failure has been established, it will be entitled to decide what sanction is appropriate.
4. The Board's decision on the occurrence of a breach or failure and the appropriate sanctions will be final.

#### **IX) Interpretation of "Serious Breach"**

1. Article 49 of the River Clyde Homes' Articles of Association provides for the possible removal of a Board Member from the Board for failure to perform to published standards or the Code of Governance or Financial Regulations or a "serious breach" of the Association's Constitution or Standing Orders.
2. The interpretation of the term 'serious breach' will be for the Board to determine, after considering the investigation's findings, but is likely to include:
  - Failure to act in the best interests of the Association and the purpose for which it operates.
  - Support for, or participation in, any initiative, activity or campaign which directly or indirectly undermines or prejudices the interests of the Association, its service users or any of the Association's obligations.
  - Accepting a bribe from a third party designed to influence the decisions made by the Association.
  - Persistent or serious failure to observe the principles of individual or collective responsibilities of Board Members
  - Breach of Confidentiality
  - Persistent or serious misconduct towards other Board Members and/or the Association's employees, for example harassment, intimidation, bullying or aggressive behaviour.
3. For the avoidance of doubt, it is for the Board to determine the extent and seriousness of a breach of or failure to observe the Code, and to then decide on the appropriate action to be taken, for all relevant purposes.

#### **X) Sanctions**

1. If, following investigation breach of the Code is confirmed, the Board will decide what action will be taken. This action will reflect the seriousness of the circumstances. It **may** take the form of some or all of the following:
  - An informal discussion with the Member concerned
  - Advice and assistance on how his or her conduct can be improved
  - The offer of training or other form of support
  - A formal warning as to the Member's future conduct

- The matter be referred to an Extraordinary General Meeting (EGM) of the membership in accordance with Article 15 of River Clyde Homes' Articles
  - The Board Member be removed from the Board in accordance with Article 49 of River Clyde Homes' Articles
2. The following circumstances may lead to a formal vote on whether to remove a Board Member:
- Failure to perform to the published standards laid down by the Scottish Housing Regulator, as adopted and operated by the Association
  - Failure to sign or failure to comply fully with the Code of Governance and Code of Conduct.
3. The following circumstances will result in a formal vote on whether to remove a Board Member:
- A serious breach of the Association's Articles or Standing Orders
  - A serious breach of the Code of Governance or Code of Conduct
  - Failure to respond to a formal warning or other earlier intervention

In deciding what action to take, the Board will take account of the seriousness of the breach or failure involved, and any risks to the reputation and/or effective future governance of the Association.