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Consultation – summary of responses

The Remuneration of Board Members of Registered Social Landlords

March 2015



Consultation on the Remuneration of Board Members of Registered Social Landlords

Summary Report

Introduction

1. This report summarises comments received in response to the consultation paper on the remuneration of the Board members of Registered Social Landlords. The consultation document was published on 15th September 2014. The consultation period ended on 8th December 2014.
2. Respondents were asked to comment on the principle of Board members being remunerated and matters related to it, and on draft guidance notes on the implementation of such a policy if it was approved.

Response

3. Twenty-seven responses were received. The total includes one response which was revised and received after the closing date. The responses were drawn from the following:

**Table 1: Response to consultation, 2014,
by broad respondent type**

Respondent group	No.	% of respondents
Registered Social Landlords	23	85
Private sector organisations	1	4
Voluntary sector organisations	1	4
Tenant Group and individuals	2	7
Total	27	100

4. The following analysis is structured around questions set out in the consultation document.

The principle of Board members being remunerated

5. Just over half of the respondents (59 per cent) agreed with the principle of Board members being remunerated. The remainder were split between those who said they did not agree (22 per cent) and those who did not say one way or the other (19 per cent).

6. For those who agreed with the principle of remunerating Board members, several commented it would be good for Registered Social Landlords to have the option to do so and that they should be able to make the decision to remunerate or not as the case may be. Another respondent said it was about giving flexibility and choice to Housing Associations to put in place the governance arrangements appropriate to their business needs.
7. In addition to the decision on whether or not to remunerate, comments suggested that how much was paid and on what basis should be a matter for individual Boards. They could be held to account by their key stakeholders. One respondent said Board members recognised the importance of consulting tenants and other relevant stakeholders on this matter. It was felt this would be part of effective relationship management and a “damage limitation” strategy to protect the reputation of the Association.
8. One respondent said Board members were divided on the issue but agreed that on a sector-wide basis, it was an important tool for Boards should they wish to use it. Another felt there should not be a general expectation that all Associations would pay their Board members, while another said that across the Board of 15 members (5 tenants, 5 Independent, 5 Local Authority), there was recognition that if payment were offered, there would be various reasons why individuals may wish not to accept it. There was a suggestion that Board members should have the option to request the Association makes a donation equivalent to their remuneration to a registered charity without tax and/or benefit reduction implications for the member(s) concerned.
9. Common reasons behind the need to pay Board members included:
 - Improving attendance of Board meetings
 - Being able to recruit Board members who otherwise would not be able to give their time,
 - Improved Board members’ preparation prior to meetings such as reading papers.
 - Easier to manage the above with a payment contract in place.
10. Another respondent said evidence indicated it should improve Board performance, attendance and attract increasingly demanding skill-sets from a wider pool of applicants. The view of increased attendance or better quality input was evident in another response. It emphasised the need to remember that some Associations may wish to pay in order to attract good quality members. There may not be performance improvements that are required or set out. The organisation may simply feel that it is reasonable to compensate members for their time and effort. That said, it is a reasonable expectation of introducing payment that there is an improvement in performance, be that through increased attendance or better quality input into RSL governance.

11. The subject of Board members' skills and payments, which could help to attract individuals with the essential skills and experience needed, was reflected in several responses. One explained good governance is essential to a successful organisation and the Association's stakeholders rely on the Board to ensure good governance. It went on to say a Board can only operate effectively in this and other requirements if it has the right mix of skills, abilities and experience. An Association needed to be able to select individual Board members on this basis, referring to evidence that remunerating Board members improves recruitment, performance and retention.
12. Respondents referred to Associations becoming larger, more complex organisations and becoming increasingly demanding of Board members in terms of time commitment, higher levels of responsibility and increased expectations. It was felt this changed the emphasis from the restrictions of a volunteer Board. Remuneration could also acknowledge the higher commitment requirements attached to roles such as Chair of Board and Chairs of Committees. One respondent mentioned the complexity of business plans and, potentially, the need to deal with a weight of debt for Large Scale Voluntary Transfer Associations. This was felt to make the role of Board members, especially the Chair, particularly onerous.
13. Responses mentioned Associations being required to operate on a far more commercial basis. There was considered to be a requirement for Board members to engage with different priorities utilising a different skill set and to acquire this skill set would require targeted recruitment. It was felt this would be better facilitated by the option to pay Board members. Remuneration could also help ensure Boards are accountable and can leverage an ability to demand full commitment from Board members by supporting a robust appraisal and performance management process for Board members.
14. One respondent said the principle of remuneration has been recognised in other areas of public governance and in other parts of the UK. This was felt, inevitably, to have created an unfair playing field and resulted in an even harder challenge to recruit effective Board members for Housing Associations. It was considered to be hard to change unless the principle of remuneration is introduced. There was a comment that Housing Associations in Wales should have the same powers and freedoms that are afforded to Associations in England to choose whether to pay their Boards. Another felt it was unacceptable to have two different Board remuneration systems; that is, one for England and a different one in Wales.
15. Respondents who did not agree with remunerating Board members pointed to the principle of voluntary Board membership in the not-for-profit sector. They believe a good organisation is able to attract good Board members because people want to be involved with a successful organisation and want to give something back to their local communities.

16. One respondent questioned whether the levels of remuneration Associations are likely to be able to offer would be significant enough to attract members in their own right. Successful and professionally expert people are able to generate sufficient remuneration in their chosen professions and careers and do not need to rely on additional remuneration from Board positions.
17. Tenant representatives expressed concerns that remuneration would inevitably come from tenants' rents and felt this money would be better directed at enhancing service provision.
18. One respondent didn't feel remuneration would improve the quality of the Board. Other respondents pointed to the cost to an Association, a possible impact on the number of Board members needed, or queried how it would fit in with an Association's mission and values. One said it doesn't sit with their values and that to date, they had not seen any evidence which demonstrates paid Board members means a high performing Board. It was also considered it could drive a division between members involved. Possible tax and benefits issues and implications for some members were also mentioned.

A maximum amount for remuneration

19. Views were split evenly on this subject. A third of respondents (9) felt that a maximum should be set for the amount of remuneration. The same number disagreed while the other respondents were silent on the issue.
20. Respondents were asked about the advantages and disadvantages of setting a maximum figure for remuneration. The responses are summarised below.

Table 2: Advantages and disadvantages of setting a maximum level of remuneration for Board members

Advantages	Disadvantages
<ul style="list-style-type: none"> • Protecting the reputation of the sector. • Increased transparency. • Reduced chances of Board member 'competition' based on remuneration. • Guidance establishes boundaries based on size/turnover/complexity in diverse sector. • Avoids recruitment of members based on who can afford to pay the most. • Sets boundaries and provides guidance • Aids standardisation & transparency. 	<ul style="list-style-type: none"> • May not recognise the complexity of different organisations. • Some organisations may struggle to attract particular skill sets and need the ability to pay more. • Difficult to compare organisations on a like for like basis due to the business diversity of the sector. • It may be tempting to pay everyone the maximum amount

21. Within respondents' comments were suggestions that maximums should be set for Officer posts and for Board members without additional

- responsibilities. It was also suggested the maximum should allow some flexibility reflecting local circumstances and for differing size and/or complexity of individual Associations.
22. If remuneration was allowed, eight respondents (30 per cent) felt the Welsh Government should specify the maximum amount a Registered Social Landlord could pay. Five respondents (18 per cent) disagreed. The remaining respondents – just over half (52 per cent) - did not respond to this question.
 23. Respondents who said a maximum amount should be set for remuneration (n=9) were asked whether it should be in the form of an annual amount, a day rate for attendance allowance, or another form. Five respondents felt it should be in the form of an annual amount. The others did not comment.
 24. Two of the respondents who did not feel the Welsh Government should set a maximum said it should be determined by Registered Social Landlords themselves.

Draft guidance

25. The consultation document included draft guidance on the subject of remuneration and how such an arrangement might work, if it was implemented. Respondents were asked to comment on the content, format and structure of the draft guidance.

Table 2: Advantages and disadvantages of remunerating Board members, summary based on responses to the consultation

	Very useful	Quite useful	Not very useful	Not at all useful	Did not respond
Number	5	11	3	2	6
Per cent	19	41	11	7	22

26. A range of comments and suggestions was offered in response to a question on how the draft guidance could be improved. Some of the comments overlapped with, and in some cases reiterated, views on the overall principle of remunerating Board members.
27. A greater focus was requested on the consideration of, and practical issues for, a decision whether or not to pay Board members. The guidance was considered to have several sections which provide guidance on other matters e.g. board diversity. The guidance needed to avoid duplication and information that is not relevant to the remuneration of Board members.
28. As a general point, one respondent felt there should be limited guidance on the matters on which he or she believed each Association must be allowed to make its own decision. The respondent did not believe just allowing payments meant “the floodgates” would open.

29. The draft guidance document outlined the need to have a business case for the remuneration of Board Members. One respondent felt that given the Welsh Government is requiring Housing Associations to “do more with less”, the guidance needs to make reference to any business case demonstrating value for money. More information is needed for Associations to determine the business case and to be able to demonstrate the costs of implementing Board member remuneration are outweighed by the benefits. It was felt the remuneration of Board members must not just be an additional cost that has to be funded from tenants’ rents.
30. One respondent said an Association’s decision to pay its Board members should not be dependent on them having adopted and implemented Community Housing Cymru’s Code of Governance. The view was there may be good reasons why an Association isn’t able to implement all the recommended practice in the Code.
31. The evidence that payment improves performance was considered by one respondent to be limited and controversial. One comment referred to the view of the Regulator in England in that payment does not enhance good governance despite findings from the recent National Housing Federation member survey. Therefore, the argument set out in the line in the draft which states “*the main justification for paying board members must be to improve the quality of governance*” is difficult to support. It was suggested that this line was substituted with the words “*Associations must be able to justify their reasons for Board member payment*”.
32. As managing Board turnover and Board renewal is a requirement of good governance whether Associations choose to pay their Board members or not, one respondent was unsure why this line had been included. It was suggested it should be removed from the final version. Similarly, the size and composition of a Board should also be considered irrespective of decisions on paying Board members.
33. The requirement to “*inform the Regulator of intentions to introduce payment so the Regulation Team can have assurance that the Association has “complied”*” with the guidance was considered by one respondent to be strange and counter-intuitive. It was accepted the Regulator should be told if an Association is introducing Board member payment but it was felt that guidance should be guidance and should not require evidence of compliance.
34. The commentary under the “Regulation of Payments” suggests assurance for the Regulator should include the identification of areas where it expected to see measurable improvements. This was felt to be inconsistent with the view expressed on page 11 of the consultation document, which refers to some Associations wishing to introduce payments even though their Boards are already performing well,

concerns about the ability to retain the right people or the quality of future recruits, and Associations feeling it appropriate to reward current Board members for their commitment and hard work. It was acknowledged that a decision to introduce payment for Board members could just reflect a desire to reward the time commitment of members and an Association may not be expecting improved governance as a result.

35. One respondent noted on page 11 of the consultation paper a statement that rewarding Board members for their hard work may be acceptable in the context of driving continuous improvement in the Association's services and better governance. The comment referred to two issues. The use of the word "acceptable" was considered to imply the Regulator has to approve the decision to pay Board members, which would bring into question the decision making powers of the Board and officers of the Association. The use of the words "maybe acceptable" was considered to imply a compliance approach, which was felt to be contrary to the concept of "co-regulation". It was also felt to link payments and improvement with the comment that there isn't hard evidence that the two are linked.
36. One respondent said his organisation was particularly concerned about the sentence which said the failure to address matters before introducing payment will be regarded as a failure to fulfil the basic good governance obligations of the Code of Governance. It was felt this aspect reinforced the view that the document was about more than guidance. Another said that whilst having guidance is extremely useful, it was felt it should be for guidance only and that parts of the draft appear to state requirements. Mandatory prescription was not favoured. If there was an expectation that everyone would have to 'comply' with all aspects of the guidance, it ceased to be guidance and became an instruction. It was felt important to bear this in mind in setting out any guidance.
37. On behalf of fellow Board members, one respondent made a general observation the guidance was poorly drafted, too detailed and, in parts, implied that certain governance arrangements were better than others without any clear evidence or reasoning being provided.
38. Other comments contained a number of suggestions. The guidance should contain a "*must have*" schedule e.g. adoption of the Community Housing Cymru Code of Governance whilst retaining flexibility for local circumstances.
39. It was noted the draft guidance stated that any Association considering payment would need to demonstrate it has adopted and implemented Community Housing Cymru's Code of Governance". One respondent asked for clarification on this point explaining an Association may not have been able to comply on a particular point and instead, should be able to explain.

40. If payment of members is allowed, one respondent felt an Association should be free to follow that route, subject to satisfying itself that there was a strong business case for doing so. It was felt meeting the requirements of the Code of Governance was a different matter and if an Association did not meet the Code, it would be a separate issue for the Regulator to take up and should not be linked to the payment of Board members.
41. The guidance, as drafted, was taken to suggest that non-compliance would mean that the Association could not offer Board remuneration. It was felt this should be the case because as a Large Scale Voluntary Transfer body, it could be many years before it was able to fully comply with every element of the Code of Governance.
42. One respondent felt the Welsh Government should be more pro-active in the guidance it issues rather than put at risk the good governance the Housing Association sector in Wales has achieved and evidenced. For example, it was felt more work should be done on the potential impact upon residents of any decision to remunerate Board members. It was felt Board membership involving residents has been embraced in Wales and there is a risk that some Board members may feel unable to access governance structures if payment puts their income at risk. The comment asked what analysis has been undertaken of the potential impact.
43. The reference to the Charities Commission guidance, rather than articulate the potential impact in the consultation document, was not considered to be acceptable by one respondent. It was suggested the Welsh Government should undertake the work and share it with the sector to ensure any potential risk is appropriately mitigated.
44. The guidance states an Association is also expected to have made publicly known its intention to pay and should have been proactive in seeking the views of tenants, residents and other stakeholders. Clarity was requested on what is intended by the use of the word "*publicly*".
45. The section in the draft on the appointment of the Chair appears to suggest that open competition is the preferred method of appointment. One response did not disagree with this sentiment but felt it should be possible for any existing Board Members with the necessary skills and experience to be included in any open competition.

Additional guidance

46. Respondents were also asked whether anything was missing from the guidance. The comments produced a number of suggestions. The points below are in no specific order of priority or importance:

- More detail on the considerations in relation to taxation and status as an employee or office holder or worker and the implications of those.
 - More detail or examples of what has worked in relation to how to pay people who are on benefits.
 - Examples of proposed pay structures
 - More references to the experience in other sectors in Wales where payments are made to non-executive Board members and the benefits and/or challenges experienced around recruitment.
 - More on the link with effective Board size, although it was noted this could equally be covered in other guidance relating to governance structures generally.
47. One respondent said that if the Welsh Government introduced a remuneration maximum, or guide levels and/or a preferred basis for setting the remuneration e.g. link to allowances for councillors, the guidance would need to have appropriate sections covering those issues. Another said a section on review of payments would be needed once a decision to pay has been made.
48. It was noted that the National Housing Federation book *“Board member pay: What housing associations need to know”* gives further and more detailed guidance. It was considered helpful to include sub-set information relevant to the sector in Wales.

Other comments

49. One respondent sought clarification on whether the guidance on Board member remuneration would also apply to Care and Repair Agencies. Another said, historically, paid Executives could not be on the Boards of Management. However, if the remuneration of Board members was allowed, the respondent asked if there will be an expectation or acceptance that Associations could also appoint paid Executives to the Board. In doing so, it was felt a Housing Association Board would appear to be closer to a commercial Board with Executive and Non-Executive Directors. The respondent asked if this is what the Welsh Government is aiming to achieve, rather than be akin to charities where payment of trustees is not allowed
50. The impact on Board members in receipt of benefits was understood and recognised as a matter for personal consideration for those likely to be affected. The risk of a decision to pay Board members could trigger multiple resignations and the related difficulties with recruiting to such vacancies was recognised. Clear guidance and consideration as to whether concessions could be granted would be welcomed.
