

New Board Member Training Session

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Through the turbulence

With good governance



Quiz question

How many housing associations are there in England?

- A. 1500*
- B. 2000*
- C. 750*
- D. 5000*

Inequality, poverty, austerity



Housing association history

- First association dates to 1235 AD
- 1900: Peabody and other charitable trusts
- 1974, 1988, 2008 landmarks
 - *1974: registration and access to grant*
 - *1988: private finance and stock transfer*
 - *2008: private sector competition*
- Main providers of new social homes
- Good track record

About the sector....

- 1,519– some are for profit organisations (25) now
- 321 own over 91% of stock though
- Different types of legal entity – charities, what were termed I&P societies, now community benefit companies, few are Co Ltd by guarantee
- Regulator is the Homes and Communities Agency
- Pretty heavily regulated sector – standards on governance, financial viability, value for money
- HCA also provides grant, within London provided by GLA

About the sector

- Different types of model:
 - *housing association (Cathy Come Home – churches, philanthropy – huge range)*
 - *LSVT or stock transfer – ex – when Councils transferred their stock in order to release capital investment in housing*
 - *ALMO*
 - *Group structure – parent and subsidiaries*
 - *Have influenced the Board model*

About the sector

- Different types of model:
 - *Almshouse*
 - *Abbeyfield*
 - *Self Build*
 - *Community Land Trust*
 - *Co-ops*
 - *Specialist*

Quiz question

The largest housing association in England has how many homes?

- A. 20,000*
- B. 50,000*
- C. 75,000*
- D. 150,000*

Changes under way

- Governance -
 - *Professionalisation – including recruitment*
 - *Board size is shrinking*
 - *Board composition – increasingly skills and competency-based*
 - *Board meeting times moving from evenings*
 - *Executive membership of the Board*
 - *Board payment*
 - *Commercial skills increasingly sought*
 - *Locality still matters a fair bit*

Top priorities for associations

- Staying solvent, out of trouble
- Delivering good homes and services
- Supporting communities and neighbourhoods
- Improving efficiency, performance
- Creating tenant satisfaction, involvement
- Achieving Decent Homes Standard
- Developing new homes
- Creating a great place to work

The turbulent winds of change ...

- Rent cuts – 12-15% over 5 years – cost cuts to match
 - Benefit cuts
 - Poverty, ageing, disability of tenants
 - Increased borrowing costs
 - Harder to access the funding markets
 - Back book reprice?
 - Right to Buy
 - Little or no grant
-

Moody's said ...

“The scope and abruptness of the changes signal a less stable policy environment for English HAs, whose credit strength had previously been underpinned by policy predictability.

HAs now face a more challenging policy environment that they will have to adjust to quickly. These changes have also accelerated the weakening of credit positive ties between HAs and the UK sovereign.”

The wider world

- The credit crunch (yes, again!)
- Climate change gathering speed
- Technology and life style
- Demography and demand: ageing society
- Migration within UK and beyond
- Resurgence of poverty, health inequality

Quiz question

Housing associations can run employment projects and training

A. True

B. False

C. Only for their own tenants

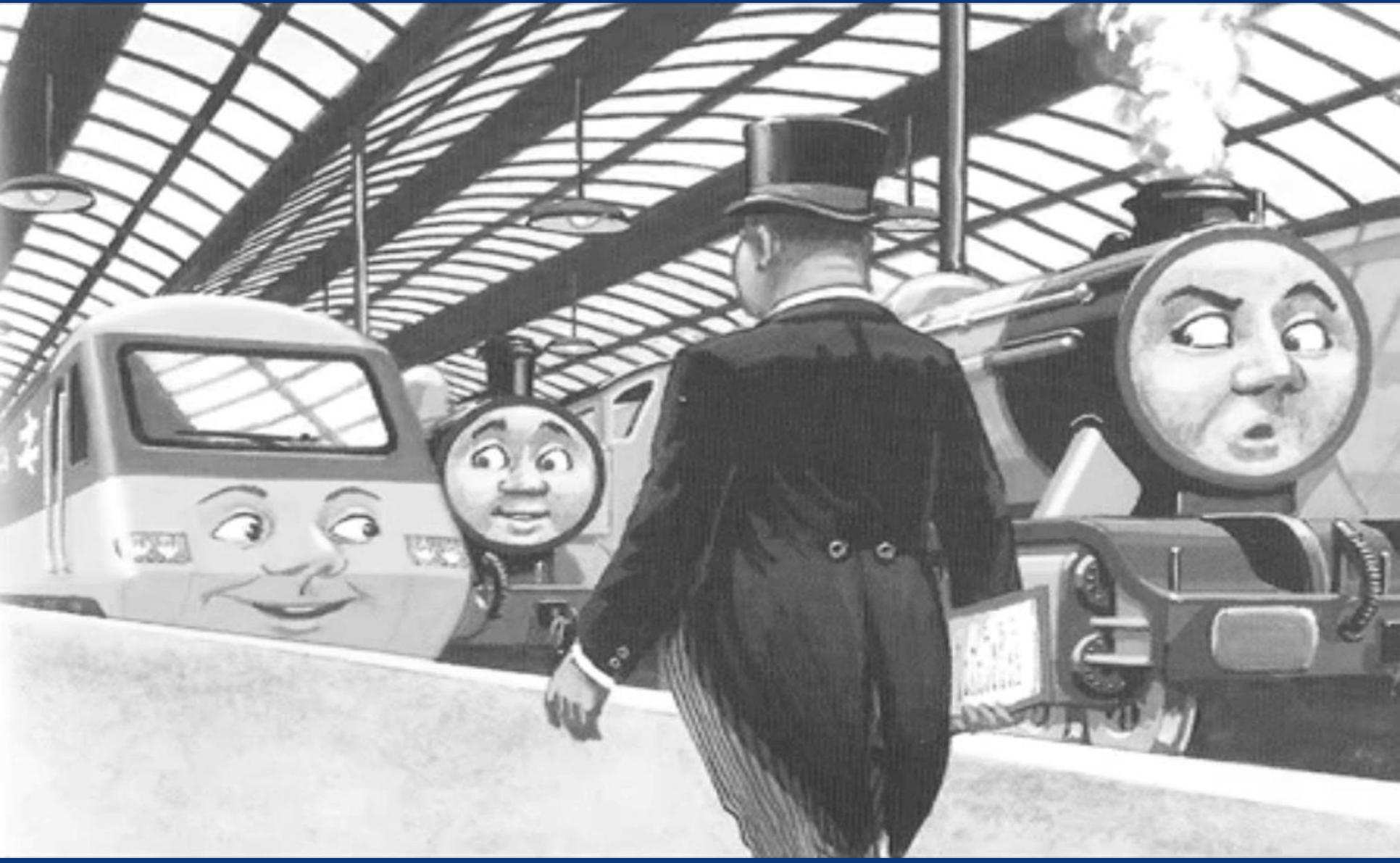
D. Only with permission from the local Council

Quiz question

Housing associations can run prisons

- A. *True*
- B. *False*
- C. *True, but only open prisons*
- D. *True, but only for people who are on remand, but not convicted*

Know what the regulators want



How much do Boards need to know?

- Their legal and regulatory responsibilities
- Good governance
- Their own personal liability
- The key business drivers
- That it could all go horribly wrong, and fast

- ▶ What information they need, and in what form
- ▶ What assurance they have
- ▶ To love the Audit Committee
- ▶ About the auditors: external and internal
- ▶ About the regulators and what they expect/need
- ▶ What they need to learn



Or in a nutshell ...

**Enough to exercise true
independent judgement**

... and be ever ready for them



So what's going on in housing?

- Conservative majority in Government – surprise, some policy things around housing that we expected trade-offs with Lib Dems
- Rent formulae in social housing still controlled by Government – changed the formula, -1% for 4 years
- Reclassified as public bodies – trying to reclassify back – consents around disposal
- Housing and Planning Act

So what's going on in housing?

- Housing and Planning Act
 - *Pay to stay, higher value voids*
 - *Shorter term tenancies*
 - *Voluntary Right to Buy*
 - *Increasing impoverishment, hollowing out of London*
- Main messages: less public money, less grant, massive promotion of home ownership, increasing unaffordability of housing – even social housing with welfare reform – esp London and the South

What does this mean for you?

- Providers having to expand the range of tenures to cross-subsidise
 - *Market sale*
 - *Shared ownership*
 - *Market rent – or private rented sector*
 - *Intermediate rents*
- Creation of commercial subsidiaries, joint ventures
- Range of funders has changed – institutional investors

What does this mean for you?

- In recruitment terms
 - *Shrinking Board size is reducing diversity arguably*
 - *Commercial skills increasingly sought*
 - *Smart property, development, strategic asset management skills increasingly sought*
 - *Mergers and acquisitions*
 - *Board members there to bring the right challenge in this area*
 - *Payment*

Know your responsibilities

- As company directors, under company law
- As charity trustees
- Regulatory and legal compliance
- The HCA Standards and Code
- The NHF Code and guidance
- To avoid train-crashes!

Companies Act 2006: new duties

1. Act within powers set out in the Memorandum
2. Promote the success of the company
(NB: Not just profit)
3. Exercise independent judgment
4. Exercise reasonable care, skill and diligence
5. Avoid conflicts of interest
6. Not accept benefits from third parties
7. Declare interests

NB. Charity trustee duties go somewhat further

Exercise independent judgement

- **Common law: ‘not to fetter discretion’**
- **Not make up your mind on your own!**
- **Can rely on judgement of others where not an expert**
- **Can even have an interest in the matter**
- **But judgement is your own judgement**
- **Must take appropriate advice, but not follow it slavishly**

Reasonable care, skill & diligence

- Background: Insolvency Act 1986
- **Objective test:** *what a reasonably diligent and experienced person would do*
- **Subjective Test** - *exercise the general knowledge, skill and experience that s/he has if that is greater than the objective standard*

Changes under way

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Quiz question

The law says that tenants have the right to elect Board members of all housing associations

- A. *True*
- B. *False*
- C. *True, but only for tenant Board members*
- D. *True, but only for Council transfers*

Quiz question

Housing association Boards have to meet in public

- A. *True*
- B. *False: it's actually forbidden*
- C. *False, but they can if they want to*
- D. *True, but only for Council transfers*

Quiz question

Housing associations can go bust

- A. False: the Government guarantees them*
- B. False: the Council has to step in*
- C. True: but none ever have*
- D. True, and it has happened*

The Board in charge

- Company directors
- Like charity trustees
- Stewardship not ownership
- Personal responsibilities and duties
- No representatives at the Board table
- Need to be on the front foot

The 'G' word

- Good governance vital
- Board: strategy, direction, control
- Accountability: tenants, the local authority, other stakeholders
- “Boards should direct, not manage”

Board role

- Ensure compliance with objectives
- Set plans & budgets, monitor progress
- Understand and manage risks
- Take major decisions
- Support and challenge staff
- Act as employer

The annual Board cycle

- Accounts, budget and audit
- Corporate planning (also 3/5 yearly)
- Financial reporting: monthly, quarterly
- Internal controls
- Statutory and regulatory returns (HCA, Financial Conduct Authority)
- Review Efficiency, Value for Money

Making boards effective

- JDs, person specs, clear expectations
- Focus on skills needed
- Open selection for independents
- Advertising, interviews etc
- Recruitment 'packs'
- Induction, appraisal, training
- Appraisal and renewal
- Recognition and respect

Role of Chair

- Ensure efficient board
- Work with/appraise chief exec.
- Oversee business between meetings
- Obtain advice when needed
- Lead board self-assessment

Role of chief executive

- Manage within board policies
- Lead staff team
- Help board set strategy
- Compliance with law/solvency
- Service and support board
- Board member or servant?

Regulator's approach

- Boards as first line of regulation
- Punitive approach to non-compliance
- Major focus on solvency, liquidity
- Protection of social housing assets
- Waiting for the 'Next Big One'

More specifically

- Changes to Governance and Financial Viability Standards
- Introduction of Code of Practice
- Disposal regime
- Rent standard
- Registration criteria

The Code of Practice

- Isn't really a Code
- Compliance not required – “advisory”
- Co-regulation principles
- Requires adoption of a governance code
- Up-to-date register of assets & liabilities
- Stress-testing, risk, cash-flow etc
- Non-registered parents for RPs

So what is the key message for Boards?

- More onus on Boards
- Emphasis on good governance
- Self certification of compliance
- Stress testing rather than ring-fencing

The advantages of regulation

- Low interest rates
- No loss on default
- Badge of quality
- It's free (for now)
- More onerous for for-profits

The limits of regulation

- The catch-22 of statutory powers
- Power of lenders/ratings agencies
- Moratorium and insolvency powers don't really work
- Political interference
- Contested space

The roots of evil ...



The three roots of evil

- Weak governance leading to failures of oversight
- Powerful ambition unmatched by capacity, ability or risk understanding
- Incompetence & lack of attention to detail
 - *Often compounded by complexity*
 - *The iron law of interdependence*
- Turbulence will blow away the weak, unprepared

Invest in governance



Invest in governance

- Fiduciary, strategic, creative
- Intelligent design, the cycle
- Focus on skills and behaviours
 - *New activities will need new skills*
- Recruitment and renewal
- Adopt a Governance Code & Comply
- Use the HCA Code of Practice
- Annual review
- Create the audit trail ...

Comply with company director (and trustee) obligations



Comply with company director (and trustee) obligations

- Companies Act 2006 set new standards
- Wider general duties
 - *Stakeholders, employees, environment, reputation*
- Exercise independent judgement
- Reasonable care, skill, diligence
- Charity law: Trustee duties require higher standard of prudence, probity, application
- Insolvency Act 1986
- Important role of Company Secretary

Comply with HCA obligations



RENDER
UNTO
CAESAR



Comply with HCA obligations

- The Standards and certification
- The Code of Practice
- Applying co-regulation
- Avoiding 'undue risk'
- No loss of social housing assets, no sales to meet shortfalls

The joy of being boring, below the regulatory radar



Register of assets & liabilities

- Up to date record of assets and liabilities
- Especially where impact on social housing
- Housing assets and security
- Other entities and their impact
- Readily available info to assist regulator & potential rescuer if resolution needed
- Board oversight of register and its format
- Recorded by business stream

Liabilities

- Loans (inc. intra-group)
- Guarantees
- Leases
- Derivatives
- Cross-default provisions
- Impairment
- ‘Soft’ liabilities – JVs, reputation, etc

Hone risk management



Hone risk management

- Risk maps are all very well
- Can't leave it all to a Committee
- Give 'creative' time to risk conversations
- Optimism bias is a risk in itself
- Stress testing ...

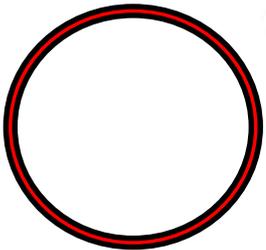
Comply with landlord obligations



Comply with landlord obligations

- Gas servicing, fire, electrical, lifts, Legionella, asbestos and more
- Health and Safety
- Equality and discrimination
- Rents and service charges
- Tenants' & leaseholders' statutory rights
 - *Ever-increasing complexity*
 - *Will vary hugely between individuals*

Comply with employer obligations



Comply with employer obligations

- Board is responsible, even if not aware
- Equality Act
 - *Equal pay*
 - *Discrimination*
- Discipline at work – process issues
- ACAS Code of Practice
- Public Interest Disclosure Act 1998
- European Directives
- Health and Safety at Work
- Line management of CE

Comply with other general obligations



Comply with other general obligations

- Data Protection Act 1998
- Corporate Manslaughter Act 2007
- Health and Safety
- EU procurement regulations
- Fraud Act 2006
- Bribery Act 2010
- Equality Act 2010
- Staying Off the Front Page of the Daily Mail Act 2014

Trust but verify

- Business assurance
- The growing importance of the Audit Committee
- Ignorance seldom an excuse
- The need for Board 'grip'

Three governance modes

- **Oversight** (fiduciary)
- **Foresight** (strategic)
- **Insight** (creative)

Do the right thing



Do the right thing

- Get the housekeeping right first
- The social mission is key
- It's not about the regulator
- Most of what they want is sensible
 - *If not exactly in the way they want it*
- Creating the audit trail will take time

- Let's have a break?

The engaged Board

- It's not just about Board meetings
- Committees, panels, working groups
- Meeting with tenants, front line staff
- Informal time in the business
- External activities – seminars, conferences, learning and development

It needs to be FUN!



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