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South Cambridgeshire Landlord Selection Panel

Tenant involvement and landlord structures

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1 Introduction

The Landlord Selection Panel is currently considering the most suitable form of landlord structure to take a transfer of the Council's housing stock. The panel has sought some further advice about the protections that can be put in place to ensure that in the event a decision is taken to transfer to a stand alone organisation that the organisation does not then take a decision to join a group structure at some point in the future without proper reference to tenant's views.

2 Governance arrangements and considering group structures

2.1 There is always a possibility that the new association may at some point in the future want to look towards joining a group structure for a large number of reasons. This however is not a decision which can be taken lightly or in isolation of the views of the various stakeholders and there are a number of steps which would need to be followed before this can occur.

Consulting tenants

2.1.1 Tenants would need to be consulted on any proposed change to the landlord structure. The Housing Corporation will expect to see evidence of this as part of its formal consideration of the proposal. The Housing Corporation has previously indicated that it will not allow new registered social landlords to enshrine a commitment to ballot its tenants on the option of moving to a group structure. Whilst tenant consultation is a necessary part of the process, providing tenants with the ability to effectively "veto" any decision to transfer to a group in the future which may be the most viable or responsible decision is unlikely to be permitted.

2.1.2 The Housing Corporation will need to provide its approval to any decisions to join a group structure and will require evidence that there is a clear business case for doing so, that the decision has been made after careful consideration of all significant key factors and is appropriate under the circumstances.

2.1.3 The board of the association would need to take any decision to joint a group structure very seriously and it is expected that it would only do so following consideration of detailed specialist advice on the implications of this decision. As directors of the association all board members must take any decision to join a group structure in the future having regard to their duties to act in the best interests of the association.

Shareholder votes – the tenant role

2.2 If the board supports the decision to join a group structure this decision must also be supported by the shareholders of the association. Before the association could decide to join a group structure it would need to amend its constitution in order to become a subsidiary. Any changes to the constitution must be approved by the shareholders. In order to achieve this the proposal would require support of over 75% of the shareholders attending and voting at the meeting. In a traditional stock transfer RSL where voting powers of the shareholders are held by tenants, the Council, and the independent

shareholders equally each of these constituent groups holds one third of the vote. In order to pass a resolution requiring 75% it would be necessary to have support from each of the three constituent groups. It would therefore not be possible for the amendment to be passed unless tenant shareholders support the change.

Full scale merger, often done by a transfer of engagements only requires a two thirds majority and so could, in theory, take place if the Council and independent shareholders vote in favour. However it is unlikely that the Corporation would consent if the tenants were against. If this is a real concern then looking at models where tenants hold more than one third of votes may be appropriate.

3 Community Gateway Associations

3.1 If more tenant control over future change is wanted then you could consider a model where tenants hold more of the shares. The essence of the community gateway model is increased empowerment for residents and members. Under the gateway model the constitution normally provides that the only shareholders in the association can be tenants or leaseholders of the association. Unlike the conventional transfer described above the Council would not be a shareholder in the association and any control it would want to keep over the association would have to be through the transfer agreement.

3.2 The standard gateway rules provide for the tenant and leaseholder board members to be elected by tenant and leaseholder shareholders but to prevent this becoming a small group of self perpetuating people, the normal rules also say that if the number of shareholders is less than 25% of the total number of tenants and leaseholders then the board can direct for different kinds of elections to be held but the underlying principle for the community gateway is that an association is owned by its residents.

3.3 The make up of the board in a gateway association is also different from the common 4/4/4 or 5/5/5 of a stock transfer. It would be more usual to have 7 tenants and leaseholders, 3 local authority appointees and 5 independents.

3.4 Community gateway associations all have what are called different things in different places but are sometimes called a gateway committee, a gateway board, or a residents group but in each case this is a body intended to have a very large number of resident members which link into an influence the operations of the association. The association's board however remains responsible through the control of the association in the normal way.

3.5 With a community gateway the resident shareholders would have real control over future change.

4 Controlling change through the transfer agreement

Quite separately from the shareholding it is possible to require in the transfer agreement that the Council consents to any future merger or joining a group structure. The clause could require that the Council has to be satisfied that tenants have been fully consulted but as said above they could not require another ballot. Usually such clauses are for a limited period, say 5 years.

5 **Conclusion**

- 5.1 Whilst none of the landlord models provide circumstances where there can be an ability for the landlord to remain a stand alone association indefinitely or at all costs there are certainly a number of mechanisms by which tenants can feed into the process. As mentioned above tenants will always need to be consulted before the decision to move to a group structure is taken. The shareholding of the organisation will also need to support the rule changes necessary to join a group structure. Clearly from the tenants' perspective the more influence which tenants are able to exert through the vote at general meeting (and this is at its strongest under the gateway model) the greater the level of influence they can have in the future governance arrangements of the new landlord.

Trowers & Hamlins
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Review of IGA Models

	Existing Group Structure	Newly formed Group Structure	Independent "stand alone" organisation
Acknowledgement of a level of independence for subsidiary	Yes, subject to Housing Corporation policy retirements in Good Practice Note 11. Some groups will have a more flexible approach than others. Examples of independence would include the subsidiary operating with its own business plan (subject to approval at Group level); the subsidiary having a defined area of operation, the tenant "golden share" option	Yes- this will be a key consideration in the establishment of the group and in negotiations with preferred partner. Will still be subject to Housing Corporation policy retirements in Good Practice Note 11. Examples of independence would include the subsidiary operating with its own business plan (subject to approval at Group level); the subsidiary having a defined area of operation, the tenant "golden share" option	Organisation will be completely independent
Appointing and removing Board	Depends on rules, but likely to be governed by existing policy/practice within the group. subject to Housing Corporation policy retirements in Good Practice Note 11	More likely to be able to negotiate minimum requirements of subject to Housing Corporation	Not applicable
Exit?	For negotiation with chosen group. Most groups don't look favourably on exit provisions.	Yes- this will be a key consideration in the establishment of the group and in negotiations with preferred partner. But could exit work both ways - so to force South Cambs RSL to become independent?	Not applicable
Chief Executive appointment	Most parent boards will expect a major role Options around who the CE is employed by,	Most parent boards will expect a major role Options around who the CE is employed by,	Board decision

	Existing Group Structure	Newly formed Group Structure	Independent "stand alone" organisation
	for example jointly by Group and subsidiary	for example jointly by Group and subsidiary	
Restrictions on step in (note: none are contractually binding – this is normal now)	Likely to be governed by existing policy/practice within the group.	A key consideration in the establishment of the group and in negotiations with preferred partner.	Not applicable
Service provision:			
Compulsory	Likely to be assumed that key services will be required to be purchased from Parent	Less likely- as in the first instance, a new Parent may well not provide central services	Not applicable
Ability to go elsewhere	Not likely except where Parent is in default	Not likely as (assuming services would be provided) new Parent's business plan may rely on purchase of services	Not applicable
Transparent payment mechanisms	Likely to be governed by existing policy/practice within the group. May be options around how these are calculated, including marginal costs.	Likely to be more transparent as new parents business plan will be devised according to purchase of services. May be options around how these are calculated, including marginal costs.	Not applicable
Dispute resolution	Likely to be governed by existing policy/practice within the group, but likely to be Parent Board	For discussion with chosen partner, but likely to be Parent Board	Not applicable
Who has the final say?	Some offer independent arbitration, although this is becoming rare	Some offer independent arbitration, although this is becoming rare	

	Existing Group Structure	Newly formed Group Structure	Independent "stand alone" organisation
General points	Structure is likely to be governed by existing policy/practice within the chosen group - there could well be a trade off between the overall package offered and the governance structure.	Clear ability to negotiate terms with chosen partner; that said overall parameters will still be driven by Housing Corporation's good practice note 11 and overall requirement for parental control.	