



TENANTS AND BOARD MEMBERSHIP MARCH 2018

One of the questions we often get asked here at TAROE Trust is whether there has been a reduction in the numbers of tenants on the board of management (“the board”) of housing associations, and if so, what does this mean for tenant empowerment?

We thought it might be helpful for us to set out our position on this matter.

We also think this is an area requiring further research and would welcome contact from any parties interested in supporting sector research in this area.

Background

There has been limited research and data available to accurately monitor the numbers of tenants currently sitting on boards, and to compare trends with historical purposes.

Some commentary on anecdotal based recent trends in the sector are as follows:

- Historically, stock transfer (LSVT) organisations would typically have a board consisting of 15 members, in a typical independent / councillor / tenant split 5/5/5.
- Traditional housing associations would historically have smaller boards, and less tenants. However, there was an increase in tenants sitting on boards alongside the launch of the co-regulatory system following the Housing and Regeneration Act 2008.
- Many LSVTs have changed their governance arrangements post-transfer, in part due to mergers with non-LSVT organisations, or as a result of governance reviews which have identified good governance practice. In particular, requirements to comply with a Code of Governance (e.g. circa 80% of sector has adopted the NHF Code of Governance) which stipulate a maximum board size of 12.

More recent developments in governance

There has been a general trend in recent years for the emergence of ‘skills based’ boards¹.

¹ For example: *LSVT Governance that is fit for the future: Exploring sector trends and best practice examples*, Altair (2016)

These have developed on the basis that housing associations are increasingly large and complex businesses, that are engaged in sophisticated financial borrowing. Typical features of these boards are:

- Much smaller boards (typically 6-9 members) that can make decisions more easily and be more nimble and commercially astute
- Appointments based on a preferred balance of skills, knowledge and experience designed for the current and future needs of the organisation (usually requiring a mix of professional expertise)
- Requirements for non-executive board members to enter formal agreements and dedicate minimum time to the role, many of which are now remunerated.

Overall, the above trends point to a “professionalisation” of housing governance. Much of the above, in theory at least, should mean greater accountability of Executives to their Boards, more effective strategic governance and leadership, improved decision-making.

Recent de-regulatory measures have also meant that it is easier for LSVT housing associations to amend their constitutions to move from constituency based to skills-based boards. This has diminished the influence of local authorities on LSVTs, who are no longer able to exercise their ‘golden share’.

The result of these developments is that there has been a significant reversal of the trend for tenants to be appointed to housing association boards.

Challenges to tenants on boards

When a tenant is appointed to the board of a housing association, they assume all the same individual and collective responsibilities of all other members of the board. They must act as non-executive directors. This includes the need to promote the best interests of the organisation² and avoid conflict of interest situations. Where the organisation is also charitable, which is usually the case, they must also assume the additional responsibilities of charity trusteeship.

The historical approach for establishing an LSVT usually involved arrangements for tenants to be elected to the board from the local community. This arrangement is incongruous with the subsequent responsibilities which successful tenants must assume on becoming a non-executive director³. ***It is not possible for such tenants to act in a “representative” capacity.*** Many housing associations that have retained the role of tenants on a board have usually amended such arrangements to include an additional recruitment stage where prospective candidates must first demonstrate minimum basic skills and competencies to fulfil the role.

² These will usually be in line with the best interests of tenants, but also have the potential to be detrimental, e.g. rent increases might improve financial viability, but might harm tenant affordability.

³ See Cowan et al (2006) for a further exploration of this role.

Some tenants may be familiar and experienced at operating in a board environment. However, for others, the environment might be an alien one, which is intimidating. This could even include the formality of meetings, the use of language, extensive professional qualifications, or the dress code. When appointed to boards, tenants may require additional support and development to fulfil their role. This might also include access to mentors, or independent advice. Where these are not forthcoming, and the culture of the organisation does not embrace the contributions that tenants may make to the board, the contribution that tenants may make as a non-executive director might be restricted. From this perspective, it is possible to see how some organisations could conclude, particularly when moving to a smaller board, that competition for places has increased and must be filled by persons who can contribute more fully to the governance debate. However, this could equally be a reflection on the organisational culture of the organisation (see next section).

Where a tenant becomes a member of a housing association board, this can also create significant individual challenges. For instance, the tenant would need to reconcile their role as a non-executive director with not being representative of tenants. This can sometimes create personal challenges for the individual concerned, but also broader challenges within their neighbourhood where other tenants do not appreciate the restrictions on their role but see such persons as their representative on the board (exacerbated where local elections for appointment take place).

The fulfilment of a non-executive board member's duties necessarily requires a focus on matters of strategic relevance. Whilst this does not prevent such tenants from continuing to engage in other tenant involvement arrangements, it may curtail their ability to do so where this brings those individuals into conflict with the collective decisions of a board. This may be particularly challenging for tenants that have previously fulfilled a tenant activist role. Likewise, it would not be appropriate for tenants appointed to a board to raise issues of an operational nature at board meetings, where to do so would be disruptive at best.

The appointment of tenants to a board is therefore a marginal aspect of tenant empowerment. They are not representative of a wider community. They are also restricted in their capacity to influence change and are bound by the legal responsibilities and restrictions of collective responsibility.

Governance and culture

Whilst there are significant limitations to the extent to which tenants sitting on a board can be seen to represent tenant empowerment, this does not mean that there cannot be benefits derived.

The make-up of housing association boards is often homogenous in nature. The professionalisation in recent years has compounded this position. Whilst there are many exceptions, the increased use of 'professionals' as board members often results in the drawing upon a pool of candidates from a narrow socio-economic and cultural background (e.g. often aged 55+, white, male, wealthy). It can mean that governance decisions are reached from a narrow world view. This can have the following consequences:

- Similar values and views can mean that similar strategies are developed and adopted (which might or might not be optimum, e.g. current vogue is to engage in increased development programmes with a mix of tenures and potential commercial exposures - the problem here is that if all housing associations adopt the same approach, and there is a housing market collapse, all housing associations are exposed to those risks materialising)
- there can be a tendency to not question other fellow professionals on a board
- potential failure to consider the impact on tenants of decisions due to being overly focused on assessing commercial risks etc. - sometimes compromising the optimum commercial return can result in greater levels of social return for tenants (an example of this is the decision to go down the 'affordable rent' route as opposed to 'social' rent - it may appear that the former is better as it results in greater numbers of new housing completions (subsidised by the rents of tenants who would otherwise be paying a 'social' rent); but in reality too many 'affordable' rent properties could mean financial exposures due to lack of rent affordability.

The potential for organisational "group think" is potentially dangerous to the housing sector. It is a mind-set which contributed to the financial crisis in the banking sector in 2007. Boards that contain greater levels of diversity protect themselves against this tendency and make richer governance decisions. ***The appointment of tenants to boards, as part of broader preferred balance of skills and competencies, is one way in which such diversity can be achieved and the tendency towards organisational "group think" can be averted.***

It should be noted that the NHF Code of Governance 2015 (adopted by circa 80% of housing associations) includes requirements to promote board diversity.

Where tenants are supported to fulfil their duties as a board member, and the Board and Executive staff welcome and encourage their membership on the board, this can have a broader positive impact on the culture of the organisation overall in terms of the promotion of effective tenant engagement.

Links between governance and wider tenant empowerment

It should be clear from the narrative above, the appointment of tenants to boards is fraught with difficulties and restrictions. They are in no way representatives of the wider tenant population, and the scope of their role is in many ways constrained. However, provided tenants understand, and are supported where appropriate to fulfil their role, they can add value to the overall governance of an organisation, and where done effectively, this can bring a strategic lead to the need for a culture that embraces tenant empowerment throughout the organisation. Ultimately, the appointment of tenants to a board does not assure effective tenant empowerment throughout an organisation.

Ultimately, to engender real and effective tenant engagement, there is a requirement for wholesale change required across the regulated housing sector. TAROE Trust has set this out

within its [Manifesto for Change](#) publication. Some key points to highlight in particular include:

- Tenants need to be granted consumer protection and a right to meaningful tenant engagement within their tenancy agreement.
- A strengthening of the Regulatory Framework is required to include the proactive regulation of consumer standards and expectations that include the availability of various routes for tenant engagement.
- Tenants need increased security of tenure.
- A national tenant body, funded by Government, is required to advise and support tenants on their options and rights.
- Broader and simplified Ombudsman arrangements to afford tenants a right to effective redress.

Tenants and local authorities

The governance arrangements for local authorities are fundamentally different to those of housing associations. The involvement of tenants in strategic decision-making is limited due to the democratic accountability arrangements that are in place.

However, the above should not restrict the requirement for tenants to also have a range of mechanisms in place to enable them to scrutinise their landlord, to be engaged in decisions which affect them, and to have a right to hold their landlord to account where appropriate.

Summary

The key points that TAROE Trust would like to highlight on the role of tenants on housing association boards are as follows:

- The role of tenants on boards has significantly diminished in recent years with the shift towards 'skills based' boards.
- The role of tenants appointed to boards is first and foremost that of a non-executive director, bound by the restrictions of corporate law (and usually charity law too).
- Tenants appointed to boards are not "representatives" of the wider tenant population.
- Tenants can fulfil a valuable role when appointed to boards, enriching board diversity, enhancing the effectiveness of decision-making, and demonstrating strategically the importance of effective tenant engagement.
- The role of tenants on boards can only ever be a marginal one in terms of tenant empowerment. A much wider and more fundamental set of changes are required if meaningful tenant empowerment is to be achieved. Further details are set out in TAROE Trust's [Manifesto for Change](#).