National Housing Federation
Lion Court
25 Procter street
Holborn
London
WC1V 6NY

Via email
2 September 2020

Dear Sir/Madam,

**NHF Code of Governance: Final consultation**

On behalf of The Chartered Governance Institute (the Institute) I am pleased to provide feedback on the draft Code of Governance for housing associations.

The Institute is the international professional body for governance, with more than 125 years' experience and with members in all sectors. Our purpose is defined in our Royal Charter as 'leadership in the effective governance and efficient administration of commerce, industry and public affairs' and we work with regulators and policy-makers to champion high standards of governance, providing qualifications, training and guidance.

We are the professional membership and qualifying body supporting chartered secretaries and governance, risk and compliance professionals in all sectors of the UK economy. Members are educated in a range of topics including finance, company law, administration and governance, which enables them to add value to any organisation.

The Institute has an extensive pedigree in the governance arena, advising governments and regulators on company law, charity law and governance issues. The breadth and experience of our membership enables the Institute to access a variety of applied experience in order to provide insights into effective practices across a range of organisations. Our wealth of expertise and experience has informed our response.

**General comments**

Governance in every sector of the economy has evolved and it is only appropriate that sector-specific governance codes are reviewed to ensure they reflect good practice and attempt to meet the varying needs of stakeholders. Most governance codes have developed to incorporate both hard (policies, procedures and protocols etc) and soft (people, behaviours, culture, diversity and values) governance factors to reflect practices that meet modern needs. To reflect those changes many codes have taken measures to move away from an approach that would appear to support 'box ticking' and promote board activities that think more holistically about good governance practice and what 'good practice' looks like in their individual organisations. Such an approach supports the belief that 'one size does not fit all' in governance terms, but it has also left some organisations struggling to understand what good governance looks like for them, and other boards simply continue to ignore the fact that governance has developed and their practices are no longer fit for purpose.

There is still work to do to convince some boards and board members that good governance is integral to an organisation achieving its objectives. Clarity and consistency in the language used in the code helps to promote understanding and avoid confusion. An explanation as to some newly introduced terms would also help in promoting understanding and application of the principles (and practices). While some of the provisions in the 2015 version remain in this version, new additions do not mirror the existing language and can lead to a perception of a lack of urgency or importance. The following are examples of a few areas we suggest require reviewing for clarity and consistency before final publication.

The structure of the code prioritises the mission and resident-centred focus of the organisation, however the constitutional purposes of the entity are not mentioned until section 2.1. Given the legal nature of the charitable (or other) purposes of the organisation, these requirements should be mentioned at the start of the document. The consequences of not complying with legal requirements should not be underestimated and require the same attention from the board as meeting the needs of the communities the organisation serves.

The code refers to residents, customers, stakeholders, workforce and partner statutory bodies without defining each or discussing their relevant standing in terms of governance practice. Furthermore, the code covers equality, diversity and inclusion without providing a definition as to what each means in relation to the delivery of effective, robust and proportionate governance. A glossary would therefore be a valuable addition to the code (either within the code or accompanying it).

There are several areas where the code would benefit from clarification, better cross-referencing or being more explicit about what is required. For instance, the code alludes to the work of audit and remuneration committees but does not specifically make it clear that such committees should be established (except for section 4.1 (2)). A definitive statement on committees that organisations of all sizes and complexity, or reaching a specified threshold, should have in place would be helpful. Another area where greater clarity is needed is around the role of the senior independent director (SID) or vice-chair. Section 3.9(5) states that the chair should be appraised by a 'senior board member', but 3.3(4) asserts that "there is a senior independent director or vice chair with duties that include the appraisal of the chair…". While the different terminology may mean the same thing, the lack of consistency in language undermines the overall message; that there should be a SID and that the SID should lead on the appraisal of the chair.

Finally, the introduction to the new code states that it has placed more emphasis on accountability, equality, inclusion and diversity, sustainability and culture. Unfortunately, there are few specific references to sustainability (section 2.1) and culture (sections 1.4 and 3.9) which may undermine the aim to promote these aspects. It is also a missed opportunity given the trends in other sectors acknowledging the growing importance of organisational culture to deliver strategic aims and the wider public's awareness of sustainability issues.

**Specific questions**
**Q1.    Are there any areas if the code you think are unclear?**

In a drive for conciseness and brevity, it appears that some fundamental governance issues have not received the attention they might warrant. For instance, there is little reference to the behaviours of board members, especially regarding conflicts of loyalty. The sections covering integrity and conflicts of interest are to a significant degree the same wording, with no reference to managing gifts, awards and hospitality. These are areas with which many boards can struggle and clear guidance as to expected standards of practice would help them.

Some sections would benefit from providing examples of the frequency of when documents and practices should be reviewed. Sections 2.2 and 2.3 use the phrase 'from time to time' which gives the impression that the review of the effectiveness of the practice in question is not deemed worthy of regular board time. This could be a result of different authors using different styles and may be remedied in a final proofread and edit. It does, however, raise a wider point about the tone of the document and the language used.

In other instances, the language is too passive (section 2.5), giving the impression that they are not that fundamental to the achievement of effective or robust governance arrangements. For example, section 2.5 (4) urges boards to have policies on 'safety and wellbeing' but again does not encourage boards to review their effectiveness just to 'receive regular reports on their operation'.

Furthermore, some clauses merely state that certain things should be in place, but do not encourage the board to assess how effective those measures are. For example, section 1.7 (5) encourages organisations to report on their board and committee structures but not how effective they might be.

### Q2.    Is there anything missing from the code that we should consider adding?

Sections 1.5 and 1.6 should be reviewed to reduce repetition and include the mechanisms for declaring and recording the offer, acceptance and decline of gifts, awards and hospitality. Further guidance should also cover the issue of conflicts of loyalty.

Boardroom behaviours can have a fundamental impact on the success of an organisation. A specific section covering boardroom behaviours would further support the section on culture, reflecting other governance codes.

The section on risk views the issue in purely adverse terms and does not include the risk of being too risk averse. A paragraph on the risk of missed opportunities would help to balance the tone of this section.

### Q3.    Is there any reason why your organisation would not be able to adopt the code?

As a professional body, the Institute has been involved in the development of many governance codes. Within the social purpose sector there can be several challenges for organisations in implementing governance code principles and practices. In our experience, it is likely that a few organisations will require additional practical support to help implement each aspect of the code.

Clarity within the guidance also enables a board to understand what is required and how frequently. There are certain aspects of the proposed code which provide an opportunity for misunderstanding or confusion and should be more explicit in what is required and more consistent in the messaging. For example, 2.4 (1) could clarify that delegations to the chief executive should be set out in writing and regularly reviewed by the board as opposed to merely being 'clearly set out'.

Unambiguous statements make it easier for boards to understand what is expected and where they decide to differ from recommended practice, better placed to being able to explain the divergence.

### Q4.    Are there any areas of the code where you believe further guidance or supporting documentation would be useful to support implementation?

Each aspect of the code will require further guidance and/or supporting documents to enable different sizes of organisations to apply the principles. That guidance will be different according to the needs of the organisation seeking that help, it is unlikely that a single document will be able to address the needs of such a diverse sector.

### Q5.    Are there any other observations you wish to make?

The code appears to be less prescriptive and shorter than previous versions. While a more concise document will be broadly welcomed, an explanation as to why a less prescriptive approach was adopted would be helpful. This could sit alongside a broader commentary as to how the code will drive standards of governance in the sector.

Section 4.5 'confidential concerns' does not specifically mention whistleblowing or 'speak up' policies. Although an experienced governance reader would recognise the allusion it may not be clear to those less familiar with governance. Being clear about what is included in this section could help readers and users of the code make the link between culture, openness, safeguarding and placing customer experiences at the heart of decision making.

I trust the above comments help with the development of this much-used governance code. Should you require any clarification or have questions, please do not hesitate to contact me directly.

Yours faithfully,


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