



**COUNCILLOR
GEORGE DAVIES - CABINET
MEMBER FOR HOUSING
AND COMMUNITY SAFETY**

CABINET
6 June, 2016

**REVISION OF GOVERNANCE
ARRANGEMENTS FOR WIRRAL
PARTNERSHIP HOMES TRADING AS
MAGENTA LIVING**

Councillor George Davies, Cabinet Member - Housing and Communities, said:

“If we are to meet our 2020 pledge for good quality housing that meets the needs of residents, we need to support our Registered Provider partners to ensure their governance is fit for purpose. These proposals will ensure that that Board of Magenta Living can provide strong leadership and vision going forward and enable the company to be competitive in an increasingly business focused environment”

1.0 REPORT SUMMARY

- 1.1 The purpose of this report is to advise Cabinet that the Council, as a Company Member of Magenta Living, will be required to vote on proposals for Magenta Living to move to a Board that is selected on the basis of skills rather than by constituency nominations.
- 1.2 Magenta Living’s Board has agreed to move to a Board recruited for the skills and experience necessary to enable the organisation to move into more diverse and commercial areas of business and demonstrate it meets the standard required by the Regulator, the Homes and Communities Agency (HCA) for the current business in the new operating environment.

2.0 RECOMMENDATION/S

Cabinet is recommended to:-

- agree the proposal for Magenta Living to move to a Board that is selected on the basis of skills rather than by constituency nominations.
- Agree that Magenta Living's Articles of Association be revised to reflect the changes.
- Delegate authority to the Borough Solicitor to agree changes to Magenta Living's Articles of Association.
- Authorise the relevant Council officer to vote on the changes (and associated matters) proposed and referred to in this report at the forthcoming Magenta Living General Meeting.
- Refer this report to Council meeting 11 July 2016 for approval.
- That relevant Members undertake and be provided with all requisite training and development necessary / appropriate to be a Board Member of Magenta Living.

SUPPORTING INFORMATION

3.0 REASONS FOR RECOMMENDATIONS

- 3.1 To enable Magenta to be involved in more diverse activities and to meet the expectation of the Regulator that their Board is sufficiently skilled to have oversight of a more complex business and able to manage the associated risks

4.0 OTHER OPTIONS CONSIDERED

- 4.1 None

5.0 BACKGROUND AND KEY ISSUES

- 5.1 The operating environment has changed dramatically since transfer in February 2005. Previous Boards of Wirral Partnership Homes and Magenta Living have tried to reshape the business in light of these changes to make it more resilient. These attempts have been met with limited success.
- 5.2 At transfer there was a board of 15 comprising five local authority nominations, five tenants and five independent people. In order to comply with the minimum National Housing Federation (NHF) Code of Governance requirements at that time, in 2013 the Board and Company Members agreed to reduce the Board size from 15 to the maximum number of 12 but still maintaining the three constituencies in the same third ratio, along with a change of board directors' terms of office from three terms of three years to two terms of four years and that tenant and independent board directors would go through the same skills based interview process for places on the Board. This was agreed by Magenta Living's AGM in September 2013.
- 5.3 Magenta Living is proposing to make further changes to their constitution in the light of wider scale changes in the housing association sector.

6.0 THE DRIVERS FOR CHANGE

- 6.1 Social housing is under considerable pressure: reductions to rents charged, cuts to current operating budgets, lack of demand and reduced lettings income following benefit reductions to Magenta Living's traditional clients, reduced and/or no grant or subsidy for new build developments mean that resources are not available to run the social housing business as they once were.
- 6.2 The Magenta Living Board agreed that they needed to develop into more diverse areas of work to create other income streams that would replace or supplement previous public subsidies. Moving into build for sale, build for shared ownership and developing a portfolio of private market rent schemes, together with the development of joint ventures are all new and challenging activities being pursued. All offering potential rewards but with significantly different risks. It is essential that the Board of the company has the skills to manage those risks, ensuring that profits are made which are brought back to Magenta Living to replace lost government subsidy.

6.3 For risk management reasons as well as taking regulatory guidance, Magenta Living needs to ensure that it has a sufficiently skilled and experienced Board to have oversight of such new ventures.

6.4 It is clear from the HCA that they expect stronger commercial and business skills will be required on Magenta Living's Board for the future.

7.0 THE EXPECTATIONS OF THE REGULATOR

7.1 The HCA has flagged up concerns that the Magenta Living Board should be sufficiently skilled to be able to understand the more diverse activities that they would be involved in.

7.2 All registered housing associations must operate to a recognised code of governance. Magenta Living has adopted the 'NHF Code of Governance: promoting excellence for housing associations'. The main expectations with reference to this review of Magenta Living's governance are:

- Board Directors must act in the interests of the organisation and not on behalf of or representing any constituency or interest group
- Board should be at least five and no more than twelve members
- Recruitment to board vacancies must be open and transparent and be based on the board's considered view of the skills and attributes required to discharge its functions
- Maximum tenure for all non-executives must in total be nine years
- Where a board member is nominated or elected the organisation "must ensure that those coming forward bring skills and experience that meet the needs of the board, and that they are fully aware in advance of the responsibilities that they will undertake. New board members must not be appointed without undergoing a due selection process to establish their suitability."

7.3 Seminars and articles from leading figures such as Julian Ashby, Chair of the Regulation Committee at the HCA have been increasingly urging boards to ensure they are sufficiently skilled. In September 2013, Julian Ashby said that the HCA had dealt with a number of cases where poor governance had led to ineffective risk management. Those boards did not have sufficient skills to challenge or did not recognise the need for specialist or professional advice and he called on providers to regularly appraise their mix of expertise and ensure their boards are fit for purpose by refreshing and renewing skills regularly. This advice has consistently been reinforced and early this year Julian Ashby advised boards that if they did not have the necessary skills for diverse activities then they should not be involved in those activities.

7.4 In order for the HCA to be able to really test the effectiveness of boards and their organisations a new system of In-Depth Assessments (IDAs) are now being carried out on registered housing associations. Through review of the company's documentation and intensive work on site, the HCA wish to ensure that governance and financial arrangements in each housing association do not put the social housing assets at risk. The HCA will be looking for evidence that the board has credible plans and they will wish to obtain assurance that the board has the skills

and drive to deliver those plans. The Magenta Living Board understand that an IDA would consider a range of areas: strategy, structure, financial resilience, risk profile and mitigation and governance. Under governance the HCA will test the Board's understanding of business planning, management reporting and forecasting. They will wish to see the level of individual Board skills and effectiveness and the interface with the executive.

- 7.5 Through IDAs the HCA is 'raising the bar' in assessing registered providers' compliance with the regulatory standards and whether they are fit for purpose in a much more difficult operating environment. A key element will be the level of skills and experience on the Board to manage what will be more challenging businesses going forward.
- 7.6 The regulator has published four volumes of 'Learning from Problem cases' over the last twenty years. These reports chronicle, in some detail, the failures in the housing association sector. They are produced for boards and executives to learn from the mistakes and setbacks of others so as to avoid encountering similar fates. The latest volume was published by the HCA in June 2015 and covers Cosmopolitan Housing Association (a Liverpool housing association that was brought to the brink of insolvency due to weak governance and management and a number of financial issues). Whilst there are a range of factors leading to problem cases the report sets out that the greatest root of cause of failures has been through weak governance. The report states that 'in today's tough business environment, boards need skill, grip and effective teamwork if they are to exercise proper oversight of the executive and the operations of the organisation.'
- 7.7 The report goes on to highlight that 'we are seeing a higher bar for the standard and skills and competencies required for non-executives' and 'we are now seeing – if not universally – a more ruthless focus on skills, capabilities and the depth of knowledge in much board member selection.' The problem cases highlighted show that poor governance and risk management with, in many cases, weak board skills and oversight in more risky and complex non-social housing activities can lead to spectacular failures. One of the lessons is to ensure the board have the skills to oversee the new ventures that are part of the organisation's aspirations. This is a theme that Julian Ashby the Chair of the Regulation Committee at the HCA regularly comes back to as set out earlier.
- 7.8 In short the HCA expect housing associations to be involved in more diverse activities but that their boards are sufficiently skilled to have oversight of a more complex business and able to manage the associated risks.

8.0 MAGENTA LIVING INDEPENDENT REVIEW OF GOVERNANCE

- 8.1 Following a meeting with the HCA in July 2015 Magenta Living commissioned an independent governance review using Altair (a specialist national housing consultancy). They would review Magenta Living's governance arrangements and carry out a study on best practice in Large Scale Voluntary Transfer housing associations (LSVTs).
- 8.2 Altair referred to the changed operating environment and the need for appropriate skills and experience for a board to be able to control, support and direct the

organisation in its business objectives and the fact that the NHF Code of Governance and HCA Regulatory Framework have both been strengthened in this regard.

8.3 Altair's review of Magenta Living's Board found that:

- All board directors agreed that with the future challenges a more skills based board was required
- All board directors agreed that there were currently skills gaps, particularly around finance and business and commercial skills
- Many noted that the board relies on a small number of key board directors
- There was concern over the imbalance between focus on strategy and on day to day operations
- There were mixed views on the size and composition of the board whilst agreement that it needs to be skills based
- There was a view that the annual appraisal process needed review
- It was agreed there were too many committees and these should be streamlined and recruited on the basis of skills
- It was felt that board champions' roles were not adding value
- It was felt existing tenant involvement and advisory forums were ineffectual
- Governance documents needed to be reviewed and updated, particularly the scheme of delegation

8.4 Altair made a series of recommendations:

- Magenta Living move to a skills based board and consider reducing the size of the board
- That a more rigorous approach to annual appraisal be instituted with no automatic reappointment, instead the skills the board requires would drive the appraisal and appointments process
- Nominated board directors should go through the same skills based appointments process as all other board directors
- If the board decides to move away from constituencies altogether, that arrangements be established to ensure adequate engagement with tenants
- Committee structures to be streamlined with a minimum of audit and remuneration committees and consider task and finish groups for other business
- Cease the board champions role
- Revise the supporting governance documents
- Review the length of the chairs appointment from one year at a time to introduce more certainty and consistency
- Reduce the level of operational detail in reports and focus more on strategy

8.5 The report will be available to the HCA as part of any future IDA or regulatory review of Magenta Living. The HCA would expect the Magenta Living Board to have taken account of it and to have acted on the findings of an external independent review.

9.0 SKILLS AND APPRAISALS

- 9.1 Following the Altair review, the Magenta Living Board agreed a set of skills that will be required moving forward to more diverse activities. The list of agreed skills is attached at Appendix 1.
- 9.2 From the surveys undertaken by Altair, board directors collectively identified a range of skills gaps, a number of which will be required for the future operation of the business going forward:
- Business growth and diversification
 - PR and Communications
 - HR
 - Housing Management and service delivery
 - Property development
 - Legal services
 - Commercial and financial skills
- 9.3 From previous discussions Magenta Living has already noted that it will wish to retain skills that it has acquired in its early years work. These have included community development, resident perspective, tenant involvement, local authority and public sector working and voluntary and community work.
- 9.4 However from the above analysis there are a number of skills not presently in place which will be required for the future operation of the business going forward undertaking more diverse activities.
- 9.5 The Board undertook a skills gap analysis / appraisal process (facilitated by Altair) at the end of March 2016 which, together with an agreement on the skills required against its future work programme, will inform the Board's future structure.

10.0 WHAT ARE OTHER LSVTS DOING?

- 10.1 It is clear that the vast majority of LSVT housing associations have made significant changes to their governance structures. Many have moved away from constituencies which have equal numbers of board directors in each.
- 10.2 The NHF has also conducted a survey to 154 LSVT housing associations receiving responses from 76. Amongst their findings are:
- 29 now do not have a local authority board director, 12 have one and 11 have two on the board, the remaining 19 who responded have three or four
 - For tenants there is a wider spread. 11 do not have tenants on the board, six have one, 30 with two or three on board, 15 have four and 11 have between five and nine.
- 10.3 Several organisations moved away from the constituency model to a purely skills based approach without any nominations via constituencies. Altair has conducted a good practice study of LSVT associations as part of their review of governance. They concluded that most (70 out of 76) LSVTs have adjusted their governance structures due to the changed operating environment and need for business diversification. Most have moved to a more skills based board and most had moved

away from the standard constituency model to a board that includes more independents with the required relevant skills. This has been done by reducing the number of tenant and council places but in the main still reserving a minimum number of constituency places.

11.0 WIRRAL COUNCIL APPROVAL

11.1 Officers and Board Directors from Magenta Living have met with the Leader of the Council and the Cabinet Member for Housing, outlining the issues detailed in this report.

11.2 From the discussions it was agreed that:

- Once the new governance arrangements are in place, the Council would be able to encourage suitable skilled and experienced individuals to apply for any vacancy
- The existing Councillor Board Directors will be eligible to apply for a place on the skills-based Board and will undergo an interview process by an interview panel of the Magenta Living Board
- It can reasonably be anticipated that the Councillors currently serving on the Board will have between them some of the skills required to be on a skills based Board
- At the time that any director comes to the end of their term of office, and a vacancy occurs, any individual from any background or sector, who has the necessary skills, will be eligible to apply. The Council would be able to encourage any suitable person to apply

11.3 The Council's decision making process will require this report to be approved by the Cabinet and the recommendation to be subsequently approved by a full Council meeting. The Cabinet Member for Housing is recommending approval of the changes outlined in this report.

11.4 If the full Council agree to the governance changes the Borough Solicitor would be required to attend a general meeting of Magenta Living and cast the Council's vote in favour of the necessary changes to Magenta Living's Articles of Association.

11.5 Once agreed, the changes will be incorporated into Magenta Living's Articles of Association and the recommendation is for the Borough Solicitor to be authorised to agree these changes.

11.6 A timetable for Company Member consultation and holding a General Meeting of Company Members has been drawn up which will pick up the Council's decision making process which is set out below.

12.0 THE COUNCIL'S 'GOLDEN SHARE'

12.1 At a General meeting of the company the Council has one vote which is worth a third of the voting rights. The tenant members have a share of a third of the votes and the independent members have a share of the remaining third of the votes.

- 12.2 For any special resolutions such as changing the name of the company or changing the company's articles, under company law, 75% of the company membership must vote in favour of the resolution for it to be passed. As the Council vote is worth 33.3% of the total vote it has what has become known as a 'Golden Share' as it is in effect a veto over the other two constituencies represented at a company meeting.
- 12.3 It has been agreed that officers from Magenta Living and the Council work together to come up with a revised approach which ensures a more balanced allocation of votes at a general meeting.
- 12.4 Further proposals will be brought to a future Cabinet in respect of the Council's 'Golden Share'.

13.0 TIMETABLE

- 13.1 The proposed date for implementation of the skills based Board is Magenta Living's AGM on 20 September 2016.
- 13.2 Magenta Living's consultation with its Company Members (tenants and independents) has started and will be ongoing until the AGM.
- 13.3 In order to achieve this target date, Council's Cabinet are requested to consider and recommend approval of the proposal to full Council at its meeting on 11 July 2016.

14.0 THE HOUSING AND PLANNING BILL 2015/16

- 14.1 As officers are preparing this Cabinet report an announcement has been made by the Government that they intend to bring forward an amendment to the Housing and Planning Bill currently going through parliament which would give the secretary of state the power to create regulations with the purpose of "limiting or removing" the ability of councils to "exert influence" over registered providers.
- 14.2 For LSVTS such as Magenta Living this appears to include removing the council's ability to nominate board directors and also their voting rights at a general meeting (the 'Golden Share').
- 14.3 The Government's approach is to ensure that housing associations can be classified as independent bodies rather than public sector bodies. This follows the reclassification of housing associations as 'public non-financial corporations' by the Office of National Statistics (ONS) late last year given the amount of control exercised over them by government or other public bodies. The Government made an immediate commitment to bring in changes necessary to prompt the ONS to reverse this decision and, in January, laid a number of deregulatory amendments to the Housing and Planning Bill intended to address the ONS' concerns. The Government now appears to have now tabled an additional amendment to address other instances of public sector control that it has become aware of, relating to local authority influence over Large Scale Voluntary Transfer (LSVT) organisations.

- 14.4 It is unknown at this stage what these changes will look like and how Magenta Living's constitution could be amended by the new powers. It is recommended that given the Council and Magenta Living have started to make similar changes already that Cabinet agrees to the changes highlighted in this report. Should legislation be passed which makes further changes then these will then be implemented as a matter of fact.

15.0 RELEVANT RISKS

To the Council:

- 15.1 The Council is a Company Member of Magenta Living holding one-third of the membership therefore it is essential that the Board of Magenta Living is fit for purpose, in order to ensure effective decision making mitigating any risk to the Council's reputation and interests in the Company.
- 15.2 It is in the Council's interests to have a vibrant locally based and locally managed housing association which owns around half of the social housing in the borough.

To Magenta Living:

- 15.3 If Magenta Living does not change its governance structure it would be at risk of increased scrutiny by the HCA and a potential downgrade of its governance rating (Magenta Living currently holds the highest G1 / V1 rating for Governance and Financial Viability).
- 15.4 Moving into more diverse activities and not having the most appropriate skills on the Board could result in decisions being taken without full appreciation of implications which could have dire consequences. It would be no defence that the Board Directors did not have sufficient skills to understand the decisions taken.
- 15.5 Taking no action to revise Magenta Living's governance structure would make it very difficult to undertake the diverse activities required in order to provide further income to the Company.

16.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

- 16.1 This relates to the structure of 'Magenta Living' so there are no financial implications for the Council.

17.0 FINANCE IMPLICATIONS

- 17.1 The existing Community Fund arrangements which the Council has in operation jointly with Magenta Living are unaffected - although the Fund is looking to be closed at the end of 2016/17.

18.0 LEGAL IMPLICATIONS

- 18.1 This relates to Magenta Living's governance arrangements so there are no legal implications for the Council.

19.0 ENGAGEMENT/CONSULTATION

19.1 Magenta has consulted with Board members and Senior Officers from the Council on the proposed changes. It is intended, subject to Council approval, that Magenta further put these changes to a formal vote as part of their Annual General Meeting in September 2016.

20.0 EQUALITIES IMPLICATIONS

20.1 Magenta Living's Constitution is a fundamental part of its approach to equality and diversity.

REPORT AUTHOR: Ian Platt
Head of Housing and Community Safety
telephone: (0151) 691 8208
email: ianplatt@wirral.gov.uk

APPENDICES

Magenta Living Board Skills List

REFERENCE MATERIAL

SUBJECT HISTORY (last 3 years)

Council Meeting	Date



BOARD DIRECTOR – REQUIRED SKILLS

Relevant Experience and Skills - Essential

1. Board Director or Governance experience
2. Operational experience at a senior level
3. Strategic leadership
4. Financial Management
 - Accountancy
 - Treasury management
 - Business planning
 - Audit
5. Asset Management
 - Property development and sales
 - Property management
 - Construction
 - Housing management
 - Regeneration
6. Risk management
7. Change management
8. Performance management
9. Business growth and development
10. Customer services
11. Commercial business skills

Relevant Experience and Skills - Desirable

12. Legal
 - company
 - constitutional
 - business
 - contracts
 - charity
13. Stakeholder engagement
14. Community involvement
15. Marketing
16. Public relations
17. ICT

Knowledge - Desirable

1. Registered Providers
2. Regulatory Framework
3. Political and economic environment
 - welfare reform
 - devolution
 - housing strategy
 - planning
4. Probity
5. Local knowledge
6. Mergers and acquisitions
7. Health and social care
8. Social investment

Abilities - Essential

1. Team working
2. Integrity
3. Independent judgement
4. Creative and clear thinking
5. Analytical skills
6. Communication skills
7. Networking
8. Equality and diversity