

TMO BOARD - 8TH DECEMBER 2005

REPORT BY THE COMPANY SECRETARY

PAYMENT OF BOARD MEMBERS

1 Purpose of the Report

- 1.1 The purpose of this report is to give opportunity for the Board to consider again the question of Payment of Board Members, which was most recently discussed at Ashridge in October.

FOR DECISION

- 1.3 The TMO Board is asked to confirm its previous decision not to make payment to Board Members.

2 Introduction

- 2.1 Historically Board Members roles have been voluntary without payment other than out of pocket expenses.
- 2.2 The Housing Corporation took note of concerns by some Housing Associations, who are Registered Social Landlords (RSLs) of difficulties with Board recruitment, high turnover, retention and Board performance. It issued a Good Practice Note entitled "Board Member Remuneration" in June 2003.
- 2.3 Ministers have now issued Guidance which gives ALMO's the opportunity to pay Board Members with effect from this financial year 2005/2006. This Office of the Deputy Prime Minister (ODPM) guidance is shown as Appendix 1.

3 Matters for Consideration

- 3.1 The ability to pay Board Members of ALMO's where appropriate is welcomed as it creates a level playing field with RSLs.
- 3.2 The Board has previously discussed the question of payment of Board Members.

- 3.3 It was raised again recently at the Ashridge training session at the beginning of October, when the Board reviewed the Governance Health Check items identified by Marion Turner. Under the heading of “Developing the Capacity and Capability of the Governing Body to be Effective”, question 15, asked the Board to consider whether any rule change is needed to enable payment. The Board’s response was that it disagreed with the need for payment.
- 3.4 The Board is advised that the Constitution currently only permits payment to Board Members for professional or trade services, for goods supplied, for out of pocket expenses or nominal allowances for attendance at meetings. If payment was to be introduced it would need the approval of 75% of TMO Members voting at an AGM or Extraordinary General Meeting (EGM) of the company. No meeting is currently scheduled until the next AGM on 13th November 2006.
- 4 **Board Decision**
- 4.1 The Board is asked to confirm its previous decision not to make payment to Board Members.

FOR DECISION

**David Bird
Company Secretary**

APPENDIX 1

ODPM GUIDANCE ON PAYMENT OF ALMO BOARD MEMBERS

Background

1. When ALMOs were first introduced, the way that their boards were set up was very closely based on the arrangements for the boards of Registered Social Landlords (RSLs). This meant that in line with the regime that applied for members of RSL boards at that time, ALMO board members could receive expenses, but could not be paid.
2. Since then, following consultation, the Housing Corporation has given RSLs the option of paying board members and has issued a Good Practice Note (Housing Corporation Regulatory Code Good Practice Note 5: "Board Member Remuneration" - June 2003)¹ setting out the arrangements. This enables RSLs to pay their board members in recognition of the increased time commitment and responsibilities now involved in carrying out this role, as well as to address problems with recruitment, high turnover, retention and board performance. Payment may be made up to a maximum of £20,000 per year, based on the complexity and size of the organisation.
3. As set out in the ALMO Guidance published in October 2004, Ministers have agreed that ALMOs should be given the same opportunity as RSLs to pay their board members. Although there has been no great demand from ALMOs wanting to start paying their members, nor substantial take-up of the new arrangements by RSLs, it is considered appropriate to keep ALMOs in line with RSLs and allow them to operate on the same terms. This means that ALMOs can now also make payments to their board members in the interests of improving governance.
4. This Guidance gives ALMOs the opportunity to pay their board members from the current financial year, 2005/06 (although in practice ALMOs will need some time to develop and consult on their proposals and prepare a proper business case). The following sections, which are largely based on the Housing Corporation's Good Practice Note for RSLs, set out the circumstances under which payment may be appropriate and the issues for ALMOs to consider when deciding whether to introduce payments.
5. It may also be helpful for ALMOs to refer to the National Housing Federation's publication "To pay or not to pay" (July 2003)² which looks at the principles and practicalities of board member payment and, if appropriate, the Charity

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<http://www.housingcorplibrary.org.uk/housingcorp.nsf/AllDocuments/D327706142A2A00680256D5700428AB2>

² <http://www.housing.org.uk/prodserv/booklist.asp?ptype=Govern>

Commission's guidance on "Payment of Charity Trustees" (CC11)³. In addition, the Housing Corporation's report "Board payment: the first year" (Sector Study 36, November 2004)⁴ provides a useful analysis of the take-up of board member payments. ALMOs should also have regard to the "ALMO Governance Resource Pack" published by ODPM/CHTF in August 2004⁵.

6. The payment of board members is not a decision to be undertaken lightly. Any proposals will need to be backed up by robust justification and analysis and must have the support of the local authority, not least because board payments will be funded from the management fee paid to the ALMO by the local authority.

When payment might be appropriate

7. The key consideration should be whether payment of board members will lead to improved governance. A clear desired outcome should be identified, which can be defined and measured, to justify payments.
8. It may be appropriate to consider payment to address the following issues:

Performance

- * Payment may be considered as one of a number of measures to tackle poor performance, although payment on its own is unlikely to result in better governance. Other measures to improve board performance may include training, setting objectives, performance contracts, fixed term appointments and mandatory appraisal.

Recruitment and retention

- * Where there are difficulties retaining good board members, or concerns that retention or recruitment may be an issue in the future, the ALMO should consider how payment would help address this issue. If recruitment is a problem, the ALMO should consider whether there is anything else it could do to advertise more widely, use recruitment consultants etc.

Skills

- * Payment could be used to address problems with the composition of the board. The board should reflect the communities served by the ALMO and possess the necessary range of skills and knowledge to carry out its duties most effectively. If this is an issue, the ALMO should consider how payment might attract a more diverse or better qualified board. Other measures may include addressing the issue when recruiting new board members, or having

³ <http://www.charity-commission.gov.uk/publications/cc11.asp>

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<http://www.housingcorplibrary.org.uk/housingcorp.nsf/AllDocuments/5F4A56FC8F483C3280256F5B00436497>

⁵ available from ODPM on request

existing board members undertake additional training.

Reward

- * The ALMO may wish to reward its board members for their commitment and hard work. This may be justified in the context of continuous improvement and making the board more professional and accountable. Such payments should not, however, be awarded retrospectively. The ALMO should also consider whether there is any danger that payment could undermine the integrity of the board. Alternatively, ALMOs could consider rewarding high performing boards through non-pecuniary means, subject to the usual rules on gifts etc, which may be more appropriate in some circumstances.
9. It may not always be appropriate to pay all of the board members. In some circumstances, payment of the chair only may be appropriate. However, careful consideration should be given to issues of equality and whether there are board members other than the chair who also have special responsibilities or additional workloads. The impact of future potential changes in personnel, for example a change of chair, should also be taken into account when developing proposals.
 10. Board members who are already paid for their ALMO duties by their nominating organisations should not normally receive payment from the ALMO as well. For example, if a councillor receives a special responsibility allowance from the council for their work on the ALMO board under the Local Authorities (Members' Allowances) (England) Regulations 2003, that should be taken into account before any payment is awarded by the ALMO.
 11. That said, council representatives on the board should not be treated significantly differently from the other board members. Although initially nominated by the council, once appointed to the board, a member is representing the interests of the ALMO board rather than the council. Any payment should therefore reflect this by coming from the ALMO rather than the council.
 12. The Local Authorities (Companies) Order 1995 places restrictions on the level of payments to councillors who sit on boards of local authority controlled companies. Under the Order, councillors cannot be paid more by the company than they would receive from the local authority for carrying out comparable duties. The ALMO would therefore need to consider the position of board members who are councillors separately to ensure that any payments were in line with this.
 13. It is the individual member's responsibility to ensure that the receipt of payment from the ALMO does not mean that they are in breach of the terms of any other allowances they may be receiving.
 14. Another important consideration is the effect that payment may have for board members on low incomes in receipt of benefit. Any payment received may affect their benefit entitlement. RSL experience is that the offer of payment, even if it is

refused, can have implications for benefits, because this can be seen as the recipient effectively refusing "paid" work.

15. Again, ALMO board members should be clear about their individual liabilities.

What to consider before making the decision

16. Before deciding whether to pay their board members, ALMOs should consider in consultation with the local authority whether payment is the best way of addressing the issues identified above, or if there are other measures which may also be effective in leading to improved board performance.

17. The ALMO should also ensure that its existing systems for recruitment and appraisal of board members are robust, transparent and independent. Further advice on this is set out in the ODPM/CHTF "ALMO Governance Resource Pack". The ALMO should also have clear systems in place for assessing performance at least annually, for both the board as a whole and individual members.

18. The ALMO should consider its financial position and the implications that payment of board members would have. The costs of payment should be balanced against the benefits of improved governance. It should also consider the implications for board members, for example those in receipt of benefit or those who are councillors.

19. Tenants and the local authority should be fully involved in these considerations. The local authority must be formally consulted and its agreement obtained before payments to ALMO board members can be made.

Method of payment

20. Methods of payment may include an annual fee or honorarium or an hourly rate. We would not expect ALMOs to pay a pensionable salary to board members.

21. When deciding how to make payments, ALMOs should consider whether the method is fair, for example whether it would discriminate against the low paid or unemployed, whose benefits may be affected, the costs to the ALMO/local authority and the experience of other similar organisations and administrative simplicity. Before accepting payments, board members in receipt of benefits may need to consider whether they would face difficulties claiming benefits again after a board appointment has ended. Such members should always be advised to seek independent advice on the implications for them personally and for any members of their household before accepting payment.

How much to pay

22. The regime for the payment of ALMO board members is based on the arrangements for RSLs. Paragraph 3 of Schedule 1 to the Housing Act 1996

enables the Housing Corporation to specify the maximum amounts which may be paid to board members of RSLs that are industrial and provident societies or Companies Act companies. Up until June 2003, the limit for payments other than reasonable out-of-pocket expenses was £50. Following consultation, the Housing Corporation issued a specification in June 2003 under Schedule 1 to the Housing Act 1996, raising the upper limit that may be paid from £50 to £20,000.

23. Although the new maximum payment is £20,000 it was envisaged that this amount would only be appropriate in a very small number of cases, for the chairs of particularly large and complex organisations.
24. The ALMO Template Documentation sets out that ALMO board members can be reimbursed for any "reasonable out-of-pocket expenses" and "such other sums.... provided that no sum shall be paid to a board member in excess of that which would be permitted to be paid to a board member of a social landlord registered under the Housing Act 1996".
25. This gives ALMOs the flexibility to pay their board members up to the same limits as RSLs. Although we would encourage ALMOs to seek their own advice on their legal position, it appears that ALMOs wishing to pay their members should be able to do so under the terms of the model constitution.
26. In considering how much to pay their members, ALMOs should recognise that the figure of £20,000 is very much an upper limit, and we would only expect to see such sums paid in exceptional circumstances. It will, however, be up to the individual ALMO, in consultation with the local authority, to decide how much to pay.
27. The Housing Corporation's analysis ("Board Payment: the first year" Sector Study 36 November 2004) has found that where payments are being made, the majority of chairs receive between £7,000 and £10,000 per year. Members are typically paid around 40% of the sum paid to the chair - in most cases between £3,000 and £5,000. Chairs of smaller RSLs receive between £3,500 and £7,000, with members being paid £2,000 to £3,000.
28. New Deal for Communities (NDC) partnerships are able to pay their board members so long as this does not increase their expenditure on management and administration to more than 10% of their overall budget. The NDC Board Member Guidance quotes two examples of partnerships which are paying their board members. One pays its members an "honorarium" of £1,300 per year. The other pays £1,500 per year, with the Chair and Vice Chair receiving an additional £500.
29. Factors to take into account when deciding the level of payments should include the overall cost to the ALMO in proportion to its turnover and the amounts paid to individual board members.
30. When considering the overall cost to the ALMO, the issues to be taken into account should include:

- * whether that proportion of turnover is reasonable to spend on payments to the governing body
- * whether the total amount is justified in terms of cost per tenant or per unit.
- * whether the amount to be spent would affect the ALMO's ability to deliver services to tenants
- * the impact the payments would have on the ALMO's other obligations
- * whether the expected improvements in governance justify the expenditure on board member payments.

31. When considering the amounts to be paid to individual members, ALMOs should consider:

- * the time the member is expected to spend on ALMO duties
- * the level of responsibility assumed
- * the size and complexity of the ALMO and the difficulty of the job
- * amounts (if any) paid by neighbouring ALMOs
- * amounts paid to board members of similar public sector or voluntary organisations.

32. In considering whether the chair and/or deputy should be paid more than the other board members the ALMO would need to consider:

- * how much extra time these individuals spend on ALMO board duties compared with other members.
- * how much additional responsibility they assume
- * how much chairs and deputies of similar public sector or charitable organisations are paid.

33. Some smaller ALMOs may decide that they cannot afford to pay the whole board, but may wish, for example, to have a paid chair. They will still need to consider the issues outlined above.

34. ALMOs should also consider how and when payments should be reviewed.

ODPM requirements

35. The ODPM does not require ALMOs to seek specific approval to introduce board member payments, but needs to keep a record of the ALMOs that are paying their members, the reasons for this and the amounts offered. ALMOs should therefore notify ODPM of their intention and the reasons for introducing payments before they commence paying any board members. They should demonstrate that they have followed this guidance in making their decision, setting out how payment would improve the quality of the ALMO's governance and how they will meet the additional cost.

36. They should also demonstrate that tenants, the local authority and other stakeholders have been consulted and set out whether they support the decision, providing copies of any reports or consultation documents which the ALMO has prepared setting out the case for payment. As set out above, the local authority must agree to the proposals before payments can be made.

Monitoring the impact

37. ALMOs should monitor the impact of board member payments so that they can clearly demonstrate the difference that the introduction of payments has made. This will involve identifying the areas where improvement is expected and monitoring the effect that payment has had. In the interest of sharing good practice, ALMOs should copy monitoring reports to ODPM.

Contact details

38. Any queries on this Guidance, or notifications of intention to commence payments to ALMO board members should be sent to Julia Gristwood, Decent Homes Division, ODPM, 2/J4 Eland House, Bressenden Place, London SW1E 5DU, email: julia.gristwood@odpm.gsi.gov.uk.