

Mayor and Cabinet			
Report Title	Lewisham Homes Governance Update	Item No	
Contributors	Executive Director for Customer Services, Head of Law		
Class	Part 1	Date	20 September 2018

1. Purpose of paper:

1.1. To outline the proposal to amend Lewisham Homes' Articles of Association to allow for the remuneration of board members.

2. Policy Context:

2.1. The proposed recommendations support the achievements of the Sustainable Community Strategy policy objectives:

- Ambitious and achieving: where people are inspired and supported to fulfil their potential.
- Empowered and responsible: where people can be actively involved in their local area and contribute to tolerant, caring and supportive local communities.
- Healthy, active and enjoyable: where people can actively participate in maintaining and improving their health and well-being, supported by high quality health and care services, leisure, culture and recreational activities.

2.2. It will also help meet the objectives of the Lewisham Housing Strategy in which the Council commits to:

- Helping residents at times of severe and urgent housing need
- Building the homes our residents need
- Greater security and quality for private renter
- Promoting greater quality in the social and private rented sectors

3. Recommendations:

3.1. That Mayor and Cabinet approve that Lewisham Homes should remunerate its non-councillor board members, on the terms set out in this report and commencing from the date of decision: and

3.2. To note that a proposal to pay Lewisham Homes councillor board members a special responsibility allowance under the Scheme of Members' Allowances is to be recommended to full Council at a future meeting.

4. Background:

- 4.1. On 22 March 2017 Mayor & Cabinet gave final approval to the extension of the management agreement between the Council and Lewisham Homes, for a further 10 years until 2027, with a three-year break clause. Since then the necessary consent has been received from the Secretary of State, and the agreement has been extended to 2027.
- 4.2. Lewisham Homes is a wholly owned Council company limited by guarantee. Its Articles of Association provide that it is governed by a management board, made up of seven residents, five independents and three councillors.
- 4.3. The Board sets the overall direction and measures Lewisham Homes progress in achieving its mission of providing great housing services for thriving neighbourhoods. The board ensures Lewisham Homes is focused, and provides challenge to ensure that Lewisham Homes delivers improved services to their residents.
- 4.4. Resident Board Members bring first-hand experience of Lewisham Homes services, and the issues that are important to residents.
- 4.5. The board meets quarterly, for two hours per meeting. In addition, board members attend four strategy sessions, including a full weekend away.
- 4.6. There are five committees, which board members are assigned to attend. These include:
 - Audit and Risk Committee - Quarterly
 - Performance Committee – Quarterly
 - Ethics & Remuneration Committee – Twice a year
 - Repairs Business Development Committee – Three times a year
 - Regeneration and Investment Committee – Quarterly, with additional meetings if needed
- 4.7. The Chair of the Board meets with the Chief Executive Officer monthly. The Vice Chairs and Committee Chairs meet with the CEO quarterly.
- 4.8. Board members are also encouraged to attend learning and development session and resident engagement panels.
- 4.9. As part of the dialogue around the contract, officers have been in close liaison with Lewisham Homes. As part of this, an independent governance review was carried out by specialists in the social housing sector. This review has recommended that Board members be paid for their service to better enable Lewisham Homes to recruit and retain the appropriate capacity and expertise to its Board. This is imperative especially as a result of the new commercial activities that Lewisham Homes is undertaking on the Council's behalf in relation to the new homes and property acquisitions programmes.
- 4.10. This purpose of this change is to ensure that the Board members are appropriately remunerated.

5. Reasons for recommendation:

- 5.1. Lewisham Homes is changing as an organisation and taking on more risk as the business areas become more complex, and it is crucial to Lewisham Homes – and therefore the Council – that it has a board that is adequately able to manage that complexity and risk.
- 5.2. As the organisation is working to become more commercially-minded and holding an increasingly extensive property portfolio, it is essential to recruit the best candidates to manage these tasks. The remuneration will increase the appeal of Lewisham Homes to more highly skilled and experienced candidates and make the organisation more competitive to those candidates in the social housing market.
- 5.3. All Board Members will be expected to sign up to the new terms and be held to account. The payment will help recruit people ready for the challenging new ways of working and will serve as visible recognition of the existing Board's contribution.
- 5.4. The payment is also seen as facilitating better performance management through increasing the standard against which Board members are held and subsequently improving the performance of the individuals.
- 5.5. This is in line with decisions taken by similar organisations who were benchmarked against as part of the independent review.
- 5.6. Lewisham Homes' Articles of Association, which can only be changed with the approval of the Council as Lewisham Homes' sole shareholder, already make provision for Board member remuneration. However, this provision can only be enabled with the direct approval of the Council, and as such this report recommends that the Mayor and Cabinet approve and enable the payment of Board members.
- 5.7. Officers continue to liaise closely with Lewisham Homes, and to keep any other necessary constitutional or organisational changes under review. At this point no other changes are considered necessary, but further updates to Mayor & Cabinet will follow if that position changes.

6. Level of board pay

- 6.1. The proposed level of board pay has been benchmarked against other providers, with a particular focus on other ALMOs. The benchmarking data used was obtained by the governance review based on 2014-15 data. This data has been re-verified as still applicable now, with very little change or movement.
- 6.2. Of the two London ALMOs that paid their board members, Barnet Homes pay £4,000 and CityWest Homes, Westminster pay £3,500.

- 6.3. On that basis, paying attention to similar London ALMOs undertaking similar commercial activities in Barnet and Westminster, Lewisham Homes proposes paying its eligible Board Members, according to the scale set out below:

Role	Pay
Chair	£6,000
Committee Chairs	£4,500
Board Member	£3,000

7. Financial implications:

- 7.1. The Council currently pays Lewisham Homes a fee from the HRA to manage the core housing stock and other services. Under the extended management agreement, Lewisham Homes will continue to be paid an annual management fee, which forms part of the HRA budget agreed annually as a part of the Council's budget setting process.
- 7.2. The remuneration paid to Board members will be paid from the agreed annual management fee paid over to Lewisham Homes. This additional expense will be funded from efficiencies made within the Lewisham Homes management fee.

8. Legal implications:

- 8.1. Lewisham Homes is a wholly owned Council company of which the Council is the sole member. Its Articles of Association set out the rules by which the company is run and governed.
- 8.2. The Articles provide that Board members may be paid expenses reasonably and properly incurred in connection with their attendance at company meetings, otherwise in discharge of their duties as a member, and such other sums as may be determined by the Council (in its role as sole member of the company). There are 2 limits imposed on this broad discretion. The first is that Board members may not be paid more than permitted under relevant Government guidance. The second is that a Board member who is a councillor may not be paid more than is permitted by the Local Authorities Companies Order 1995.
- 8.3. The proposals for the amounts to be paid do not exceed Government guidance. So, there is no legal impediment to the Council agreeing the levels of remuneration proposed for non-councillor Board members, provided it is satisfied that there is justification to do so.
- 8.4. The Local Authorities Companies Order 1995 applies to regulated companies, which include wholly owned Council companies such as Lewisham Homes. The Order provides that a regulated company cannot pay a councillor director more than would be paid under the Members' Scheme of Allowances for comparable duties. At present there are no comparable duties in the Council's Scheme of Allowances. The Council does not provide in its scheme of allowances for any remuneration in respect of being a director of a company or for being in any position on outside bodies. Currently therefore there is no power for the Council to agree any payment to councillor directors.

- 8.5. However, given that a new administration was elected in May 2018, the Council is due to consider a report at its next meeting on the subject of Members' allowances. The Council has commissioned the services of Sir Rodney Brooke to advise it on the appropriate levels of basic and special responsibility allowances for this administration. His report is to hand and will be before the Council when it considers the new members' allowances scheme. He recommends that Council board members on Lewisham Homes should receive a special responsibility allowance of £3,000. Of course, the decision on the level of any special responsibility allowance will be a matter for the Council to decide, but if Sir Rodney's recommendations are accepted, councillor Board members will receive that SRA of £3000 per annum. This would mean that even were a councillor Board member elected to the position of Chair of Lewisham Homes, or to the Chair of one of its committees, their SRA by law, would remain at £3000, unless and until the Council decided to amend the Scheme of Members' Allowances.
- 8.6. The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 8.7. In summary, the Council must, in the exercise of its function, have due regard to the need to:
- (a) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
 - (b) advance equality of opportunity between people who share a protected characteristic and those who do not;
 - (c) Foster good relations between people who share a protected characteristic and persons who do not share it.
- 8.8. The equality duty continues to be a "have regard duty", and the weight to be attached to it is a matter for the decision maker, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 8.9. The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled "Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice". The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:
<https://www.equalityhumanrights.com/en/publication-download/technical->

guidance-public-sector-equality-duty-england.

8.10. The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

1. The essential guide to the public sector equality duty
2. Meeting the equality duty in policy and decision-making
3. Engagement and the equality duty
4. Equality objectives and the equality duty
5. Equality information and the equality duty

8.11. The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:
<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance>.

8.12. The financial remuneration proposed in this report is designed to act as an incentive for local residents, including those with protected characteristics to be actively involved in the governance of Lewisham Homes, but there are otherwise no specific equalities implications.

8.13. The decision relating to the remuneration of Lewisham Homes board members is not one which is reserved to the Council, or which the Mayor and Cabinet is prohibited by law from making. The decision is an executive function which under the Council's constitution and Mayoral scheme of delegation is to be made by Mayor and Cabinet.

9. Crime and Disorder implications

9.1. There are no crime and disorder implications arising directly from this report.

10. Environmental implications

10.1. There are no environmental implications arising directly from this report.

11. Background documents:

11.1. The following table contains the relevant background documents:

Document	Date
Lewisham Homes Board Papers October 2016	25 October 2016
Lewisham Homes Board Remuneration Review (pages 23-44)	May 2016
Lewisham Homes Management Agreement, M&C Report, Pt. 1	22 March 2017

11.2. For further information please contact Rachel Dunn, Housing Policy and Partnership Manager, on 020 8314 6213.