

BRENT HOUSING PARTNERSHIP LIMITED

A Guide to the Rights and Responsibilities of Board Members

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BRENT HOUSING PARTNERSHIP LIMITED

The Rights and Responsibilities of Board Members

Introduction

This is a brief guide to the role and duties of board members of Brent Housing Partnership Limited prompted by current (Autumn 2002) concerns over risks phased by non-executive directors in the private sector. It tries to put these problems in context.

Brent Housing Partnership Limited - The Context

BHPL is a **company limited by guarantee** which means it has no shareholders. It has **one "Owner"** Brent Council - technically its guarantor member.

It is a **not for profit company** which means that although it could make a surplus of income over expenditure it cannot pay that surplus by dividend or similar payout to its guarantor member, the Council.

It is effectively a **special purpose vehicle**. It is set up by Brent Council to enter into service contract with Brent Council to manage Brent Council housing stock.

As Brent Council are the only guarantor member and can appoint and dismiss board members of BHPL, BHPL is a **wholly owned subsidiary** of Brent Council and BHPL's constitution, its Memorandum and Articles of Association, contain rules which say that BHPL cannot do certain important things, such as borrowing monies, without the approval of Brent Council.

BHPL board members are **unpaid** and have no contract of employment with BHPL. The day to day management of the company is carried out by BHPL's employed staff controlled by a senior management team (SMT) headed by the Managing Director.

So all BHPL board members are in effect **non-executive board members**.

That context is important to understand the board members role and responsibilities.

Detailed commentary to the BHPL constitution is given in the guide to the Memorandum and Articles, detailed guidance on Service Contract with Brent Council is given in the guide to the Service Contract - final versions of these guides with the constitution and the Service Contract attached will be distributed to board members within the next month.

The role of board members

BHPL is like other "not for profit" bodies and charities - it is governed by its board but the day to day management is carried out by the SMT.

So the role is -

1. to monitor the performance of the SMT and take any necessary measures if they become dissatisfied including replacing or reshaping the SMT.
2. taking key decisions on important matters - BHPL standing orders state which decisions have been reserved to the board, which decisions to sub-committees of the board and which decisions have been delegated to officers.
3. giving to BHPL the benefit of the particular experience which they have gained whether as tenant or in their work or with the Council or otherwise.

How do they perform this role

1. by attending board meetings. They do not have to attend every one but have to get to as many as they can.
2. Serving on sub-committees of the board.
3. Spending time reading the papers to the boards and sub-committees.

They will be expected to know enough about the business of the company to be able to monitor effectively and if they feel they have not got enough information to enable them to do that they should require the information.

Board members with particular skills, accountants, surveyors, lawyers etc. are not expected to ask to act as accountants, surveyors etc. for BHPL as BHPL employs such professionals - so the persons with particular qualifications would be expected to speak out if they felt that in that particular area BHPL was doing or was about to do something wrong. The best way to do that is to speak to the Managing Director or Company Secretary and ask for an explanation rather than leave it to a board meeting but if not satisfied they should let other board members know.

Board members are not executives, not part of the SMT. It is not their job to micro managers - they are not expected to get involved in the day to day running of BHPL as that could be disruptive.

Because of the tight requirements of the Service Contract BHPL board members could take the comfort that Brent Council itself will be monitoring the activities of BHPL including its financial health. However board members should not rely only on Brent Council but, must, particularly through the specialist sub-committee, particularly audit committee, be their own watchdogs.

Duty to act in the best interest of BHPL

Every board member owes to BHPL a duty:

- **to act at all times in the interest of BHPL as a whole.**
- **to avoid any conflicts of interest.**
- **to avoid doing anything for collateral reasons**

Two-thirds of BHPL board members, are one way or another, nominated by outside bodies - in the case of Council members Brent Council, in the case of tenant members through a process involving tenant representative bodies.

That makes no difference to the duties - board members must be free exercise their best judgment in the interest of BHPL.

That is not as alarming as it seems, because BHPL's sole business is the Service Contract with Brent Council so for Council board members it is likely that the two interests will coincide although there will be occasions when this is not necessarily so.

Tenant board members could have greater potential conflicts but here again the Services Contract with Brent means that BHPL's relationship with Brent tenants is as manager for Brent and it will be almost certainly in the interest of BHPL as contractor not to be in breach of contract with Brent Council.

Tenant board members can inform and influence but ultimately the Service Contract defines BHPL's task.

Criminal liability

The law imposes upon board member duties which if breached, can result in a fine or more serious consequences, disqualification from being a director in other businesses or loss of licence to practice as a professional.

Broadly -

There are under the **Companies Act** a set of duties relating to company accounts, annual returns, keeping a register - these duties are delegated to the Company Secretary and the Finance Director and non-compliance is unlikely but even so board members can avoid conviction if they show they took all reasonable steps to comply.

Legislation relating to the **environment, product liability and health and safety** but here the prosecution is more likely against the company as it would be difficult to establish blame against individual board members particularly in circumstances where BHPL's policies on these important matters have to be agreed with Brent Council and Brent Council are monitoring implementation - however if a board member sees something wrong they should write to the Secretary or the MD with copy to the Chair.

BHPL also has to make VAT, PAYE and other tax returns but its employs accountants and auditors and has a Finance Director so liability is unlikely.

Civil Liability -

being sued by service users - tenants, leaseholders people applying for housing, people injured during building works and other third parties - but individual civil liability for board members is unlikely in the case of a non-executive board such as BHPL as even a commercial situations, specific authorisation by or gross negligence of an individual director would have to be established.

Financial liability

Board members would be liable for any fraudulent or wrongful misdoing which they took part in or turned a blind eye to.

They can also be personally liable if BHPL becomes insolvent i.e. is wound up owing monies to creditors - this is called wrongful trading - where the liquidator of BHPL can show that before BHPL was dissolved board members knew or ought to have known that there was no reason or chance that BHPL would avoid insolvency.

This is a fate unlikely to be suffered by BHPL board members if it employs an experienced Finance Director, if it has a Finance / Audit sub-committee to monitor the financial health of BHPL who together will see that the terms of the Service Contract with Brent, which requires reviews of BHPL financial performance, viability and reviews the payment structure in the Service Contract (which is flexible to take account of BHPL's financial situation both for tax mitigation and to deal with variations and services) are monitored and enforced.

Skill Standards

BHPL board members, on the non-executive basis, are only expected to show the levels of skill that a person of similar experience to them would have and the law acknowledges

that they are justified in trusting senior employees who are properly qualified to carry out executive functions.

Health Warning

Once there are any reports or signs that BHPL could be heading for an insolvency then BHPL board members must act immediately and request the Secretary or the Chair

(i) to convene a joint meeting with Brent Council officials on how to resolve the situation and (ii) to get immediate advice from BHPL's accountants and lawyers

Given the nature of BHPL and its relationship with Brent Council it does seem unlikely that this situation would occur.

Contract

The Courts have where a company goes insolvent owing money power to relieve board members from liability if they acted honestly and took all steps that persons of their skills and experience could have taken to avoid or minimise the loss.

Protection

All BHPL board members have the benefit of an indemnity insurance policy which will protect them against loss except in situations where they acted unlawfully or fraudulently.

Changes in the law

Board members will have read or seen that the role of non-executive directors in the commercial sector is under review after the collapse of some big companies. These non-executive directors are paid, (unlike BHPL board members) so the standards expected of them should be higher than those of unpaid board members but nonetheless any changes in the law which bring about any greater potential liability on BHPL board members will be brought to the attention of BHPL board together with proposals to deal with the risk.

Further Information

Contact the Company Secretary or the Managing Director for any further information you need on this guide or on any particular problem you have - if they do not know the answer they can get advice from BHPL's advisors.
