

Gloucester City Council

Meeting:	Cabinet	Date:	20th July 2016
Subject:	GCH Governance Structure & Rule Amendment		
Report Of:	Cabinet Member for Housing and Planning		
Wards Affected:	All		
Key Decision:	Yes	Budget/Policy Framework:	No
Contact Officer:	Helen Chard, Housing Strategies and Enabling Manager		
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Appendices:	1. Email following informal meeting between GCH and GCC Group Leaders) For Cabinet Briefing only		
	2. Trowers and Hamlins report on the amended Rules		
	3. Draft amended Rules		
	4. Tenant and leaseholder consultation letter		
	5. Tenant and leaseholder consultation additional factsheet		

FOR GENERAL RELEASE.

1.0 Purpose of Report

- 1.1 The report is intended to inform Members about the proposed change in governance arrangements relating to Gloucester City Homes (GCH) and a change to its rules.
- 1.2 In order to meet its regulatory requirements and to enable it to remain a strong and viable organisation; this report seeks Cabinet approval for an amendment to the Rules of Gloucester City Homes and to implement governance improvements to;
 1. Reduce the size of the board from 15 to 12 (and to reduce the quorum from 5 to 4;
 2. Reduce the number of GCC nominees from 5 to 3, ensuring that as far as possible, future GCH board members nominated by GCC bring relevant skills, knowledge and experience, and;
 3. Note that the GCH Board, in the future, may consider paying some or all Board members (excluding Council nominees), subject to independent advice and compliance with Housing and Regeneration Act 2008 requirements.

2.0 Recommendations

- 2.1 Cabinet is asked to **RESOLVE** that the GCH Rules as appended to this report be approved.

3.0 Background and Key Issues

- 3.1 The constructive and positive partnership relationship between GCC and GCH is an important one for the Council and for GCH. The Council-nominated GCH board members have made a significant contribution, helping GCH get established firstly as a successful ALMO and then as an independent Registered Provider (RP). Changes to the Homes and Communities Agency's regulatory requirements regarding board member skills, selection and independence now require GCH to re-think its routes to board membership.
- 3.2 In its first year as a 'Private Not-For-Profit' Registered Provider, GCH has had to respond to many different challenges including statutorily enforced rent reductions over 4 years from 2016, the roll out of Universal Credit and other welfare benefit reforms; and significant public sector spending cuts, and rising demand for new homes.
- 3.3 GCH needs to remain a strong and viable organisation; contributing to social cohesion and economic growth in its local communities, and is committed to investment in Gloucester and supporting the Council's aims through:
 - Regenerating local homes and communities
 - Improving the lives and wellbeing of residents
 - Providing training and employment opportunities, and
 - Building affordable homes for the people of Gloucester as a preferred development partner for the Council.
- 3.4 GCH's focus is on efficient and effective delivery of the 8 Offer Document tenant promises and the 5 strategic aims iterated in its Corporate Plan, and needs to develop a board that is fit for the future; that can manage the risks associated with achievement of delivery of promises and aims; and diversification into new business areas such as new homes development; and the in-house repairs and maintenance service (from next April); all this will require a differently skilled board.

Current GCH Board Structure

- 3.5 The GCH Board is fairly typical of a new Large Scale Voluntary Transfer (LSVT) organisational structure in that it is made up of 15 members split equally between the three principal constituencies:
 - elected residents
 - local authority nominees and
 - selected independents.

Social Housing Regulatory Context

- 3.6 The HCA, in its regulatory documents, the Governance and Financial Viability Standard (G&FVS), the accompanying G&FVS Code of Practice, the Sector Risk Profile and Regulating the Standards (which describes its operational approach) acknowledges that, as the level of challenge and risk in the external operating environment increases, registered providers need to make sure that their Boards and executive teams are capable of delivering promised and strategic aims in the changed environment.

- 3.7 To achieve this, the GCH Board need to ensure that they have the appropriate skills for the type of activities GCH undertakes, and the associated risks they have to manage. The Board is also expected to conduct its affairs with an appropriate degree of independence in order to ensure that they act in their own best interests and not those of third parties. The HCA's G&FVS, with which GCH must demonstrably comply, suggests that organisations that have the appropriate mix of skills and capability and are suitably independent will be run more effectively and are better able to protect their social housing assets.
- 3.8 The HCA's G&FVS therefore places a focus on Board skills and capability, with the requirement that:
- "2.2 Registered providers shall ensure that they manage their affairs with an appropriate degree of skill, independence, diligence, effectiveness, prudence and foresight."*
- 3.9 The accompanying Code of Practice suggests that one way in which this could be achieved is by having independent board members, who help to ensure that the registered provider is able to act effectively in its own best interest without undue influence from others. The HCA does not stipulate the number of independent board members but requires that registered providers determine for themselves how best to meet regulatory requirements on independence.
- 3.10 As part of the on-going development of the GCH Board, during 2016, a Board skills strategy and skills matrix have been approved and all current board members have self-assessed against the collective skills required. In addition, all board members have had a robust individual appraisal, and collective board and committee appraisal has also been completed, with reports to Board on the outcomes

Proposed Changes

- 3.11 An informal meeting with Council Group Leaders on 29th January 2016 resulted in agreement in principle from the Group Leaders to:
- A reduction in the overall size of the GCH board from 15 to 12
 - A reduction in the number of GCC nominated board members from 5 to 3
 - A reduction in the number of 'ring-fenced' board posts for tenant board members from 5 to 2
 - An increase in the number of independently selected board members from 5 to 7.
- (See **Appendix 1** – email following meeting between GCC Group Leaders and GCH)
- 3.12 A consensus was further reached with GCC Group Leaders concerning the basis for selection of GCC nominees such that GCC would in future seek to nominate board members who brought skills which matched those identified in GCH's Board skills strategy and skills matrix. GCC Board members would seek to match specific skills requirements on the GCH Board, and GCC nominations would not be made primarily on a political basis or necessarily be elected GCC members.
- 3.13 It was highlighted to the Leaders that the GCH board skills matrix includes a 'Customers and Communities' section with nine specific skills identified, which the

GCH Board believes will continue to deliver a balanced board, with the capacity to challenge the GCH executive across the full range of issues relevant to the business of a Registered Provider, not just those relating to finance, funding/treasury and risk management, and including those of importance primarily to customers and local communities.

- 3.14 Currently tenants/leaseholders are interviewed but then subject to an election process. Following an independent Tenant Participation and Advisory Service (TPAS) review of Resident Engagement at GCH, in January 2016, the GCH Board approved the creation of a new Tenants Panel (and the disbanding of the former Customer Forum and Tenant Scrutiny) to support the HCA's requirements regarding co-regulation. This started the move towards a different form of accountability to tenants/leaseholders, which was widely consulted on with customers, involving reducing the number of 'ring-fenced' positions on the board for customers, but at the same time creating stronger accountability through the new Tenants Panel. GCH remains committed to 'the voice of the tenant' continuing to being heard at board level, and to tenants having a wide range of opportunities to scrutinise performance and make recommendations for service improvements.
- 3.15 It is proposed therefore that alongside the reduction in tenant Board members from 5 to 2, that the selection move away from an election-based approach to a skills-based approach which would be in line with the recruitment process for selecting independent Board members and reflecting the GCC member nomination principles.
- 3.16 Clause D10 of the Rules deals with the removal of Board Members. Currently with a larger board of 5 (Council nominated), 5 (Independent) and 5 (Tenant) Board Members, the removal of a Board Member is subject to a vote of 75% of the Board, which would mean at least one Council Member would need to be party to a decision to remove another Council nominated Member, along with all Tenant and Independent Board Members, whereas with a reduced Board, currently Tenant and Independent Board Members could vote off Council nominated Members. It is important to remember that all Board Members have a duty to vote in the best interests of the company, not necessarily the interests of the Council.
- 3.17 The governance model GCH proposed is tried and tested, and based on up to date not-for-profit housing sector specific Model Rules, which are acknowledged as a beacon of best practice. The model meets the HCA's regulatory compliance requirements and the National Housing Federation's Code of Governance, with which GCH must comply. It takes account of best practice in the sector and GCH's rules have been amended taking external professional advice from GCH lawyers, Trowers and Hamlins. Many other LSVT housing associations already have similar rules.

Remuneration

- 3.18 A recent (2015) NHF survey, supported by independent evidence from Altair consultants and Grant Thornton, suggests that most LSVT boards have introduced payment for some or all board members.
- 3.19 The potential future benefits of allowing GCH the option to remunerate board members has been discussed with GCC, and it is proposed to incorporate the necessary rule amendment with the overall amendment allowing the GCH board the

option to consider Board member remuneration in the future, should it be judged necessary to recruit and retain suitably skilled and experienced board members. This would not mean that Board members would be remunerated right now, but would give the Board the flexibility to consider remuneration in the future. The current GCH rules do not permit the option to consider payment of board members.

Tenant and Leaseholder Consultation

- 3.20 A full tenant and leaseholder consultation exercise has been undertaken. All GCH tenants and leaseholders were individually sent a letter dated 22nd March 2016 outlining the proposals. Responses were invited by 3rd May 2016. The letter was sent with an invitation to attend the GCH Customer Conference on 30th March, where the GCH Head of Governance and Policy was available to discuss the proposals with any customers who wished to do so. The consultation letter was also provided on the GCH website (**Appendix 4**).
- 3.21 An additional factsheet (**Appendix 5**) was sent on 14th April 2016 to nine respondents in answer to some of the questions and points raised in the feedback received. This was also made available on GCH's website. No further responses were received. Below is a summary of the responses:

Received via	Date range of response(s)	Number	Note
Email	23/03/16 – 30/03/16	4	Includes one person who also contacted a Board member
In person at Customer Conference	30/03/16	4	Includes two people who sought clarification / additional information but had no concerns
Letter	07/04/16	1	

- 3.22 The GCH Board has reviewed the nine responses received, and has agreed that the responses do not provide grounds for reconsidering the governance improvement proposals.

Draft Rule Amendment

- 3.23 A report on the rule amendments by GCH lawyers, Trowers and Hamblins is provided at **Appendix 2**. This provides a commentary on the proposed amendments.
- 3.24 The draft amended rules are provided in **Appendix 3**.
- 3.25 The GCH Board has considered the governance improvements twice (on the 2nd March and on 1st June 2016), and has approved the Rule amendments.
- 3.26 At its meeting on 1st June 2016 the GCH Board approved amending the rules to remove the formal requirement for GCH to hold an Annual General Meeting (after the next Annual General Meeting scheduled for 7th September 2016). This was recommended by GCH lawyers, Trowers and Hamblins, and is a common feature of the rules of Registered Providers who, like GCH, have a "closed" membership. The draft amended rules entitle the Council to call a general meeting of shareholders upon a written requisition.

Potential Changes to Local Authority Control under the Housing and Planning Act

- 3.27 The Housing and Planning Act (the Act) includes provisions which entitle the Government to make regulations to limit the Council's ability to appoint or remove officers and/or exercise or control voting rights of Registered Providers. If such regulations are issued they may impact on the Council's rights and obligations in the Rules. At this stage the effect of such regulations remains hypothetical; although it is understood that they are not expected before the end of the year, it is not certain when the regulations will be issued, nor is there any indication of their content.
- 3.28 As currently drafted, the amended Rules do not materially "dilute" the constitutional mechanisms through which GCH remains accountable to the Council – the right to appoint a number of GCH's board members is preserved and the Council retains its "golden share". If future statute requires a relaxation of the Council's rights and obligations under the Rules, GCH is committed to discussing such regulations with the Council at an early stage and would seek to resolve any mismatch between statutory requirements and the Rules in a manner which would be amicable to both parties.

4.0 Asset Based Community Development (ABCD) Considerations

- 4.1 Strong governance helps GCH achieve its key Strategic Aims, which include maintaining and transforming homes and communities, and developing and maintaining effective partnerships. GCH believes that developing and maintaining strong partnerships with a range of agencies and community organisations is essential to providing valued tenant services and supporting strong, successful communities, through an asset based community development approach.

5.0 Alternative Options Considered

- 5.1 Not applicable.

6.0 Reasons for Recommendations

- 6.1 The recommendations are made to:

- i. Meet recent changes to the Homes and Communities Agency's Regulatory Framework which places a greater emphasis on the role of board members linked to financial risk and strategic risk management. This requires a high degree of skill and higher levels of responsibility, time commitment and accountability than previously.
- ii. Ensure GCH's governance arrangements comply with the National Housing Federation Code of Governance, giving the right mix of skills, knowledge and experience, and selection, to allow the GCH Board to be as effective and successful as it can be in delivering the eight tenant promises and GCH's 5 strategic aims.
- iii. Allow the GCH board to consider Board member remuneration in the future, should it be judged necessary to recruit and retain suitably skilled and experienced board members.

- iv. Ensure GCH remains a strong and viable organisation; able to contribute to social cohesion and economic growth in its local communities, committed to investment in Gloucester and able to support the Council's aims.

7.0 Future Work and Conclusions

- 7.1 Assuming that GCC approval is provided at its meeting, the Rule amendment will require final ratification by the GCC shareholder at a GCH General Meeting, in its capacity as 'the council shareholder' holding 33.3% of the shareholding membership voting rights.
- 7.2 GCH will ensure that its own internal processes are followed, including:
- Notification to its lender, RBS, of the Rule amendments (legal advice is that lender consent is not required)
 - Calling a General Meeting where the necessary constitutional changes will need to be approved by the shareholders including the Council shareholder (which holds 33% of the total votes), or at the GCH Annual General Meeting (proposed date 7th September 2016)
 - Seeking Financial Conduct Authority (FCA, which is GCH's Registrar) consent to the Rule change (HCA consent will not be required, but they will need to be informed).
- 7.3 It is anticipated that, subject to GCC approval in July, and GCH shareholder approval in September, the amended Rules will be in place by mid-October 2016.
- 7.4 Following this, GCH will work with GCC to seek to develop and agree a suitable (ideally skills-based) selection process for GCC nominees to the GCH Board.

8.0 Financial Implications

- 8.1 None.

(Financial Services have been consulted in the preparation this report.)

9.0 Legal Implications

- 9.1 The Transfer Agreement dated 17th March 2015 provides:

'GCH will not change its Constitution so as to reduce the actual or percentage Council or Tenants shareholding or membership on its Board of management without the Council's prior consent in writing such consent (in relation to Tenants) not to be unreasonably withheld or delayed'.

- 9.2 This report seeks authority to approve the changes to the Constitution.

- 9.3 The advice from Trowers and Hamlin sets out the changes to the Rules. The main change is at Board level in that the current membership is 5:5:5 but this will change to:

- Council 3
- Tenants 2

- Independents 7

This changes the potential balance of decision making at Board level from the Council and Tenants to the Independents. It is important to note, however, that all directors are under a duty to act in the best interests of the Company when making decisions at Board level.

- 9.4 The shareholding for the 3 classes of owners remains equal with each class entitled to a 33 1/3% of the vote at General Meetings. The proposed changes to the Rules cannot be implemented until approved by the Shareholders. The council's vote may be exercised by the Cabinet Member for Housing and Planning.

(One Legal have been consulted in the preparation this report.)

10.0 Risk & Opportunity Management Implications

- 10.1 No additional risks identified, given the shareholding remains as now.

11.0 People Impact Assessment (PIA):

- 11.1 Not applicable

12.0 Other Corporate Implications

Community Safety

- 12.1 Not applicable

Sustainability

- 12.2 Not applicable

Staffing & Trade Union

- 12.3 Not applicable

Background Documents:

HCA Governance & Viability Standard

HCA Governance & Viability Standard Code of Practice

HCA Sector Risk Profile (September 2015)

HCA Regulating the Standards (June 2016)

NHF Code of Governance "Promoting board excellence for housing associations [2015 edition]

Appendix 1 – Email following informal meeting between GCH and GCG Group Leaders

Dated: 29th January 2016

Dear Group Leaders,

Thank you for meeting with myself, Ashley Green (Chief Executive), Rob Wharton (Director of Resources and Company Secretary) and Stephanie Bamford (our external governance advisor) today. I think we all found the meeting very useful, constructive, positive and productive. I have tried to encapsulate the agreed outcomes below.

The changing external environment

- Ashley opened by explaining just how much has changed in the past 12 months since Gloucester City Homes moved from being an ALMO to being an independent Register Provider (RP).
- He reiterated the importance to GCH of continuing to be a strong and vibrant organisation, committed to investment in Gloucester, and to working in partnership with GCC to the long term benefit of our local communities
- There has been a new and much more robust Homes and Communities Agency (HCA) regulatory framework since April 2015, accompanied by a new sector-wide Code of Governance, and a new and much more robust regulatory assessment process.
- The 8th July Summer Budget heralded a 4-year reduction in our rental income which is being implemented through the Welfare Reform and Work Bill; our income will reduce by over £7m between 2016-2020.
- The changes being proposed in the Housing and Planning Bill will continue to impact on the external environment which has become, and will continue to be, much more difficult for RPs
- This combined with other welfare reforms which will impact on our income (and our arrears), pressure on public expenditure which will impact on grant funding for new homes, increasing demand for new homes, and the [current national government policy emphasis on home ownership](#), are all focusing attention on the changing role and responsibilities of the RP board member

Gloucester City Homes compliance with Homes and Communities Agency regulatory requirements

- GCH is currently undergoing a HCA 'In Depth Assessment' process which has highlighted the current regulatory focus on:
 - Smaller boards
 - Boards which have the necessary non-executive skills to direct the business of GCH; manage the risks and provide effective challenge to the [Leadership Team](#) in an increasingly complex environment

- Boards which have a higher level of finance, funding and risk skill and knowledge than previously required
- GCH is working towards full compliance with HCA regulatory requirements (notably the Governance and Financial Viability Standard) and with the National Housing Federation's Code of Governance (which says that ideally boards should comprise no more than 12 members, and that all board members, regardless of whether they are nominated or elected, should be subject to some form of skills assessment)

Agreement in principle, subject to formal approval by GCC

To summarise our discussion, and the agreement we reached in principle, we will now work towards bringing a governance changes 'business case' back to the Council for approval that will include:

- Reducing the overall size of the GCH board from 15 to 12
- Reducing the number of GCC nominated board members from 5 to 3
- Reducing the number of 'ring-fenced' board posts for tenant board members from 5 to 2
- Increasing the number of independent board members from 5 to 7

We also agreed that as far as possible:

- GCC would seek to nominate board members who brought skills which matched GCH's skills strategy and skills matrix (approved by the GCH board). I have attached copies of the Skills Strategy and Skills Matrix for your information. The skills matrix has been developed by the board, and identifies the skills the board believes it needs to deliver GCH's 5 strategic aims and the 8 promises to tenants. It is important to note that the skills matrix includes a 'Customers and Communities' section with 9 specific skills identified, which we believe will continue to deliver a balanced board, with the capacity to challenge the executive across the full range of issues relevant to the business of a RP, not just those relating to finance, funding and risk management, and including those of importance primarily to customers.
- That future nominations would not be made primarily on a political basis.
- That GCC nominations to the GCH board did not have to be of an elected member.

We sought to reassure you that the work commissioned by the GCH board and undertaken by TPAS, the sector's leading independent tenant empowerment organisation, has already started the move towards a different form of accountability to tenants, which has been widely consulted on with GCH's tenants. This would involve reducing the number of 'ring-fenced' positions on the board for tenants, but at the same time creating a Tenant Senate. GCH remains committed to the voice of the tenant continuing to being heard at board level, and to tenants having a wide range of opportunities to scrutinise our performance and make recommendations for service improvements.

We also discussed the potential future benefits of allowing GCH the option to remunerate board members in the future. We agreed that GCC would permit the necessary rule change allowing the GCH board to consider board member remuneration in the future, should it be judged necessary to

recruit and retain suitably skilled and experienced board members. This would not mean that GCH board members would be remunerated right now, but would give the GCH board the flexibility to consider remuneration in the future. Remuneration is currently not allowed in GCH's Rules.

The process and timetable

Working on the basis that we have an in principle agreement, we will work internally to:

Complete the GCH current board member skills assessment of their current skills against the agreed skills matrix and undertake board member appraisal. This will help us to identify where there are skills gaps, and guide future board member recruitment and appointment.

We agreed it would be beneficial for potential future GCC nominees to complete a skills self-assessment to assist in identifying the most suitable candidates, and then for potential nominees to meet with GCH so that we can brief them more fully on their responsibilities and the requirements of the role.

The changes we have discussed and agreed in principle will require a change to GCH's constitutional document (Rules) which GCC would have to approve at a GCH General Meeting.

In terms of timescale there are the following key steps in terms of the Council 2016 cycle:

- 7th March – Council Scrutiny to receive a report on the proposed changes.
- 24th March – Council meeting to receive the report following review on 7th March by Scrutiny.
- 12th May – Council meeting to discuss nominations to outside bodies, following Local Government elections.
- 23rd May – Annual Council Meeting – nominations confirmed

The necessary Rule change

GCH will also need to ensure that its own internal processes are followed, including:

- Consulting with tenants
- Gaining lender consent
- Securing GCH board agreement to the proposed Rule changes at a board meeting
- Calling a General Meeting where the necessary constitutional changes will need to be approved by the shareholders including the council shareholder (which holds 33% of the total votes)
- Seeking Financial Conduct Authority (FCA, which is GCH's Registrar) consent to the Rule change. (HCA consent will not be required, but they will need to be informed).

We will now arrange to meet with GCC's Managing Director Jon McGinty to discuss the proposals, timetable and the mechanism for implementation.

Information you requested

Attached are the following GCH documents, all of which have been approved by the GCH board:

- Board Skills Strategy
- Board Skills Matrix
- Board Member Purpose, Responsibility and Person Specification

We would all like to thank you for your time this morning. We all felt that it was a really useful, constructive, positive and productive meeting which will help GCH on the next stage of its journey as a Registered Provider.

Best regards,
Paul

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Appendix 2 – Trowers and Hamlins report on the amended Rules



dated 24 May 2016

Gloucester City Homes Limited

Report on the amended Rules

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Gloucester City Homes Limited – Rules

1 Introduction

- 1.1 As part of the review of Gloucester City Homes Limited's (**GCH**) governance structure we have been instructed to prepare an amended version of GCH's rules (the **Rules**). The Rules reflect the consultation with tenants on the proposed governance arrangements which has now completed. This report provides board members with a summary of the key changes made to the Rules to reflect the new governance structure.
- 1.2 We attach a copy of the draft Rules to this report and draw your attention to the notes on the front cover.

2 Board

- 2.1 The composition of the board is set out in Rules D2 to D4. The size of the board has been reduced from fifteen members to a minimum of five and a maximum of twelve members. The composition of the board will now be as follows:
- 2.1.1 Council board members – The Council may appoint up to three board members (reduced from five). The Council is required to work with the association to ensure as far as possible that the Council board members have the necessary skills and expertise (see Rule D2.1.1).
- 2.1.2 Tenant board members - Up to two board members may be tenants – the previous rules required five tenant board members on the board.
- 2.1.3 All other members of the board (i.e. those who are not Council or tenant board members) will effectively be independent board members (although they will not form part of a specifically defined constituency).
- 2.2 Independent and tenant board members will now be appointed by the board (in accordance with a policy governing to the selection and appointment of board members) rather than elected by shareholders.
- 2.3 Employees of GCH may serve on the board but may not form a majority.
- 2.4 Board members will automatically be disqualified if they have served on the board for longer than nine years, unless they have served for six years in aggregate as at 31 March 2015, in which case the board may appoint them for a further fixed term (of a length to be agreed by the board). While the Regulator ordinarily expects board members' terms to be limited to nine years, this extension has been agreed with the Regulator in relation to specific members of the board and we therefore do not expect this Rule to have a wider application in future. Please note that the nine year longstop does not apply to board members who are employees.

2.5 The quorum for the board is three (reduced from five), and must include at least one Council board member.

3 **Membership**

3.1 The membership is now "closed" – the only shareholders comprise the:

3.1.1 tenant board members;

3.1.2 Council; and

3.1.3 "independent" board members.

3.2 Each of the above "classes" of shareholder is entitled to a 33⅓% of the vote at a general meeting, apportioned between the members of the class, which reflects the current position.

3.3 Board members who are employees may not be shareholders.

3.4 The quorum for a general meeting is three (reduced from six) and must include a representative of the Council.

4 **AGM**

4.1 As the Rules have been amended to reflect a "closed" membership, strictly speaking there is no legal need for an AGM. Many other organisations with the same structure no longer hold AGMs as this can seem artificial when the tenant and "independent" board members (plus the Council) are the only shareholders. The Rules no longer contemplate an election of the board and the accounts do not have to be laid at the AGM – i.e. all "AGM business" can be conducted at a board meeting. There is of course an administrative cost to holding an AGM and it would still be possible to convene a "stakeholder" event instead of a formal AGM.

4.2 We therefore recommend that the board consider removing the formal requirement to hold an AGM. This would require minor amendments to the Rules and if the board agrees that no AGM is necessary we suggest that it delegate approval of the amended Rules.

5 **Remuneration**

Provided GCH takes appropriate independent advice, it now has the power to remunerate board members and members of committees. GCH may also pay authorised expenses as well as benefits (provided such benefits comply with the Housing and Regeneration Act 2008).

6 **Model rules**

We have made amendments throughout the Rules to make them compliant with the NHF Model Rules 2015. We have not commented on these separately as they are not material to GCH's rights and obligations.

7 **De-regulation**

7.1 The Rules contain some provisions which are likely to become redundant once de-regulation measures in the Housing and Planning Act 2016 (**the Act**) come into effect. We have flagged these in the Rules as, depending on the timing of the commencement of the de-regulation measures, it may be necessary to make further amendments to these Rules to give effect to such provisions.

7.2 The Act also entitles the Government to make regulations to limit the Council's ability to appoint or remove officers and/or exercise or control voting rights. If such regulations are issued it may impact on the Council's rights and obligations in the Rules. We understand that it is unlikely that such regulations will be brought forward before GCH's September AGM and that in any event it is not expected that they will come into effect until the end of this year. Of course, if this changes, we will alert the board and amend the Rules to reflect the updated position before the September AGM.

Trowers & Hamlins
24 May 2016

Appendix 3 – Draft amended Rules

RULES of: Gloucester City Homes Limited

Registered under the Co-operative and Community Benefit Societies Act 2014

Register No.

MODEL RULES 2011(version 2)
National Housing Federation

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PART A

NAME AND OBJECTS

Name

A1 The name of the society shall be Gloucester City Homes Limited (the **association**).

Objects

A2 The association is formed for the benefit of the community. Its objects shall be to carry on for the benefit of the community:

A2.1 the business of providing and managing housing and social housing and providing assistance to help house people and associated facilities and amenities or services for poor people or for the relief of aged, disabled (whether physically or mentally) or chronically sick people;

A2.2 any other charitable object that can be carried out from time to time by a registered society registered as a provider of social housing with the regulator.

A3 The association shall not trade for profit and any profits shall only be applied for the purpose of furthering the association's objects and/or in accordance with these rules.

A4 Nothing shall be paid or transferred by way of profit to shareholders of the association.

Corporate status

A5 [The association is not a subsidiary of another organisation and shall not become a subsidiary of another organisation without first amending these rules to state the name of the parent entity and without first having obtained the consent of the Regulator (if and to the extent required) to such a rule change pursuant to section 212 of the Housing and Regeneration Act 2008.]

PART B

POWERS OF ASSOCIATION, BOARD, AND SHAREHOLDERS

Powers

B1 The association shall have power to do anything that a natural or corporate person can lawfully do which is necessary or expedient to achieve its objects, except as expressly prohibited in these rules.

B2 Without limiting its general powers under rule B1, and only so far as is necessary or expedient to achieve its objects, the association shall have power to:

B2.1 purchase, acquire or dispose, and purchase, take or grant any interest in land or any of the association's assets including any mortgage, charge or other security whatsoever;

B2.2 construct or carry out works to any buildings or land;

B2.3 help any charity or other body not trading for profit whose objects or activities are compatible with those of the association;

B2.4 subject to rules F12, F13, and F14, borrow money or issue bonds, notes, loan stock or any other debt instrument or enter into any transaction having the commercial effect of a borrowing on such terms as the association sees fit;

- B2.5 enter into and perform any derivative transaction on such terms as the association thinks fit for the purpose of hedging or otherwise managing any treasury risk or other financial exposure of the association;
- B2.6 subject to rule F15, invest the funds of the association;
- B2.7 lend and/or borrow money on such terms as the association shall think fit;
- B2.8 guarantee, enter into any contract of indemnity or suretyship in relation to, or provide security for, the borrowings or performance of the obligations of a third party on such terms as the association shall think fit;
- B2.9 make grants and donations; and
- B2.10 support, administer, set up or acquire other corporate bodies.

B3 The association shall not have power to receive money on deposit in any way which would require authorisation under the Financial Services and Markets Act 2000 or any other authority required by statute unless it has such authorisation.

Powers of the board

B4 The business of the association shall be directed by the board.

B5 Apart from those powers which must be exercised in general meeting:

B5.1 by statute; or

B5.2 under these rules

all the powers of the association may be exercised by the board for and in the name of the association.

B6 The board shall have power to delegate, in writing, the exercise of any of its powers in accordance with rules D28-33. Such delegation may include any of the powers and discretions of the board.

Limited powers of shareholders in general meeting

B7 The association in general meetings can only exercise the powers of the association expressly reserved to it by these rules or by statute.

General

B8 The certificate of an officer of the association that a power has been properly exercised shall be conclusive as between the association and any third party acting in good faith.

B9 A person acting in good faith who does not have actual notice of these rules or of any regulations made by the board shall not be concerned to see or enquire if the board's powers are restricted by such rules or regulations.

PART C

SHAREHOLDERS AND GENERAL MEETINGS

Obligations of shareholders

C1 All shareholders agree to be bound by the obligations on them as set out in these rules. When acting as shareholders they shall act at all times in the interests of the association and for the benefit of the community, as guardians of the objects of the association.

Nature of shares

- C2 The association's share capital shall be raised by the issue of shares. Each share has the nominal value of one pound which shall carry no right to interest, dividend or bonus. Shares shall be non-withdrawable and non-transferable.
- C3 When a shareholder ceases to be a shareholder or is expelled from the association, his or her share shall be cancelled. The amount paid up on that share shall become the property of the association.

Nature of shareholders

- C4 C4.1 A shareholder of the association is a person or body whose name and address is entered in the register of shareholders. Save for any person who is an employee of the association (employees shall not be admitted as shareholders) and any person appointed by the council under rule D2.1.1, the board members from time to time shall be the only shareholders. The council shall also be a shareholder. No other person or body shall be admitted as a shareholder.
- C4.2 The shareholders shall be divided into three classes as follows:
- the council shareholder
 - the tenant shareholders
 - the independent shareholders
- C4.3 A shareholder shall belong to a class and cannot belong to more than one class.
- C5 The council can appoint an individual to exercise its rights at general meetings. Any such appointment shall be in writing, and given to the secretary.
- C6 C6.1 No shareholder shall hold more than one share and each share shall carry only one vote.
- C6.2 In any vote the shareholders present in person or by proxy shall carry the following percentage of votes cast:
- The council shareholder: 33 $\frac{1}{3}$ %,
 - The tenant shareholders: 33 $\frac{1}{3}$ % apportioned equally amongst them,
 - The independent shareholders: 33 $\frac{1}{3}$ % apportioned equally amongst them.
- C7 A share cannot be held jointly.

Admission of shareholders

- C8 Every board member who becomes a shareholder under rule C4.1 shall pay the sum of one pound to the association. Board members appointed under rule D3 shall automatically become shareholders with board members who are tenants belonging to the tenant shareholder class and all other board members appointed under rule D3 belonging to the independent class. The name of the person and the other necessary particulars shall be entered in the register of shareholders. One share in the association shall be issued to the person.

Ending of shareholding

- C9 Save for the council shareholder, a shareholder shall cease to be a shareholder if they cease to be a board member for any reason.

General meetings

- C10 The shareholders may hold general meetings which shall be convened either:
- C10.1 upon an order of the board; or
 - C10.2 upon a written requisition of the Council or any three other shareholders;
 - C10.3 upon a written requisition signed by one-tenth of the shareholders stating the business for which the meeting is to be convened and if within twenty-eight days after delivery of a requisition to the secretary a meeting is not convened, the shareholders who have signed the requisition may convene a meeting.
- C11 A general meeting shall not transact any business that is not set out in the notice convening the meeting.

Calling a general meeting

- C12 Subject to rule C14, all general meetings shall be convened by at least fourteen clear days' written notice posted or delivered by hand or sent by email to every member at the postal or email address given in the share register. The notice shall state whether the meeting is an annual or special general meeting, the time, date and place of the meeting, and the business for which it is convened.
- C13 Any accidental failure to get any notice to any shareholder (including an accidental failure to send it) shall not invalidate the proceedings at that general meeting. A notice or communication sent to a shareholder shall be deemed to have arrived as specified in rule G16.
- C14 A general meeting may be held with less notice than required by rule C12 if three quarters of all shareholders agree, by consenting in writing or by email to such shorter notice.

Proceedings at general meetings

- C15 Before any general meeting can start its business there must be a quorum present. A quorum is three, including at least a representative of the council shareholder. Two shareholders must be present in person.
- C16 A meeting held as a result of a shareholder's requisition will be dissolved if too few shareholders are present half an hour after the meeting is scheduled to begin.
- C17 All other general meetings with too few shareholders will be adjourned to the same day, at the same time and place in the following week. If no quorum is present within half an hour of the time the adjourned meeting is scheduled to have started, those shareholders present shall carry out the business of the meeting.
- C18 The chair of any general meeting can:
- C18.1 take the business of the meeting in any order that the chair may decide; and
 - C18.2 adjourn the meeting if the majority of the shareholders present in person or by proxy agree;
- C19 An adjourned meeting can only deal with matters adjourned from the original meeting. An adjourned meeting is a continuation of the original meeting. The date of all resolutions passed is the date they were passed (as opposed to the date of the original meeting). There is no need to give notice of an adjournment or to give notice of the business to be transacted.

C20 At all general meetings of the association the chair of the board shall preside. If there is no such chair or if the chair is not present or is unwilling to act, the vice chair (if any) shall chair the meeting, failing which the shareholders present shall elect a shareholder to chair the meeting. The person elected shall be a member of the board if one is present and willing to act.

Proxies

C21 Any shareholder entitled to attend and vote at a general meeting may appoint another person, whether or not a shareholder, as their proxy to attend and vote on their behalf. A proxy can be appointed by delivering a written or emailed appointment to the registered office, or such other place as may be selected by the board and stated in the meeting notice, at least two clear days before the date of the meeting at which the proxy is authorised to vote. It must be signed or confirmed electronically by the shareholder or a duly authorised attorney. Any proxy form delivered late shall be invalid. Any question as to the validity of a proxy shall be determined by the chair of the meeting whose decision shall be final.

Voting

C22 Subject to the provisions of these rules or of any statute, a resolution put to the vote at a general meeting shall, except where a ballot is demanded or directed, be decided upon a show of hands.

C23 On a show of hands every shareholder present in person and on a ballot every shareholder present in person or by proxy shall have one vote and votes shall be counted in accordance with rule C6.2. In the case of an equality of votes the chair of the meeting shall have a second or casting vote.

C24 Unless a ballot is demanded (either before or immediately after the vote), a declaration by the chair that a resolution on a show of hands has been carried or lost, unanimously or by a particular majority, is conclusive. An entry made to that effect in the book containing the minutes of the proceedings of the association shall be conclusive evidence of that fact.

C25 Any question as to the acceptability of any vote whether tendered personally or by proxy, shall be determined by the chair of the meeting, whose decision shall be final.

C26 A ballot on a resolution may be demanded by the council shareholder or by any three shareholders at a meeting (in person or by proxy) or directed by the chair (and such demand or direction may be withdrawn). A ballot may be demanded or directed after a vote on the show of hands, and in that case the resolution shall be decided by the ballot.

C27 A ballot shall be taken at such time and in such manner as the chair shall direct. The result of such a ballot shall be deemed to be the resolution of the association in general meeting.

C28 Subject to the Act, a resolution in writing sent to all shareholders by post or email or delivered by hand and signed or approved electronically by the requisite majority of votes referred to in rule C29, shall be as valid and effective as if it had been passed at a properly called and constituted meeting of shareholders. Such a resolution in writing may comprise of more than one document in the same form, each signed or confirmed electronically by one or more shareholders.

C29 For the purposes of rule C28 the requisite majorities are:

- in the case of an ordinary resolution, a simple majority of votes of the shareholders who would have been entitled to vote had the resolution been proposed at a properly called and constituted general meeting;

- in the case of a resolution requiring a two-thirds majority of votes of shareholders, at least two-thirds of votes of the shareholders who would have been entitled to vote had the resolution been proposed at a properly called and constituted general meeting; or
- in the case of a resolution requiring a three-quarters majority of votes of shareholders, at least three-quarters of votes of the shareholders who would have been entitled to vote had the resolution been proposed at a properly called and constituted general meeting,

provided that in counting signatures and approvals towards the requisite majority, rule C6.2 shall be applied as if a vote had been held at a general meeting.

Representatives and nominees

C30 Under the provisions of these rules (including rules A3, A4, C2 and C3) no shareholder is entitled to property of the association in that capacity, and in the event of the death a person shall cease to be a shareholder, their share shall be cancelled and the amount paid up on that share shall become the property of the association. The following make provisions for representatives and nominees taking into account the provisions of these rules:

C30.1 The Act provides that a shareholder may nominate a person or persons to whom property in the association at the time of his/ her death shall be transferred. As any such share will have been cancelled, no person so nominated under the Act shall be entitled to any property of that shareholder on their death.

C30.2 No property shall be capable of transfer to any personal representative of a deceased shareholder.

C31 Upon a claim being made by a trustee in bankruptcy of a bankrupt shareholder to the share held by that shareholder, the association shall transfer such share to which the trustee in bankruptcy is entitled and as the trustee in bankruptcy may direct them.

PART D

THE BOARD

Functions

D1 The association shall have a board who shall direct the affairs of the association in accordance with its objects and rules and ensure that its functions are properly performed. These functions will be agreed by the board and set out separately in a code of governance or otherwise in writing.

Composition of the board

D2 D2.1 The board shall consist of between five and twelve board members (including co-optees) as follows:

D2.1.1 up to but no more than three council board members may be appointed by the council, who shall be appointed for a fixed term to be fixed on appointment. In appointing such board members, the council will work together with the association to ensure as far as

possible that council appointees have the necessary skills and expertise required by the association from time to time. The council may withdraw a council board member at any time. Any vacancies occurring among council board members shall be filled as soon as reasonably possible;

D2.1.2 up to but no more than two board members may be tenants (and no more than one shall be a leaseholder).

D3 All board members (other than the council board members who shall be appointed by the council under rule D2.1.1) will be appointed by the board in accordance with a policy relating to the recruitment and selection of board members adopted by the board from time to time. Such board members will be appointed for a fixed term of three years (with the exception of board members who are employees, who may be appointed for such term as the board determines), save where the board sets a shorter term prior to the appointment. Such board members shall cease to be board members at the end of the fixed term but may be reappointed in accordance with this rule D3. Save for any board member appointed by the council, time for the purpose of this rule shall be deemed to run from the date on which persons who are board members on the date of registration of these rules with the registrar were last elected or appointed to the board.

D4 D4.1 The board shall agree the obligations (including the expected standards of conduct) of every board member (including co-optees) to the board and to the association. The board shall review and may amend the obligations of board members from time to time.

D4.2 No board member (including co-optees) may act as such until they have signed and delivered to the board a statement confirming that they will meet their obligations (including the expected standards of conduct) to the board and to the association. The board may vary the form of statement from time to time.

D4.3 Any board member who has not signed such statement without good cause within one month of election or appointment to the board or, if later, within one month of adoption of these rules, may be removed from office by a resolution of the majority of the board.

Co-optees and employees

D5 The board may appoint co-optees to serve on the board on such terms as the board resolves and may remove such co-optees. A co-optee may act in all respects as a board member, but they cannot take part in the deliberations or vote on the election or appointment of officers of the association nor any matter directly affecting shareholders.

D6 For the purposes of these rules and of the Act, a co-optee is not included in the expressions "board member" or "member of the board". For the purposes of the Housing and Regeneration Act 2008, a co-optee is an officer.

D7 Not more than two co-optees can be appointed to the board or to any committee at any one time.

D8 The board may appoint or co-opt employees to the board on such terms as the board resolves but no employee may be appointed (or co-opted) to the board if, following their appointment (or co-option), employees would be in a majority.

Term of office and ceasing to be a board member

- D9 No one can become or remain a board member or co-optee at any time if:
- D9.1 they are disqualified from acting as a director of a company for any reason; or
 - D9.2 they have been convicted of an indictable offence which is not, or cannot be, spent or they have been convicted of any other offence which in the opinion of the board brings the association into disrepute or which is not considered by the board to be compatible with the role of board member; or
 - D9.3 a composition is made with that person's creditors generally in satisfaction of that person's debts; or
 - D9.4 they are not a shareholder (unless they are a co-optee or employee of the association); or
 - D9.5 they have absented themselves from four consecutive meetings or one quarter of the meetings of the board in one rolling twelve-month period (without special leave of absence from the board) unless the board resolves that they should remain a board member; or
 - D9.6 a registered medical practitioner who is treating that person gives a written opinion to the association stating that that person has become physically or mentally incapable of acting as a board member and may remain so for more than three months; or
 - D9.7 they are a tenant and are (in the opinion of at least three quarters of the board members) in material or serious breach of their tenancy agreement or lease and fail to rectify the breach within a reasonable timeframe as agreed with the association, or are subject to an anti-social behaviour order/injunction, demoted tenancy, or similar court decision; or
 - D9.8 they are a tenant and cease to be a tenant (save a temporary cessation arising from the demolition of or works carried out to their home) or save where the board agrees otherwise; or
 - D9.9 they are not a tenant when appointed as a board member and become a tenant save where the board agrees otherwise; or
 - D9.10 they are an employee of the association and their contract of employment is terminated; or
 - D9.11 they are a council board member and their appointment is withdrawn by the council under rule D2.1.1; or
 - D9.12 they have served as a member of the board for more than nine years, save that this shall not apply to a board member who served for a period of at least six years in aggregate on the board as at 31 March 2015, who may be appointed for a further fixed term (which shall be agreed by the board) immediately following the previous fixed term. This rule D9.12 shall not apply to any board member who is an employee;
- and any board member who at any time ceases to qualify under this rule shall immediately cease to be a board member.
- D10 A board member may be removed from the board:
- D10.1 by a special resolution at a general meeting; or
 - D10.2 by a resolution passed by three-quarters of the board members, excluding the board member who is the subject of the proposed removal and excluding co-optees and employees, provided the following conditions are satisfied:

- at least fourteen days' notice of the proposed resolution has been given to all board members, and in the case of a proposal to remove a council board member to the council; and
- the notice sets out in writing the alleged breach(es) of the member's obligations as a board member; and
- the board is satisfied that the allegation(s) is or are true.

Quorum for the board

- D11 D11.1 Subject to the provisions of rule D11.2 four board members, comprising at least one council board member shall form a quorum.
- D11.2 The board will not be quorate unless board members who are employees of the association are in a minority.
- D11.3 If the number and make up of board members prevent a quorum being achieved, the remaining board members may continue to act as the board for a maximum period of six months. At the end of that time the only power that the board may exercise shall be to bring the number and make up of board members up to that required by these rules.

Board members' interests

- D12 No board member, co-optee or member of a committee (or connected person) may have any financial interest:
- D12.1 personally; or
- D12.2 as a member of a firm; or
- D12.3 as a director or senior employee (being an employee with managerial status) of a business trading for profit; or
- D12.4 in any other way whatsoever, save that there shall be deemed to be no financial interest in relation to shares except in the circumstances referred to in rule D21.4;
- in any contract or other transaction with the association, unless it is expressly permitted by statute or by these rules.
- D13 The association shall not pay or grant any benefit to anyone who is a board member or a co-optee or a member of a committee (or a connected person), unless it is expressly permitted by these rules.
- D14 The following are permitted, subject to compliance with rule D16:
- D14.1 the payment, to board members, co-optees and members of committees, of properly authorised expenses, when actually incurred on the association's business;
- D14.2 the payment (directly or indirectly) of the costs associated with the procurement of insurance taken out to insure board members, co-optees, members of committees and employees against the cost of a successful defence to a criminal prosecution brought against them as officers or against personal liability incurred in respect of any act or omission which is or is alleged to be a breach of trust or breach of duty; and
- D14.3 the payment of any sums incurred by the association pursuant to the indemnifications permitted under rule E10;

D14.4 any benefits to board members, co-optees or committee members (or to connected persons), which are granted on the same terms and in accordance with the same criteria as they would be granted to any other beneficiary of the association and for the avoidance of doubt benefits granted under this rule D14.4 may include the grant of a tenancy, lease or licence.

D15 A board member, co-optee or member of a committee shall be deemed not to have an interest for the purpose of rules D12, D16 or D21 or a conflict of loyalties for the purpose of rule D17:

D15.1 if they are a tenant in any decision affecting all or a substantial group of tenants;

D15.2 because they are an elected member or officer of the council;

D15.3 in relation to permitted benefits applying to the whole board.

D16 Any board member, co-optee or member of a committee, having an interest in any arrangement with the association, or in any arrangement between the association and a third party, shall disclose their interest before the matter is discussed by the board or any committee. Unless it is expressly permitted by these rules, they shall not remain present unless requested to do so by the board or committee, and they shall not have any vote on the matter in question.

D17 If a potential or actual conflict of interest arises for a board member, co-optee or committee member because of a duty of loyalty owed to another organisation or person, and it is not otherwise permitted by these rules, the unconflicted board members and co-optees, or committee members, as appropriate, may authorise that conflict PROVIDED THAT no conflicted individual shall count in the quorum for such a decision. Such authorisation shall be on such terms and/or conditions as the board or committee (excluding any conflicted individuals) may determine, provided that such conditions shall include compliance with rule D16 when the authorised matter is discussed at any subsequent meetings.

D18 Any decision of the board or of a committee shall not be invalid because of the subsequent discovery of an interest which should have been declared.

D19 For the purposes of rules D16 to D18 the interest of a connected person shall be treated as the interest of the relevant board member, co-optee or committee member.

D20 If a board member receives or has received any information otherwise than by virtue of their position as a board member, co-optee or committee member, and in respect of this information they owe a duty of confidentiality to another person, the board member, co-optee or committee member is under no obligation:

D20.1 to disclose any such information to the association, the board members or any other officer or employee of the association; nor

D20.2 to use or apply any such information in connection with the performance of his or her duties in connection with the association;

provided that to the extent that such duty of confidentiality arises out of a situation or relationship which would or might otherwise constitute or give rise to a breach of the duty to avoid conflicts of interests, this rule shall apply only if such situation or relationship has been authorised under rule D17, or is otherwise permitted under these rules.

D21 Every board member, co-optee and member of a committee shall ensure that the secretary at all times has a list of all other bodies in which they, and any connected persons, have an interest as:

D21.1 a director or officer; or

D21.2 as a member of a firm; or

- D21.3 as an official or elected member of any statutory body; or
D21.4 as the owner or controller of more than 2% of a company the shares in which are publicly quoted or more than 10% of any other company; or
D21.5 as the occupier of any property owned or managed by the association; or
D21.6 any other significant or material interest.

D22 No board member, co-optee or member of a committee shall be treated as having an interest of which that person has no knowledge and of which it is unreasonable to expect him or her to have knowledge.

D23 If requested by a majority of the other board or members of a committee at a meeting convened specially for the purpose, a board member, co-optee or member of a committee failing to disclose an interest as required by these rules shall vacate their office either permanently or for a period of time.

D24 Notwithstanding rules D12 and D13, the association may:

D24.1 pay properly authorised expenses to board members, co-optees and members of committees when actually incurred on the association's business;

D24.2 pay insurance premiums in respect of insurance taken out to insure officers and employees;

D24.3 pay reasonable and proper remuneration, fees, allowances or recompense for loss of earnings to board members, co-optees and members of committees following appropriate independent advice; and

D24.4 subject to compliance with Section 122 of the Housing and Regeneration Act 2008, and subject to compliance with any code of conduct and/or governance adopted by the board from time to time grant reasonable and proper benefits to board members, co-optees and members of committees;

D24.5 grant benefits to board members, co-optees or members of committees who are beneficiaries which are granted on the same terms and in accordance with the same criteria as they would be granted to any other beneficiary of the association.

Meetings of the board

D25 The board shall meet at least three times every calendar year. At least seven days' written notice (sent by post or electronic communication) of the date and place of every board meeting shall be given by the secretary to all board members and co-optees. The board may meet on shorter notice where not less than three quarters of the board members so agree.

D26 Meetings of the board may be called by the secretary, or by the chair, or by two board members who give written notice to the secretary specifying the business to be carried out. The secretary shall send a written notice to all board members and co-optees to the board as soon as possible after receipt of such a request. Pursuant to the request, the secretary shall call a meeting on at least seven days' notice but not more than fourteen days' notice to discuss the specified business. If the secretary fails to call such a meeting then the chair or two board members, whichever is the case, shall call such a meeting.

Availability of certain board statements

D27 The board shall agree and make available:

- the board's statement of the values and objectives of the association;

- a statement of the current obligations of board members to the board and the association;

and the board may vary the form of these statements from time to time.

Management and delegation

- D28 The board may delegate any of its powers under written terms of reference to its committees or to officers or employees. Those powers shall be exercised in accordance with any written instructions given by the board.
- D29 The board may reserve to itself certain significant matters that cannot be delegated to committees or employees.
- D30 The membership of any committee shall be determined by the board. Every committee shall include at least one board member or co-optee to the board. The board will appoint the chair of any committee and shall specify the quorum.
- D31 All acts and proceedings of any committee shall be reported to the board.
- D32 No committee can incur expenditure on behalf of the association unless at least one board member or co-optee of the board on the committee has voted in favour of the resolution and the board has previously approved a budget for the relevant expenditure.
- D33 For the purposes of the Housing and Regeneration Act 2008 any member of a committee shall be an officer.

Miscellaneous provisions

- D34 All decisions taken at a board or any committee meeting in good faith shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the members at a meeting.
- D35 A resolution in writing sent to all board members or all members of a committee and signed, or confirmed electronically by three-quarters of the board members or three-quarters of the members of a committee shall be as valid and effective as if it had been passed at a properly called and constituted meeting of the board or committee and may consist of documents in the same form and signed or confirmed electronically by one or more persons.
- D36 Meetings of the board or a committee can take place in any manner and through any medium which permits those attending to hear and comment on the proceedings. Any person who attends in this manner will be deemed to be present at the meeting and whether or not all are assembled in one place.

PART E

CHAIR, VICE CHAIR, CHIEF EXECUTIVE, SECRETARY AND OTHER OFFICERS

The chair

- E1 The association shall have a chair, who shall chair board meetings, and shall be elected by the board on such terms as the board determines. The association may also have a vice chair who, in the chair's absence, shall act as the chair and have the chair's powers and duties and who shall be elected by the board. The arrangements for election and removal of any vice chair shall be determined by the board.

- E2 The chair on election shall hold office until the first board meeting after the next general meeting of the association (or until the chair resigns or is removed as chair or ceases to be a board member). The first item of business for any board meeting when there is no chair (or vice chair) or the chair (or vice chair) is not present shall be to elect a chair for the purpose of the meeting. The chair must at all times be a shareholder and a board member and cannot be an employee.
- E3 In a case of an equality of votes, the chair shall have a second vote.
- E4 The chair of the association may be removed at a board meeting called for that purpose provided the resolution is passed by at least two-thirds of the members of the board present and voting at the meeting.

The chair's responsibilities

- E5 The chair shall seek to ensure that:
- E5.1 the board's business and the association's general meetings are conducted efficiently;
 - E5.2 all board members are given the opportunity to express their views;
 - E5.3 a constructive working relationship is established with, and support provided for, the chief executive;
 - E5.4 the board delegates sufficient authority to its committees, the chair, the chief executive, and others to enable the business of the association to be carried on effectively between board meetings;
 - E5.5 the board receives professional advice when needed;
 - E5.6 the association is represented as required;
 - E5.7 the association's affairs are conducted in accordance with generally accepted codes of performance and propriety; and
 - E5.8 there is a clear division of responsibilities between the board and the paid staff.
- E6 The chair shall seek to ensure that there is a written statement of the chair's responsibilities which shall be agreed with the board, and reviewed from time to time.

The chief executive

- E7 The association may have a chief executive appointed by the board. The chief executive shall be appointed on a written contract of employment, which shall include a clear statement of the duties of the chief executive.

The secretary

- E8 The association shall have a secretary who shall be appointed by the board and who may be an employee. The board may also appoint a deputy secretary (who may also be an employee) to act as secretary in the secretary's absence. The secretary shall in particular:
- E8.1 summon and attend all meetings of the association and the board and keep the minutes of those meetings;
 - E8.2 keep the registers and other books determined by the board;
 - E8.3 make any regulatory returns on behalf of the association to the regulator and registrar;
 - E8.4 have charge of the seal (if any) of the association; and

E8.5 be responsible for ensuring the compliance of the association with these rules.

Other officers

E9 The board may designate as officers such other executives, internal auditor and staff of the association on such terms (including pay) as it from time to time decides.

Miscellaneous

E10 Every officer or employee shall be indemnified by the association for any amount reasonably incurred in the discharge of their duty.

E11 Except for the consequences of their own dishonesty or negligence no officer or employee shall be liable for any losses suffered by the association.

PART F

FINANCIAL CONTROL AND AUDIT

Auditor

F1 The association, if required by law to do so, shall appoint an auditor to act in each financial year. They must be qualified as provided by Section 91 of the Act.

F2 The following cannot act as auditor:

F2.1 an officer or employee of the association;

F2.2 a person employed by or employer of, or the partner of, an officer or employee of the association.

F3 The association's auditor may be appointed by the board or by a resolution of shareholders.

F4 Where an auditor is appointed to audit the accounts for the preceding year, they shall be re-appointed to audit the current year's as well unless:

F4.1 a general meeting has appointed someone else to act or has resolved that the auditor cannot act; or

F4.2 the auditor does not want to act and has told the association so in writing; or

F4.3 the person is not qualified or falls within rule F2; or

F4.4 the auditor has become incapable of acting; or

F4.5 notice to appoint another auditor has been given.

F5 F5.1 Not less than twenty-eight days' notice shall be given for a resolution to appoint another person as auditor, or to forbid a retiring auditor being re-appointed;

F5.2 the association shall send a copy of the resolution to the retiring auditor and also give notice to its shareholders at the same time and in the same manner, if possible;

F5.3 if not, the association shall give notice by advertising in a local newspaper at least fourteen days before the proposed meeting. The retiring auditor can make representations to the association which must be notified to its shareholders under Section 95 of the Act.

Auditor's duties

- F6 The findings of the auditor shall be reported to the association, in accordance with Section 87 of the Act.
- F7 The board shall produce the revenue account and balance sheet audited by the auditor, if required, and the auditor's report, if required. The board shall also produce its report on the affairs of the association which shall be signed by the person chairing the board meeting which adopts the report.

Accounting requirements

- F8 The end of the accounting year shall be 31 March.
- F9 The association shall keep proper books of account detailing its transactions, its assets and its liabilities, in accordance with Sections 75 and 76 of the Act.
- F10 The association shall establish and maintain satisfactory systems of control of its books of account, its cash and all its receipts and payments.

Annual returns and balance sheets

- F11 Every year, within the time period specified by legislation, the secretary shall send the association's annual return to the registrar. The return shall be prepared in accordance with the period specified in the Act, or such other date allowed by the registrar and shall be lodged within the period required by law. The annual return shall be accompanied by the auditor's report, if required, for the period of the return and the accounts and balance sheets to which it refers.

Borrowing

- F12 The total borrowings of the association at any time shall not exceed £500 million (five hundred million) pounds sterling or such a larger sum as the association determines from time to time in general meeting. For the purpose of this rule F12, any amount of the association's borrowings in any currency other than pounds sterling shall be converted to sterling at the exchange rate or rates applicable under the related derivative transaction or transactions by which the association has hedged its exposure to currency exchange rate movements in relation to the principal amount of such borrowing.
- F13 The rate of interest payable at the time terms of borrowing are agreed on any money borrowed shall not exceed the rate of interest which, in the opinion of the board, is reasonable having regard to the terms of the loan. The board may delegate the determination of the said interest rate within specified limits to an officer, board member or a committee.
- F14
- F14.1 In respect of any proposed borrowing, for the purposes of rule F12 and in relation to the amount remaining undischarged of any deferred interest or index-linked monies or amounts on any deep discounted security previously borrowed by the association, the amount of such pre-existing borrowing shall be deemed to be the amount required to repay such pre-existing borrowing in full if such pre-existing borrowing became repayable in full at the time of the proposed borrowing;
- F14.2 For the purposes of rule F12 in respect of any proposed borrowing intended to be on deferred interest or index-linked terms or on any deep discounted security the amount of borrowing shall be deemed to be the proceeds of such proposed borrowing receivable by the association at the time of the proposed borrowing; and

F14.3 No person dealing in good faith with the association shall be concerned to know whether rules F12 or F13 or this rule F14 have been complied with.

Investment

F15 The funds of the association may be invested and may be applied by the board as it thinks fit.

PART G

MISCELLANEOUS AND STATUTORY

Registered office and name

G1 The association's registered office is: Railway House, Bruton Way, Gloucester, Gloucestershire, GL1 1DG

G2 The association's registered name must:

G2.1 be placed prominently outside every office or place of business; and

G2.2 be engraved on its seal; and

G2.3 be stated on its business letters, notices, advertisements, official publications, cheques, invoices, website and any other formal corporate communication whether electronic or otherwise.

Disputes

G3 Any dispute on a matter covered by the rules shall be referred by either party to a suitably qualified independent mediator for settlement. The mediator shall be appointed by agreement between the parties or, in default of agreement, by the Centre for Effective Dispute Resolution whether the disagreement be as to the qualifications, the identity of the mediator or otherwise. The mediation will be conducted in accordance with the requirements of the mediator. Both parties will be obliged to comply and co-operate with this procedure at each stage and to share equally the costs of appointment of the relevant mediator as referred to above. Costs thereafter will be borne as the mediator will determine. Where the dispute is not resolved by mediation, any claim shall be dealt with in the county court which shall have sole jurisdiction over any dispute arising under the rules.

Minutes, seal, registers and books

G4 The minutes of all general meetings and all board and committee meetings shall be recorded, agreed by the relevant subsequent meeting and signed by the chair of the subsequent meeting and stored safely.

G5 The secretary shall keep the seal. It shall not be used except under the board's authority. It must be affixed by one board member signing and the secretary countersigning or in such other way as the board resolves. The board may in the alternative authorise the execution of deeds in any other way permitted by law.

G6 The association must keep at its registered office:

G6.1 the register of shareholders showing:

- the names and addresses of all the shareholders and
- a statement of all the shares held by each board or committee member and the amount paid for them and

- a statement of other property in the association held by the shareholder and
- the date that each shareholder was entered in the register of shareholders;

G6.2 a duplicate register of shareholders showing the names and addresses of shareholders and the date they became shareholders;

G6.3 a register of the names and addresses of the officers, their offices and the dates on which they assumed those offices as well as a duplicate;

G6.4 a register of holders of any loan;

G6.5 a register of mortgages and charges on land; and

G6.6 a copy of the rules of the association.

G7 The association must display a copy of its latest balance sheet and auditor's report (if one is required by law) at its registered office.

G8 The association shall give to all shareholders on request copies of its last annual return with the auditor's report (if one is required by law) on the accounts contained in the return, free of charge.

G9 The secretary shall give a copy of the rules of the association to any person on demand who pays such reasonable sum as permitted by law.

Statutory applications to the registrar

G10 Five shareholders can apply to the registrar to appoint an accountant to inspect the books of the association, provided all applicants have been shareholders of the association for a twelve-month period immediately before their application.

G11 The shareholders may apply to the registrar in order to get the affairs of the association inspected or to call a special general meeting. Five shareholders must make the application.

Amendment of rules

G12 G12.1 The rules of the association may be rescinded or amended, but not so as to stop the association being a charity [without the prior consent of the regulator where such consent is required under the Housing and Regeneration Act 2008].

G12.2 The rules may only be amended by a resolution put before the shareholders by the board and approved by at least two-thirds of the board prior to approval by the shareholders.

G12.3 These rules can only be amended or rescinded by a written resolution under rule C28 (for which the requisite majority is three quarters) or by three quarters of the votes cast at a general meeting.

G12.4 Amended rules shall be registered with the registrar as soon as possible after the amendment has been made. An amended rule is not valid until it is registered.

G12.5 [A copy of the amended rules shall be sent to the regulator as soon as possible after registration by the registrar.]

Dissolution

- G13 The association may be dissolved by a three quarters majority of shareholders who sign an instrument of dissolution in the prescribed format or by winding-up under the Act.
- G14 G14.1 Any property that remains, after the association is wound-up or dissolved and all debts and liabilities dealt with, the shareholders may resolve to give or transfer to another charitable body with objects similar to that of the association;
- G14.2 If no such institution exists, the property shall be transferred or given to the Housing Associations Charitable Trust;
- G14.3 If the association is registered as a provider of social housing with the regulator any transfer or gift must be in compliance with Section 167 of the Housing and Regeneration Act 2008.

Interpretation of terms

- G15 In these rules, including this rule, unless the subject matter or context is inconsistent:
- G15.1 words importing the singular or plural shall include the plural and singular respectively;
- G15.2 words importing gender shall include the male and female genders;
- G15.3 references to any provision in any Act of Parliament shall include reference to such provision as from time to time amended, varied, replaced, extended or re-enacted and to any orders or regulations made under such provision;
- G15.4 **the Act** means the Co-operative and Community Benefit Societies Act 2014;
- G15.5 **amendment of rules** shall include the making of a new rule and the rescission of a rule, and **amended** in relation to rules shall be construed accordingly;
- G15.6 **association** shall mean the association of which these are the registered rules;
- G15.7 **board** shall mean the board appointed in accordance with Part D and **board member** or **member of the board** shall mean a member of the board for the time being but shall not include a person co-opted to the board under rule D5;
- G15.8 **chair** shall, save as provided in rule E1 and where applicable, include the vice chair;
- G15.9 **clear days**, in respect of notice for a meeting, shall mean a period calculated excluding both the day on which any notice or communication is deemed to be received under these rules and the date of the meeting;
- G15.10 **connected person** shall mean, in relation to an individual who is a board member, co-optee or committee member ("the fiduciary"), a person or body with whom the fiduciary shares a common interest such that the fiduciary may reasonably be regarded as benefitting directly or indirectly from any material benefit received by that person or body, being either a member of the fiduciary's family or household, or a person or body who is a business associate of the fiduciary, but (for the avoidance of doubt) this does not include a company with which the fiduciary's only connection is as the owner or controller of less than 2% of a company the shares in which are publicly quoted or less than 10% of any other company;
- G15.11 **co-optee** means a person appointed pursuant to rules D5-7;

- G15.12 **the council** shall mean Gloucester City Council or any successor body thereto;
- G15.13 **council board member** means a board member appointed pursuant to rule D2.1.1;
- G15.14 **the council shareholder** shall mean the council;
- G15.15 **derivative transaction** means any transaction which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made, or any combination of these transactions;
- G15.16 **leaseholder** shall mean a tenant who is resident in a dwelling of the association and occupies it on the basis of a lease originally granted for more than 21 years and who is resident in that dwelling
- G15.17 **officer** shall include the chair and secretary of the association and any board member for the time being and such other persons as the board may appoint under rule E9;
- G15.18 **property** shall include all real and personal estate (including loan stock certificates, books and papers);
- G15.19 **register of shareholders** means the register kept in accordance with rule G6.1;
- G15.20 **registrar** means the Financial Conduct Authority or any statutory successor to or any assignee of any or all of its relevant functions from time to time;
- G15.21 **regulator** means the Homes and Communities Agency acting through the Regulation Committee established by it pursuant to Part 2 of the Housing and Regeneration Act 2008 and any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions;
- G15.22 **secretary** means the officer appointed by the board to be the secretary of the association or other person authorised by the board to act as the secretary's deputy;
- G15.23 **shareholder** shall mean one of the persons referred to in rule C4 and means **member** as defined by the Act;
- G15.24 **social housing** means low cost rental accommodation and low cost home ownership accommodation as defined in Section 68 and social housing as defined in Section 77 of the Housing and Regeneration Act 2008;
- G15.25 **special resolution** means a resolution at a general meeting passed by a two-thirds majority of all shareholders who vote in person or by proxy;
- G15.26 **tenant** means a person who alone or jointly with others holds a tenancy, lease or licence to occupy the association's premises for residential use and who occupies the premises as their only or principal home;
- G15.27 **these rules** shall mean the registered rules of the association for the time being.

Notices and communications

- G16 Any notice or communication required to be sent, served or delivered under these rules may be sent, served or delivered by hand, by post, by fax or by email or other electronic communication, to the last address for such communication given to the secretary, and shall be deemed to have been received by a person:
- G16.1 if posted by first class post, two clear days after being posted;

G16.2 if faxed, emailed or sent by other electronic communication, one hour after transmission provided that no transmission notification of non-delivery or error has been received by the person transmitting the communication;

G16.3 if delivered by hand, on delivery.

DRAFT

Appendix 4 – Tenant and leaseholder consultation letter

Date: 22nd March 2016

Dear

Consultation on proposed changes to the Board of Gloucester City Homes Limited (GCH)

We are proposing to make some changes to the make-up of our Board. We have always put you at the heart of what we do, and we are now writing to you to explain our proposals and seek your views and comments on what we would like to do.

We are also talking to other key stakeholders, including the Council, about our proposals.

Background

Gloucester City Homes Limited was established in 2005 to manage Gloucester City Council's housing stock, improve the homes to meet the Decent Homes Standard, and to deliver excellent services. In March 2015, the ownership of the housing stock was transferred from the Council to GCH which at the same time became a housing association, regulated by the Homes and Communities Agency as a Registered Provider.

Currently GCH has a Board of 15 made up of 5 Tenant Board Members, 5 Independent Members and 5 Council Nominees. The make-up of the Board reflects what was set out to tenants and leaseholders in the Offer Document prior to the stock transfer from the council to GCH.

What are the changes being proposed?

We have been reviewing the structure of the Board and our governance arrangements to ensure that we are well positioned to respond to the rigorous demands placed on Registered Providers and their Boards. We are proposing to reduce the number of Board members from 15 to 12 and make some changes to the composition of the Board. We are proposing that the 12 Board members are made up of 2 Tenant Board members, 7 Independent Board Members plus 3 Council nominees.

Since we became a housing association in March 2015 our shareholding membership has been made up of our Tenant and Independent Board Members and the Council and we are not proposing that this change.



The Board has approved a Skills Matrix and it is proposed that in the future all Board members would be recruited for their skills, knowledge and experience, and appointed by the Board in accordance with an agreed Board Recruitment Policy. This means that Tenant Board members would no longer be appointed through an election process.

It is also proposed to amend our Rules (constitution) to allow Board members to be paid for their role to reflect the amount of time needed to fulfill this important role and meet their expenses. This would not mean that Board members would be paid right now, but this change would give the Board the flexibility to consider payment in the future. This would be in line with many organisations to bring in the necessary skills required.

Why are we proposing to make these changes?

In the time since we became a housing association, the environment in which we operate has become much more challenging. Given the increasing legal and regulatory demands placed on Boards of Registered Providers, we have been reviewing our governance arrangements, considering best practice from other stock-transfer housing associations, and working with the council and our advisors on what is best for GCH going forward.

The National Housing Federation Code of Governance (our chosen Code) recommends a maximum board size of 12. This is because large boards (like ours currently) are thought to be less effective and have less added value. It is possible to have a balanced board with all the necessary skills, knowledge and experience to properly govern the organisation with fewer members.

We have already started the move towards a different form of accountability to our tenants as a result of extensive consultation by the Tenant Participation Advisory Service (TPAS) with our customers and endorsed by Customer Forum in December 2015. From April 2016, the new Tenant Panel will provide a wide range of opportunities to scrutinise our performance and make recommendations for service improvements which will feed regularly to the Board on each agenda. This provides a strong consumer voice to be heard in the Board room, whilst allowing tenants to contribute through the new Panel into the Board meeting. This allows us to reduce the number of 'ring-fenced' positions on the board for tenants whilst maintaining a strong tenant voice on our standards and performance.

There has been a move in the sector towards the recruitment of Board Members based on their individual skills knowledge and experience. This is also a requirement to ensure GCH continues to comply with the National Housing Federation Code of Governance. By adopting this approach we would ensure that there is the right mix of skills, knowledge and experience to allow the Board to be as effective and successful as it can be.

Recent changes to the Homes and Communities Agency's Regulatory Framework place a greater emphasis on the role of board members linked to financial risk and strategic risk management. This requires a high degree of skill and higher levels of responsibility, time commitment and accountability than previously. The proposed change would also allow the GCH board to consider Board member remuneration in the future, should it be judged necessary to recruit and retain suitably skilled and experienced board members.

What does this mean for you?

First of all, and importantly, this proposal does not impact on the way we deliver our services or set our rents and other charges and does not affect your rights as a tenant or leaseholder. Gloucester City Homes will continue to provide the strong services you have become used to over the last 10 years.

Tenants and leaseholders would still be able to apply to become GCH board members, in accordance with our new rules.

Next steps

We welcome any views you have on these proposals. If you have any comments or queries please do not hesitate to contact us by:

Emailing: governance@gch.co.uk

Writing to us at: Gloucester City Homes, Railway House, Bruton Way, Gloucester, GL1 1DG

Telephoning us on: 01452 42 43 44.

Please let us know if you have any comments or queries by **12.00 noon on Tuesday 3rd May 2016**. All feedback will be considered by GCH's Board before any final decision is made.

You can also give us your feedback at the GCH Customer Conference on Wednesday 30th March, at Kingsholm Rugby, Kingsholm Road Gloucester (see enclosed leaflet for details).

I look forward to hearing from you.



Paul Masters
Head of Governance & Policy

Appendix 5 – Tenant and leaseholder consultation additional factsheet

Date: 14 April 2016

Consultation on proposed changes to the Board of Gloucester City Homes Limited (GCH) - Additional Factsheet

This factsheet follows the consultation letter sent to all GCH tenants and leaseholders on the proposed board changes and is in response to some of the questions and points raised in the feedback we have received. It is being sent to those tenants and leaseholders who have responded and will also be available on our website.

Why the new structure is being proposed

In developing the proposals, we have worked with consultants on what would be the best board structure for GCH, and the one we are proposing is in line with that recommendation.

The board needs to be balanced in terms of skills and experience to be able to deliver our key strategic aims, including delivering the eight tenant promises, to effectively manage the associated risks, and to provide oversight and the right challenge to protect social housing assets in an ever increasing complex financial and political environment. It is no longer acceptable to just provide quotas of representation but instead to ensure board members have the skills needed so that the board as a whole can be as effective as possible.

We recognise the importance of delivering services for our tenants. The link between the board and the new Tenant Panel, where tenants are involved in setting service standards, providing feedback and monitoring performance, will strengthen our approach to delivery of the Consumer Standards part of the regulatory framework.

The changes are supported by the three Council party Group Leaders who have been fully consulted as to the reasons why the changes are being proposed, and they understand the importance of the board having the right skills and expertise to protect tenants, their homes, and future investment through a strong 30 year financial plan.

Key decision-making – shareholder voting rights

There are some major decisions that may need to be taken from time to time, for example, changes to GCH's Rules (constitution) such as those changes being proposed, or a decision, which is not currently expected, about whether to merge with another housing association.

As stated in the consultation letter we are not proposing to change our shareholding membership, which is made up of our tenant and independent board Members and the Council.

To clarify, the shareholders of GCH are currently the tenant board members, the independent board members and the Council. When considering a general resolution, for example, at a general meeting, the voting rights are split one third / one third / one third between these groups of shareholders. Under our proposals, none of this would change.

This would mean that the votes of the two tenant board members would carry the same weighting as the votes of the seven independent board members and that of the vote by the Council's authorised person.

Decisions at board meetings (that is not general meetings) would continue to be made as they are at present, with each board member voting individually.

Recruitment of independent board members

It is Government Policy to ensure that all boards are fit for purpose and the requirements are outlined in the new Governance and Financial Viability standard code of practice. All Registered Providers have to sign up to a recognised Code of Governance; we have signed up to the NHF Code which requires us to recruit board members the board to specific skills requirements to run the organisation, and independent board members will be recruited in line with that as will all board members.

Leaseholder position on the board

At present one of the tenant board member positions can be filled by a leaseholder (as long as they are resident in the property they lease from GCH). We are not proposing to alter this principle, so the changes would not preclude someone who is a leaseholder from being a GCH board member.

Paying our board members

We accept payment to board members is sensitive, however, it is rare these days for registered providers like ourselves not to pay board members. It is not because we want to, but we know that to attract the right level of skills may make it necessary in the future. The board has not yet made any decisions on this matter and it would be a relatively small sum to reflect that the board gives up a substantial amount of time. An increasing level of commitment and complexity of decision making is now being asked of board members to provide the organisation with an effective board and good governance.

Any decision on payment would be subject to an independent review and linked to benchmarking with other registered providers including other local housing associations.

Yours sincerely



Paul Masters
Head of Governance & Policy