Board member tenure and good governance

Additional guidance for housing associations adopting the NHF code of Governance 2020

April 2020

Summary

The 2020 NHF code of governance changed the approach to maximum board member tenure to emphasise that tenure should normally be six years with the possibility of extending to nine years. This guidance provides further information for housing associations that may have board members who have served six or more years or expect board members to serve beyond six years.

Codes of governance compared

Reproduced below are the relevant section from both the 2015 and 2020 codes of governance that cover board member tenure.

2015 Code of Governance

Section D *Board skills, renewal and review,* in the 2015 code of governance states the following:

**Main requirement**

Recruitment to board vacancies must be open and transparent and based on the board’s considered view of the skills and attributes required to discharge its functions. The board must select or appoint new members objectively on merit and must undertake regular appraisals of its members and of the board as a whole.

…

**D2** Maximum tenure must be agreed for all non-executives which must in total be nine years or fewer, composed of two or more consecutive terms of office. This maximum tenure must apply to all board member service with an organisation or its predecessors or its subsidiaries.

2020 Code of governance

Principal 3 in the 2020 Code of Governance covers board effectiveness, specifically the section referring to board tenure states:

**3.7** Tenure and renewal: tenure for nonexecutive board members (and independent

committee members) complies with the organisation’s constitution and is managed so as to enable the organisation to achieve an appropriately skilled, diverse and independent board membership.

…

**3)** Maximum tenure will normally be up to six consecutive years (typically comprising two terms of office), but where a member has served six years, and the board agrees that it is in the organisation’s best interests, their tenure may be extended up to a maximum of nine years.

2020 code of governance guidance

Additionally to support members adopting the 2020 code of governance we provide the following guidance in relation to tenure.

Tenure

Under section 3.7, we have emphasised that tenure should comply with the organisation’s constitution. It is increasingly common practice among organisations seeking to demonstrate excellent governance to apply a six-year maximum tenure for board members. In some cases, this comes with the flexibility to extend tenure for a further period (usually to a maximum of nine years in total), with any extension often being based upon annual review. This shift is desirable both in order to enable organisations to more quickly increase the diversity of their boards, by accelerating renewal, and ease the process of necessary renewal as the skills needed at board level shift over time. Good practice suggests that it should never be assumed on appointment that any board member will hold their role for the maximum tenure.

The 2020 code therefore, at Section 3.7, shifts the maximum tenure to, normally, six years (compared with nine years in the 2015 code), but provides the flexibility to extend tenure up to nine years on a case-by-case basis if determined to be in the organisation’s best interest.

Examples of what constitutes an organisation’s best interests will vary from organisation to organisation but may include particular skills a person has that are difficult to replace through recruitment, overall difficulty in attracting new board members to the organisation due to factors such as geography or the specialist focus of the organisation, or the need to invest in a considerable period of training and development for board members in some circumstances.

The flexibility to increase tenure for board members up to nine years can be used within the overall succession planning, to smooth the process for board retirements, especially if a number of members have already been on the board for six years or longer. It will be up to each organisation to decide how best to achieve this and ensure stability on the board.

It should be noted that the code is unambiguous that the requirements about tenure apply to office which has been held across any and all of the organisation’s boards and committees, including service as a co-optee. This requirement is designed to help organisations maintain the independence of non-executive board and committee members. For those organisations which favour ‘schooling’ potential board members through subsidiary structures or committees, the requirement to have maximum tenure apply to all board member service will need to be taken into account in any overarching succession planning strategy.

For the majority of organisations, adoption of the new code should not require any alteration to their written constitution in order to accommodate the new provisions about tenure. The code does, of course, state that if an organisation’s constitution conflicts with the code, the constitution takes precedence. Provided, however, that a constitution does not require tenure exceeding six years to be served, there is no conflict: what the code is requiring is within what is permitted by any constitution specifying a maximum nine year tenure (e.g. in line with D11 of the model rules 2015). It would be unusual, therefore, for an organisation to need to change its rules in order to comply with this section of the code.

There is strong evidence that organisations have benefited from a tenure limit: it prevents the dominance of one viewpoint or mode of thought, it is demonstrably fair to all, and it encourages a renewal and refreshment of board thinking and skills.

In order for this limit to have a genuine impact, the code now specifically requires that at least three years must elapse before a board member who has served his or her maximum tenure can be reappointed.

Many organisations in any case choose to have a blanket ban on subsequent reappointment, even after considerable time may have elapsed. This is considered good practice, and clearly this exceeds, and therefore complies with, the requirements of this code.

Q&A for housing associations adoption the 2020 code

Although every organisations is unique there will be common questions that come up for those seeking to transition to the 2020 code from the 2015 code.

Do all board members need to have served 6 years or less upon adoption of the 2020 code?

No. The 2020 code is clear that 6 years will be normal but where the board agrees it is in the best interest of the organisation tenure may be up to 9 years in line with the provisions of the 2015 code.

Can we apply a 6-year tenure to all board members who join post adoption of the 2020 code but have a 9-year tenure for all current board members?

No. A blanket board decision for only new appointees to be subject to a 6-year normal tenure, but for all current members to serve 9 years does not recognise the nuance of the code. For example, if a board member has recently joined the board and are in their first 3 year term, it is unlikely to be too onerous for the organisation to plan around that individual serving for a period of 6 years. There may be circumstances where that individual serves beyond 6 years if the board agrees that it is in the best interests of the organisation as they approach the end of their term.

Due to our specific circumstances our organisation would normally want to extend tenure to 9 years, can we do this?

The 2020 code allows the board to decide that it is in the best interests of the organisation for an individual board member to be put forward for re-election on terms which the board decide where this leads to the individual involved serving up to 9 years, this would be compliant with the code. However, if this were to become normal practice and it was a mere formality that as board members approached 6 years’ service a standard paper were to be presented to the board to enable board members to serve up to a further 3 years this would not be in the spirit of the code.

What circumstances could lead to a board deciding to extend a board members tenure beyond 6 years?

Every organisation should make its own decisions based on its own circumstances, potential reasons to extend an individual board members term may include but are not limited to some of the following:

1. The board member concerned has taken a key role in a specific project that will conclude after the end of their term, they may have knowledge and specialist skills that in the opinion of the board means that it is in the best interests of the organisation to extend the board members term beyond 6 years.
2. There has been a greater than expect turnover of board members with individuals leaving the board earlier than anticipated by the housing association’s succession plan. There may be an argument in this circumstance to extend a board members term in order to retain organisational knowledge and consistency on the board.
3. The housing association has a succession plan and has made efforts to recruit board members with specific skills that the organisation has identified as key requirements for the board to have. Due to unexpected circumstances the organisation has not been able to recruit suitable candidates. E.g. a small remote rural association that requires someone with finance skills and does not pay its board members, has struggled to find a suitable candidate to replace the chair of the audit committee who is approaching 6 years service this individual is the only member of the committee with *recent relevant financial experience* as required by 4.2.5 of the 2020 code. In this case the board may consider it in the best interests of the organisation to extend the term of the individual board member concerned, but should also consider what it could do differently to avoid repeating this situation.
4. The organisation is in the process of a merger that is expected to complete within a relative short period of time e.g. the next 12 months, in this case the board may consider it in the best interest of the organisation to retain the board as it is currently constituted.
5. The individual board member joined the organisation with little or no relevant experience (e.g. via an access program to place younger people on boards and develop their skills) and may have served initially on a committee only or the board of a subsidiary, and has therefore had a relatively short time on the board. Additionally the board believes that as the board member approaches 6 years service they are reaching their full potential as a board member and they wish to benefit from the investment they have made in the individual.

Is it possible that boards will have a majority of members having served over 6 years at any point?

Yes, it is likely that soon after adoption of the 2020 code boards will have individuals who have or will serve beyond 6 years, in some cases these members may be in the majority. However, as more time elapses since an organisation’s adoption of the 2020 code it would be expected that normally board members with service beyond 6 years will be in a minority.

Do board members that have been elected for a 3rd term that takes them beyond 6 years need to stand down if we adopt the 2020 code?

No, they can serve their entire term. Some may consider standing down before the completion of their term, but this would not be expected as the best interest of every organisation will be different. One of the harder things for individual board members to do is recognise when the right time is to leave an organisation, robust collective and individual appraisal processes make this easier for individuals.