

### GUIDANCE ON DEALING WITH POOR PERFORMANCE AND MISCONDUCT ON THE PART OF BOARD AND COMMITTEE MEMBERS

#### 1. Introduction

- 1.1. The role of Board and Committee Members in a large organisation such as Riverside is demanding and challenging, requiring strong, principled and effective Board Members to direct strategy in a complex business dealing with a wide range of social issues. Many organisations shy away from a Board Member disciplinary policy and procedure and this is often because they feel it is inappropriate to 'discipline' Board and Committee Members who are giving their time voluntarily. However the SHR's Regulatory Standards require that Board Members are appraised and it is therefore important to have guidance in place should Board or Committee Members not do what is required of them.
- 1.2. Furthermore, it would do little to promote Board Leadership of the Association if members of staff see Board or Members failing to perform or behaving unchallenged in a way in which it would be unacceptable for them to behave.
- 1.3. The Association will therefore tackle poor performance in accordance with this guidance.
- 1.4. Board Members agree on appointment to be bound by the Code of Conduct and the Board Member Agreement for Services. Failure to comply with these documents will be a disciplinary matter.
- 1.5. However, disciplinary matters are always sensitive, and need to be handled accordingly. Whilst there are some behaviours which are clearly wholly unacceptable and can be dealt with by following clear rules, in many cases the appropriate response will be a matter of judgement. This Appendix seeks to give guidance to those applying judgement, by giving examples of types of misconduct.
- 1.6. It is of paramount importance that poor performance by Board Members or their misconduct is dealt with fairly and consistently across the Group. Therefore, for any Board, in cases of doubt, reference should be made to the Chair and in

addition the Company Secretary will be pleased to provide general guidance for Board and Committee Members on request.

## **2. What do we mean by poor performance or misconduct by a Board Member?**

2.1 Such matters will be classed in one of the following categories: minor performance issues, misconduct, or serious misconduct. The following paragraphs illustrate by example the type of behaviour which would fall into each category:

### **2.1.1 Bringing the organisation into disrepute**

An example, which could be misconduct (depending on the seriousness of the behaviour), would be behaving inappropriately at a conference or similar event; Examples of serious misconduct could be:

- a. Writing letters, giving interviews or relaying opinion critical of the Association or Group, its stakeholders, or its partners to the local or national press; or
- b. Assault of another Board Member or member of staff.
- c. Not adhering to collective decision making.

### **2.1.2 Failing to demonstrate probity**

Examples of misconduct could be:

- a. Accepting gifts and hospitality which could be seen to compromise the Board Member's position; or
- b. Failing to declare a relevant interest.

Examples of serious misconduct could be:

- a. Seeking to get preferential treatment for a member of his or her family in terms of re-housing or some other service provided by the Association;
- b. Discussing confidential information about the Association or Group with a third party; or
- c. Claiming expenses fraudulently.

### **2.1.3 Behaving inappropriately in relation to equality and diversity issues**

An example of misconduct could be using inappropriate language at Board meetings;

An example of serious misconduct could be sexually harassing a tenant or resident, another Board Member or a member of staff.

#### 2.1.4 Failure to comply with the Agreement for Services

Examples of misconduct would be:

- a. Repeated non-attendance at Board and/or Committee Meetings without the express consent of the Chair; or
- b. A refusal to take part in the appraisal process.

2.2 Misconduct does not mean being deemed not to 'fit in' to the existing Board team. Expressing different views to those generally held within the Board creates healthy challenge and brings new perspectives as long as Board decisions are supported outside meetings. Similarly, some Board and Committee Members will have different backgrounds and interests to the majority of their colleagues. This brings real diversity to the team.

### **3. Principles underlying procedures to deal with Board Member poor performance and/or misconduct**

- 3.1 Riverside procedures are designed to encourage and support Board Members to improve;
- 3.2 The perceived problem should be made clear to the Board Member and he/she must be given an opportunity to state his/her case before decisions are reached;
- 3.3 Action must not be taken until the facts have been established;
- 3.4 Action must be reasonable in relation to the circumstances of the case;
- 3.5 Unless the Board Member has committed serious misconduct, no Board Member should be required to leave the Board for a 'first offence';
- 3.6 The Board Member must always receive a clear, written explanation about any action taken and any improvements expected of him/her;
- 3.7 Issues should be dealt with as thoroughly and promptly as possible; and
- 3.8 Action should always be consistent.

### **4. Who should deal with poor performance or misconduct issues?**

- 4.1 Where an individual Board Member is failing to perform in accordance with the Board's requirements, or is suspected of misconduct, the Chair should take the lead in seeking to resolve the problem. The Chair may take advice from the Chair of the Governance and Staffing Committee, the Managing Director, and/or an independent specialist.

4.2 Where the Chair is failing to perform, or does not take appropriate action, it is the Board's role, constitutionally, to take the lead. In practical terms this may mean the Chair of the Governance and Staffing Committee or another senior Board Member, or the Managing Director taking appropriate action as set out in section 5 of this procedure.

**5. What actions might be appropriate to deal with poor performance and/or misconduct?**

**5.1 Minor performance issues**

5.1.1 Such issues are handled locally and often it will be enough to point out a problem informally and explain what is needed. In addition the following options could be considered:

Training and development activities to:	<ul style="list-style-type: none"> <li>• Develop understanding on specific topics and increase the ability to contribute;</li> <li>• Appreciate the difference between Board and Executive issues;</li> <li>• Practice specific skills such as strategic planning;</li> <li>• Assist in developing overall confidence.</li> </ul>
Mentoring and support from an experienced Board Member to:	<ul style="list-style-type: none"> <li>• Develop an increased understanding of what is required of a Board Member;</li> <li>• Help in preparing for Board Meetings;</li> <li>• Appreciate the difference between Board and Executive issues.</li> <li>• Assist in developing overall confidence</li> </ul>
Visits to offices, housing schemes and partner organisations to:	<ul style="list-style-type: none"> <li>• Develop a greater understanding of the business and the areas in which the organisation operates;</li> <li>• Develop a greater appreciation of staff activities and customer requirements.</li> </ul>
Mentoring from an experienced Board	<ul style="list-style-type: none"> <li>• This can be particularly useful when, for example, the organisation first appoints Board</li> </ul>

Member of another organisation or an external consultant.	Members who are tenants and existing Board Members do not have the appropriate background to provide support.
Attendance at external Board conferences and training events	<ul style="list-style-type: none"> <li>To widen the Board Member's experience through exposure to other ideas about governance from other organisations</li> </ul>
Agreeing special leave of absence	<ul style="list-style-type: none"> <li>To assist a Board Member who may be having short term personal or work related problems which are detracting from their ability to perform their duties as a Board Member</li> </ul>

5.1.2 It will always be appropriate to discuss any such issues in the course of the Board Member's appraisal. In cases where the Board Member is unable to perform despite his or her best efforts, consideration must be given to the relative importance of the issue in relation to other skills, competencies and experience offered by the Board Member.

5.1.3 A note of the matter will be placed on the Board Member's file, and a copy given to the Board Member concerned.

## **5.2 Misconduct**

5.2.1 These are the kind of incidents that, even if they occurred through ignorance, it is unacceptable to repeat. They may involve more serious inappropriate behaviour which fails to uphold organisational values and policies.

5.2.2 In these cases, the Chair of the Board, or any person referred to in paragraph 4.2, should inform the Managing Director who will appoint an appropriate person to investigate the alleged misconduct. The person appointed will not be Group Nominee or Co-optees of the Board concerned. The appropriate person will conduct an investigation, interview the individual Board Member and make a recommendation to the Board.

5.2.3 The Board will then make a decision based on the information provided.

5.2.4 The appropriate person may recommend any of the actions mentioned above but the consequences of repetition will have to be made clear. A note of the

matter will be placed on the Board Member's file, and a copy given to the Board Member concerned.

- 5.2.5 It may in addition be appropriate depending on the seriousness of the matter to issue a written warning (a copy being placed on file). This may be a final warning, in which case its wording will clearly state that it is a final warning.

### **5.3 Serious misconduct**

- 5.3.1 This includes incidents where the Board Member has knowingly put the Association or an individual at serious risk.

- 5.3.2 In these cases the Board Member will be suspended by the Chair of the Board, (or, where the Chair is to be suspended, the Group Chair;) from office until the disciplinary procedure is completed.

- 5.3.3 The Chairman of the Board, or any person referred to in paragraph 4.2, should inform the Managing Director who will appoint an appropriate person to investigate the alleged misconduct. The person appointed will not be Group Nominees or Co-optees of the Board. The appropriate person will conduct an investigation, interview the individual Board Member and inform the Board of the recommendation to be made to them.

- 5.3.4 The Board will consider the recommendation and make a decision on the information provided.

- 5.3.5 The Board will then notify Group's Governance & Remuneration Committee of its decision.

- 5.3.6 Such recommendation may include terminating the appointment of the Board Member concerned (without having previously given a verbal or written warning).

## **6. Removing a Board Member**

- 6.1 Regard should be had to the Association's Rules, which sets out certain circumstances where Board Membership must be terminated, or where it may be terminated by the organisation concerned. In addition to this, under the Association's Rules and the Partnership Agreement, TRGL may remove Board Members of the Association.

- 6.2 It will be necessary to consider removing a Board Member if he/she:

- 6.2.1 Repeatedly fails to improve performance despite training and support;  
6.2.2 Repeats unacceptable behaviour after formal warning; or

- 6.2.3 Is found after proper investigation to have committed serious misconduct.
- 6.3 Following a recommendation of the *Governance and Staffing Committee* to the Board that a Board Member be removed, the Board will consider the matter. Should Board approve the recommendation, then with immediate effect the Board Member will cease to hold:
  - 6.3.1 Board Membership;
  - 6.3.2 Shareholding membership of the Association (if agreed by the Board);
  - 6.3.3 Membership of any Committees/; and
  - 6.3.4 Shareholding membership of TRGL (if applicable).
- 6.4 The Board Member will be informed in writing of this decision by the Chair.

Approved by Board 19 September2017