

# CHC Governance Conference 2019

## The Role of the Company Secretary

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# The Role of the Company Secretary

- What is a Company Secretary
- The Development of the Role
- Statutory Duties
- Core Functions:
  - Compliance
  - Governance
  - Advisor to the Chair (and to the Non-Executive and Executive Teams)
- The Person Specification

## Three things to take away ...

- A better understanding of the role of a Company Secretary in an RSL
- How to empower your own Company Secretary
- The breadth of the role and the value it can add

# But first ...

## Some historical context

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- In 1887 a judge commented:  
*‘a secretary is a mere servant; his position is to do what he is told*
- In 1902 the duties were described as:  
*‘of a limited and humble character’*

...”  
developing people, growing organisations

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# But first ...

## Some historical context

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- In 1971: In the court of appeal the company secretary was described as: *‘the chief administrative officer of the company’*
- and by another judge: *‘as an officer with extensive duties and responsibilities’*

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# What is a Company Secretary?

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- In 1993: The Cadbury Report on corporate governance stressed the importance of the role of the company secretary stating that: *‘the company secretary has a key role to play in ensuring that board procedures are followed .....and that the board will look to the company secretary for guidance and compliance on rules and regulations’*

# What is a Company Secretary?

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- In 2003: The Higgs review of the role and effectiveness of non-executive directors: *‘stressed the role of company secretary in ensuring relevant information is available to the board and that the company secretary should be accountable to the board on all governance matters’*

# What is a Company Secretary?

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- In 2009: The English National Housing Federation's Competence and Accountability Code of Governance commented that:  
*'the role of the company secretary ... is crucial in...providing impartial advice to board members'*



## **Core functions: Statutory**

### Based on CHC Model Rules 2017

## 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's duties will be clearly set out in writing and agreed by the board**

## **The secretary (additionally)**

E8 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;

## **The secretary (additionally)**

- 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.

## **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

- Section C: Shareholders – main contact, for admission, ending of shareholding and the register
- Section C: AGMs and SGMs – calling, issuing notices

- Section D: Board members interests – register must be kept up to date – by the secretary
- Section D: Meetings of the board – at least 7 days notice to be given by the secretary
- Section G: Notices – recipient of and sender of ..

## Minutes, seal, registers and books

- 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
- 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



## Core Functions: Compliance

- Registered Society - Model Rules – Financial Conduct Authority
- Company Memorandum and Articles of Association – Companies House
- Charity Trust Deed or Scheme – Charity Commission
- Annual returns, forms, consents, notifications, registered office, and so much more

- Regulatory Framework
- Performance Standards
- Sector Risks and Regulator Expectations
- Self-assessment
- Annual cycle of regulatory returns
- Post ONS, post deregulation:
- New notifications regime
- For example, new disposals procedures

## Housing Association circulars:

- Data collection – 13 separate regulatory returns in 2018-2019
- Permitted payments and benefits (Schedule 1) and the General Determination 2010
- Group Structures
- Self-Evaluation
- And many more ...

## Compliance – current hot topics

- Regulation of Registered Social Landlords (Wales) Act 2018
- Post-Grenfell: Registered Social Landlords in Wales Landlord Health and Safety
- Value for Money: Housing Association Comparison Tool
- Regulatory Intervention: Cardiff Community Housing Association: Lessons Learned Report

- Are all your governance and probity policies and procedures, forms and registers up to date with statutory changes, regulator expectations and best practice updates?
- Is the board getting the right level of assurance from committees, senior staff and independent external sources that what should be done is being done? To stay compliant ... with everything ...

## Statutory compliance:

- Employer and landlord law; GDPR, Welfare Reform, Care and Support, H&S, E&D, Financial crime, Welsh Language, ASB, DV, and so much more
- Funder covenant compliance
- Corporate Compliance Calendar?
- Assurance mechanisms in place?

## Core Functions: Governance



*‘Governance describes the way that an organisation is directed and controlled, which includes strategy and decision making, how it achieves its strategic objectives, and ensuring that all activities undertaken comply with legal, ethical and regulatory requirements’*

- The Chair of the English Regulator of Social Housing, commenting on regulatory downgrades:
- *‘The common thread in all cases is a failure of governance ... poor governance has long been the issue that results in organisational failure’*

- And, commentating on the post-ONS environment, where boards have more powers and there is less reliance on regulator consent:
- *‘High quality corporate governance really is business critical’*

## Governance toolkit documents:

- Must all flow from and be congruent with your constitutional documents, and with each other – and be up to date:
- Standing Orders
- Financial Regulations
- Scheme of Delegation
- Code of Governance

- Code of Conduct
- Probity (Schedule 1) Policies
- Declarations of Interest Policy and Register
- Gifts and Hospitality Policy and Register
- Bribery, Fraud, Money-Laundering, Tax Evasion Policies and Registers
- Whistleblowing Policy and Register

- Terms of reference for all boards and committees, plus EMT, plus Scrutiny
- Role profiles for all chairs, board members, committee members, scrutiny members
- Non-executive:
  - Skills strategy and skills matrix
  - Collective and individual non-executive annual appraisal scheme and outcomes
  - Succession plan

- Non executive:
  - Recruitment and Selection Policy
  - (Remuneration Policy)
  - Deed of Agreement for Services
  - Induction, Continuing L&D Policy
- Governance Improvement Action Plan

**All kept up to date – annual review**

- Cycle of meetings - board, committee, AGM, plus strategy days, EMT and scrutiny
- Flow of documents – the decision audit trail, knowing what needs to go where, when, to be approved – no duplication
- Agendas – annual cycle – make sure everything you need to do gets done, at the right time, in the right fora, without overburdening individual meetings
- Minutes – providing assurance



- There needs to be basic discipline and formality to how a board conducts its business
- The findings of the Myners report into the Co-operative Group failure highlighted how board time can easily be wasted and diverted in matters of secondary concern, with little in terms of decisions and next steps, and overly long meetings

# Board and committee documents

- Think quality not quantity
- What information do the board and committees **need to have**, not what the report author thinks might be interesting
- The CoSec is responsible for making sure the board gets the information it needs, when it needs it, to provide leadership, deliver strategic objectives, manage and mitigate risks, manage performance, stay legal and stay in control of all aspects of the business

# Board and committee meeting minutes

- A legal requirement
- Minute taking – a much under-valued skill
- Minutes record what was done not what was said, recording decisions taken and the main reasons, the options assessed, the challenges made
- Provide assurance to the board
- Track SMART actions arising
- The ‘corporate memory’ of your organisation is enshrined in minutes

# Board and committee meeting minutes

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- The CoSec is responsible to the chair for the minutes providing a true, accurate and objective record, for them being circulated promptly, signed at the next meeting and stored safely
- A 'good governance' KPI is minutes being written, agreed by the chair and circulated to all present plus any others with action points within 5 working days of the meeting

# Board and committee meeting minutes

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- All board and committee meetings should be planned such that subsidiary board and committee minutes are always available to be formally received and noted at the next (group parent) board meeting
- A crucial assurance mechanism for the (group parent) board that what has been delegated has been done

# The Charity Commission on the role of the CoSec

*‘Maintaining a forward planner which sets out, for the year ahead, the matters the board and its committees will discuss and the key dates for meeting statutory and other reporting requirements’*

*‘Ensuring that committee meetings are held at the required intervals, that the activities of the board and its sub-committees are synchronised and that links between board and committees are well-developed and effective’*

*‘Putting in place and enforcing a disciplined process for the timely preparation, quality assurance and circulation of board agendas and papers’*

*‘Ensuring that board and committee minutes are circulated quickly, that they are accurate and require minimal redrafting and that action points are followed up’*

- The CoSec, supporting the chair, should take the staff lead on:
- Delivering non-executive induction and continuing individual and collective learning and development
- Following up on skills audits and appraisal outcomes
- Addressing issues of performance, conduct and probity, attendance and commitment



## **Core Functions: Independent Advisor to the Chair** (and other non-executives and executives)

**Core Functions: Independent guardian**

**Acting always and only in the best  
interests of the organisation**

(not those of the chair, not those of the  
board, not those of the chief executive ...)

## **The UK Corporate Governance Code (2018)**

*The board, supported by the company secretary, should ensure that it has the policies, processes, information, time and resources it needs in order to function effectively and efficiently*

## **The UK Corporate Governance Code (2018)**

*All directors should have access to the advice of the company secretary, who is responsible for advising the board on all governance matters*

*Both the appointment and removal of the company secretary should be a matter for the whole board*

## The UK Corporate Governance Code (2018)

*The definition of 'senior management' should be the executive team or the first layer of management below board level, including the company secretary*

# The Company Secretary's role in a modern RSL

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- A critical friend to the board and the executive team
- A key strategic partner providing expert advice and guidance
- Supporting business planning and high quality decision making
- Requires an understanding by the board and the executive team that the role is much more than ticking boxes and being good at administration

# The Company Secretary's role in a modern RSL needs:

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- To avoid conflict of interest - actual, potential and perceived
- Should not be the CE in all but the smallest organisations, and ideally should not be the FD either
- It can sometimes be tricky to balance independent advice with professional interest if you are the CE or FD

# The Company Secretary's role in a modern RSL needs

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- A strong mutually supportive relationship with the chair – advising, supporting, guiding smooth governance operations ... the swan ...
- To be trusted by everyone – non-executives and executives, external advisors and stakeholders
- To have people who understand the role – on the board and on the executive



# The Company Secretary's role in a modern RSL needs

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- Independence, objectivity and accountability
- To be the moral compass
- Knowledge of all aspects of the business
- An understanding of strategy and risk
- Strong organisation skills
- Tact and diplomacy
- Motivation and energy

# Other essential skills...

- Humility
- Integrity
- Discretion
- Emotional intelligence
- Efficiency
- Conflict management

## And so much more ...

- Wise owl (know-it-all)
- Oracle (foretell the future)
- Saint (patience of)
- Coach (mentor, trainer)
- Enforcer (guardian of probity)
- Mediator (judge, jury, referee)
- Peacekeeper (UN blue beret optional)
- Baby (and pet) sitter
- Tea maker (experience essential)
- Shoulder to cry on (hanky always to hand)

## A serious question for chairs:

Is there someone in your organisation that knows your constitution, intra-group agreement, standing orders, delegations and policies inside out, someone who feels comfortable and empowered to challenge the board and the executive team on all aspects of governance, compliance and the effective delivery of strategic objectives

Hot off the press ... from the Wates Review

*'I happen to believe there's a real benefit in CoSecs. They allow directors to focus on what they're doing around their business and the CoSec is there to support and advise and, of course, record; and that is a very, very important role. If somebody else has the CoSec responsibility around the board table, can they really give the real level of thought needed to the business?; the CoSec has a huge role'*

# The Role of the Company Secretary

Any questions?

Any observations?

# The Role of the Company Secretary

That's all for now ...

... Thank you for listening

Stephanie Bamford

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