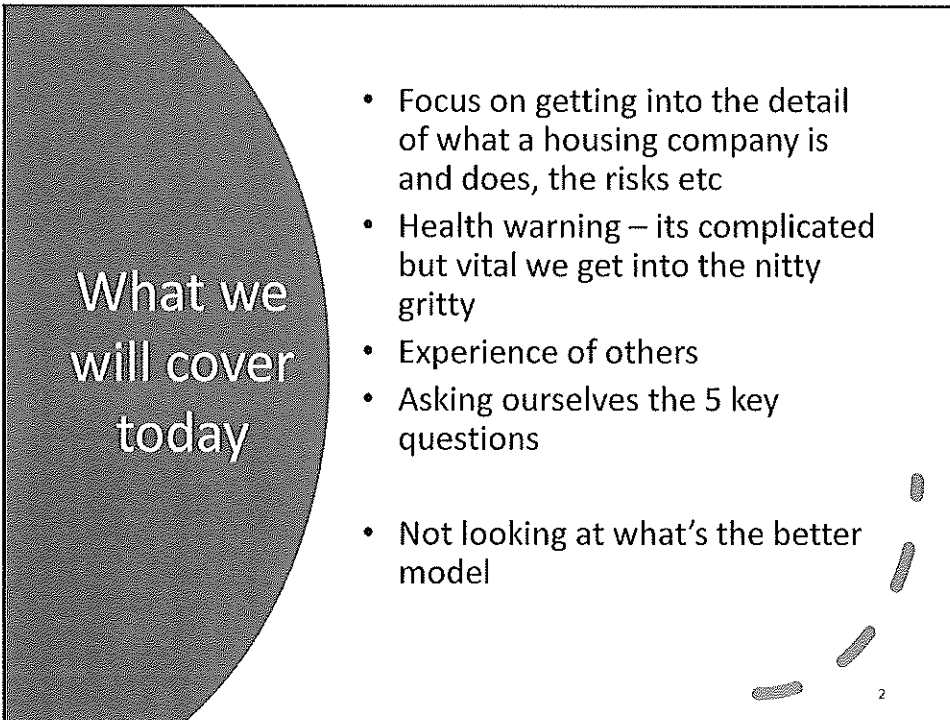




Affordable Housing Delivery Task and Finish Group

Meeting two – Housing Companies June 2022

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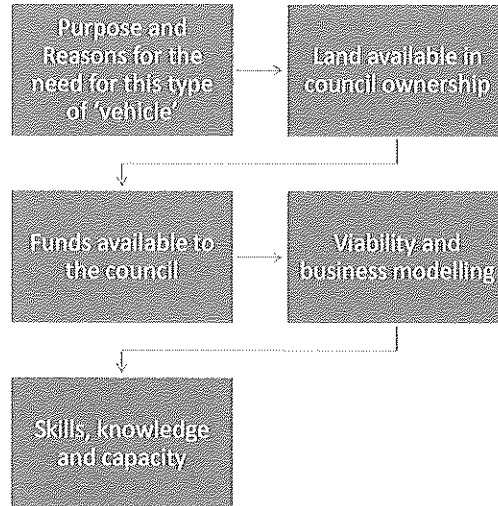


What we will cover today

- Focus on getting into the detail of what a housing company is and does, the risks etc
- Health warning – its complicated but vital we get into the nitty gritty
- Experience of others
- Asking ourselves the 5 key questions
- Not looking at what's the better model

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Key questions council would need to ask itself – come back to this at the end!



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But first...the CIPFA Local Housing Companies document

Sets out key issues to consider

- Legal powers
- Governance and directors
- Financing
- Subsidy Control (was known as state aid)
- Taxation
- Accounting
- Land and land acquisition
- Right to Buy

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Legal powers

- LAs can set up trading companies under LGA 2003
- Other relevant legislation: Localism Act (general power of competence) and LGA 1988 (limits provision of financial assistance for the provision of privately let housing)
- Not allowed to use provisions in Acts to avoid RTB
- LA cannot enter into an LLP (Limited Liability Partnership) for a commercial purpose ie to make a commercial return

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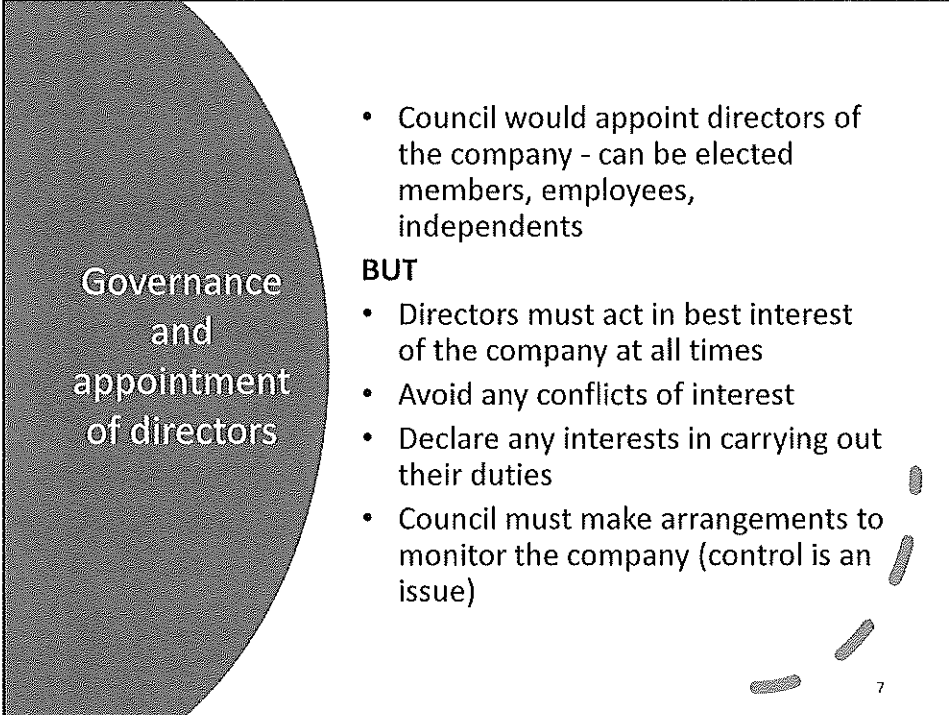
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Options for company structures

- Company wholly owned by council limited by shares or by guarantee
- Joint venture as an LLP
- Joint venture company with private sector developer or housing association
- Joint venture between local authorities
- Commercial purpose via a company or a registered society

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Governance and appointment of directors

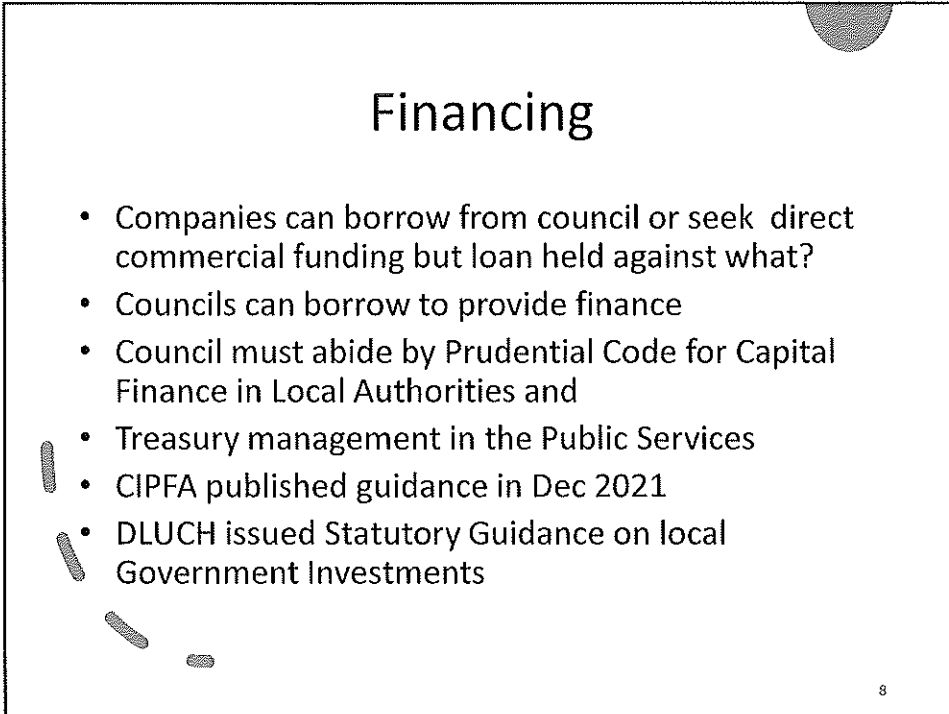
- Council would appoint directors of the company - can be elected members, employees, independents

BUT

- Directors must act in best interest of the company at all times
- Avoid any conflicts of interest
- Declare any interests in carrying out their duties
- Council must make arrangements to monitor the company (control is an issue)

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Financing

- Companies can borrow from council or seek direct commercial funding but loan held against what?
- Councils can borrow to provide finance
- Council must abide by Prudential Code for Capital Finance in Local Authorities and
- Treasury management in the Public Services
- CIPFA published guidance in Dec 2021
- DLUH issued Statutory Guidance on local Government Investments

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Subsidy Control (was known as State Aid)

- Assessment required for set up, borrowing, land transactions from the council not at market value
- Complicated area that could have implications across all the key issues
- Whatever doing always have to have this in forefront of considerations

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Taxation

Specialist advice needed on:

- VAT
- Corporation Tax
- Stamp Duty Land Tax
- Construction Industry Scheme
- Residential Property Developer Tax (April 2022)

Significant implications!

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Accounting

Key issues

- Relationship with housing company and it's size
- Impact on council's accounts
- separate group accounts are required
- Financing set up and impact of Statutory Guidance on MRP (minimum revenue provision)
- Consideration of IFRS 9 Financial Instruments – risk of default and need to assess value of losses

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Land acquisition

- Company can purchase land or acquire property by competing in the open market
- Company can develop land owned by the council and transferred to it
- Disposal of land to a company building homes for rent must comply with LGA 1988
- Role of 'general consent'
- Transfers less than market value must consider subsidy control

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- Housing Company tenants have rights and responsibilities as private tenants (ASTs are issued)
- Don't have same rights as Council or Housing Association tenants
- Extension of RTB = major risk to all housing companies but would require change in legislation
- RTB receipts (from stock previously held by CDC) cannot be used to fund development by council owned companies

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The experiences of others

- Lawyers in Local Government Code of Practice outlines some issues/difficulties faced by companies eg making decisions, scrutiny, managing regulatory matters and conflicts
- Local companies we are aware of include Horsham DC which currently holds 5 properties and Arun's 'Trisanto' (holdings unclear).
- A survey in 2017 showed 24 companies had been/were being set up with a wide range of aspirations eg making a profit &/or delivering homes
- Typically companies held less than 10 properties
- Further research would be needed to see what actually happened to them and what they have delivered
- High priority failures eg Croydon, South Kesteven and North Cornwall

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Key benefits

- Housing company may provide an income to the council (depends on terms)
- Housing company in control of development (where, what, how quickly) BUT
 - subject to planning, having land and funding
 - if not set up as a registered provider not eligible for any capital funding from Homes England
- In long term company may provide a property asset for the council (depends on terms)
- Perception of control by the council but in reality company is a separate entity largely outside CDC control

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Key risks and issues (1)

- Set up costs can be significant (time and resources diverted from other functions – housing, legal, finance etc)
- Subject to all the business risks operating in this market (rent controls, HB levels, tenancy changes, operation of the courts, costs of repairs & maintenance, staff, development costs etc)
- Taxation – irrecoverable VAT on most of expenditure, running costs significantly more expensive
- Other running costs eg audit, insurances, borrowing costs, repairs, management, maintenance etc

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Key risks and issues (2)

- Accountancy complexity and drain on internal resources
- Future changes to RTB? =losing stock/selling at a discount
- Securing land and finance
- Gearing risk – increased risk of financial distress or failure if high proportion of debt to assets/equity
- Liquidity risk – unable to meet payment obligations due to cashflow issues
- All the checks and controls required when using public money
- Government changes in policy (often without notice)

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Back to the questions we need to ask ourselves and discussion...



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Next steps and meeting three

Review the learning and information from meetings one, two and the members awareness session on housing delivery

Consider the purpose of the T and F Group, the scope it was given and the four main tasks

Have these been met?

Other considerations eg history at CDC and LSVT

Produce summary findings and recommendations to OSC/cabinet/council

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