

## APPENDIX 2: Wholly Owned Housing Company (WOC)

Principles	Partnership Agreement (PA)	LLP	Advantage of using the LLP
<b>Control</b>	The SPV is wholly owned by BYUK. The SPV structure is a contractual arrangement between the WOC and BYUK, meaning that all controls are enshrined in the partnership agreement to prevent the SPV from undertaking any activities without the consent of the WOC.	Corporate arrangement in which the WOC will become a member of the LLP with BYUK (via a holding company) being the other partner. The WOC would control the vehicle through its rights as a member.	The contractual controls within the PA are less robust than corporate controls offered by the LLP, which are supported by a host of statutory provisions and caselaw in relation to how directors act and to whom they owe duties.
<b>Third Party</b>	Third parties that contract with the SPV are unlikely to be aware of the PA and so may enter into arrangements with the SPV without seeking WOC approval.	Third party will be clear that both members have rights in relation to the partnership which may give rise to transparency at an earlier point of any activities of the LLP.	If BYUK are acting in breach of the PA, i.e. by entering into third party arrangements without consent of the WOC, it is possible that this breach would only come to light after the event, whereas the transparency and joint control offered by the LLP would identify any third party interaction immediately.
<b>Transparency</b>	Activities will be via a steering committee and monthly reporting in a format as defined within the Partnership Agreement.	Transparency and access to all information is a statutory right of each member.	As each member of the LLP has a statutory right and access to all information there is no ambiguity as to how the information can, or should, be provided.
<b>Decisions</b>	If the SPV took any decision without the consent of the WOC (in breach of the PA) then the remedy would be to sue for breach of contract and the remedy would typically be damages.	Decisions taken by the LLP without the consent of all members would allow claims to the courts based on the right of members.	Decisions taken by a member of the LLP without the consent of all members would allow claims to the courts based on the right of members and may offer access to a wider range of remedies than just damages.
<b>Shadow Director Liability</b>	The WOC may be found to be a shadow director of the SPV given its role in the day to day	There is no shadow director risk.	No risk within an LLP structure.

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	management of the SPV which can incur director liability. This can be managed through insuring against this risk.		
<b>Limited Liability</b>	The WOC has unlimited liability for the business of the SPV. This may be managed through an indemnity from the partner, but such an indemnity is not in place.	Liability of the WOC is limited to the value of the membership which is likely to be £10.	As the WOC is participating in a partnership and not a corporate structure its liability is unlimited for all business activity of the partnership under partnership law, whereas the LLP is limited to the nominal value of membership.
<b>Profit Distribution</b>	The payment of the 60% profit share to the WOC, which has been agreed with BYUK, would need to be a contractual entitlement to payment.	The LLP will receive its 60% share without having to consider alternative structuring of the payment.	The WOC does not have a legal entitlement to profit of the SPV/PA as it is not a shareholder with any entitlement to receive a dividend. Members of the LLP are entitled to share in the profit of the LLP based on the agreed split of the profit.
<b>Market Perceptions</b>	Bespoke arrangement requiring complex drafting.	Common vehicle understood by funders and the market.	As the PA is a bespoke arrangement it is difficult to explain to third parties such as funders, which has cost implications and potential contractual complexities in the event of a dispute.