



**Scottish Housing
Regulator**



How we work

Dealing with potentially
serious issues in RSLs

Issue 1

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About us

We are the independent Regulator of just under 200 social landlords – around 160 Registered Social Landlords (RSLs) and 32 local authorities. We are led by a Board of non-executive members and directly accountable to the Scottish Parliament.

Our one objective is **to safeguard and promote the interests of**

- nearly 600,000 **tenants** who live in homes provided by social landlords
- around 90,000 **owners** who receive services from social landlords
- around 40,000 **people and their families** who may be homeless and seek help from local authorities
- over 500 **Gypsy / Traveller** families who use 29 official sites provided by social landlords.

Our role is to gather, monitor, assess and report on social landlords' performance of housing activities and RSLs' financial well-being and standards of governance, and to intervene where appropriate to achieve our objective. We also keep a public register of social landlords.

You can see more on how we regulate social landlords in our published Regulatory Framework, available on our website at: www.scottishhousingregulator.gov.uk.

How we work

We want to be as open as possible about how we regulate so that tenants and service users, landlords and others with an interest in our work have a clear understanding of what we do, how we do it and why we do it.

Through the **How we work** series of publications we provide more information on how we work within our published Regulatory Framework.



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1 Introduction

In this note we set out how we will work with Registered Social Landlords (RSLs) when we need to deal with a potentially serious issue.

Potentially serious issues do not often happen; over the course of a year we may need to work with fewer than ten RSLs about a potentially serious issue. This **How we work** note sets out our practice when we do need to work with an RSL about a potentially serious issue, and explains what we do and what the RSL can expect in these situations.

Our sole statutory objective is to safeguard and promote the interests of tenants and others who use the services of social landlords. This is what drives all our actions and decisions. So, when we need to work with an RSL about a potentially serious issue in the organisation we are doing so solely to protect and promote tenants' interests.

Our framework – *Regulation of Social Housing in Scotland* – sets out that we will take a risk-based and proportionate approach to regulation. We also include in our framework the Regulatory Standards for (RSLs) and the policies and principles underpinning our regulation.

Most of our engagements with RSLs follow on from our annual assessment of risk and are set out in our published Regulation Plans. One exception to this is where we need to work with an RSL about allegations or whistleblowing we have received. So, this note is **not** about our regular engagement with RSLs which arises from our annual risk assessment.

An RSL's governing body (its Board or Management Committee) has overall responsibility for all aspects of the organisation's strategy and management. Given this, our principal regulatory relationship is with the governing body. Most of our routine regulatory engagement will be with the RSL's staff, but it is important that we are able to engage directly with the governing body when necessary.

2 What might trigger us to contact an RSL

Our initial contact with an RSL is often triggered by information or allegations brought to us by current or former governing body members or from current or former staff. The information can be about inappropriate conduct or actions within the RSL, for example, failing to identify and manage conflicts of interest, or mishandling of a serious grievance against the senior officer, or the inappropriate involvement of the senior officer in remuneration decisions.

3 Deciding our approach

When we become aware of a potentially serious issue we firstly decide whether we need to take any action and if so then we will need to contact the RSL concerned. Where we do decide to take the matter further, we then determine the nature of the approach we will take; principally, whether we use our statutory intervention powers or work with the RSL on a co-operative basis.

As a proportionate Regulator we will intervene using our statutory powers only when this is appropriate; when we are of the view that the matter is of such a serious nature and the RSL does not have the willingness and / or the capacity to deal with the issue and improve the situation. Our intervention powers are set out in the Housing (Scotland) Act 2010 and empower us to require action from a social landlord to improve or address a problem in its

organisation. The powers include appointing people to the governing body, appointing a manager, requiring a performance improvement plan and serving an enforcement notice. We will use the most appropriate power to target the issue or problem effectively. Where we decide to use our statutory intervention powers we will set out our actions and the reasons for them in a published Regulation Plan.

We may use our inquiry powers when we need to obtain information, assess and investigate an issue or concern with a landlord.

Our work with most RSLs about issues of concern does not involve the use of our statutory regulatory intervention powers. This is because RSLs will generally work with us to investigate and address the issue. We will not normally need to use our statutory intervention powers where:

- we are confident that the RSL is able and willing to address the concerns;
- the governing body engages openly, positively and constructively with us;
- the governing body gives us the assurance that it understands and is tackling the issue; and
- it has the skills and knowledge to deal effectively and speedily with the issue.

In such circumstances we will work with the RSL to support it to investigate the issue and, where necessary, tackle the issue and / or deliver improvement. We will work with the RSL in confidence, at least during the initial fact-finding phase. We normally give the landlord the opportunity to address any issues itself in the first instance.

The remainder of this note describes how we work with an RSL about issues of concern when we are not using our statutory regulatory intervention powers.

4 How we will work with an RSL about a potentially serious issue

Below we set out what we do when we work with an RSL about a serious issue and what the RSL can expect.

4.1 Point of contact

We will contact the RSL using the contact information it has given us. We normally contact the RSL's senior officer. We may need to contact the RSL's Chairperson in the first instance, but only when there is a particularly sensitive issue regarding the RSL's senior staff.

We may also need an initial discussion with the RSL's Chair and other office bearers before we meet the full governing body. This is only likely to happen where there is a particularly sensitive issue regarding governing body members or senior staff. The purpose of this initial discussion is to explain why we need to meet the governing body, and to brief the Chair in advance of that meeting so that he or she is prepared for the chairing of the meeting.

We need a point of contact with the governing body in such situations and it is for the governing body to decide who that point of contact should be, whether it is the Chair, or other office bearer or member. We shall agree with the RSL's point of contact what their preferred contact arrangements are.

We will:

- contact the RSL using the information provided to us by the RSL; and
- follow up initial contact with confirmation in writing of what was discussed and agreed.

We will not:

- contact the RSL's Chair, office bearers or governing body members outwith normal office hours or at their home address, unless that is their stated preferred arrangement; nor
- expect the chair and office bearers to make decisions or commit to any action before they meet their full governing body.

4.2 Meeting the governing body

For most aspects of our regulatory engagement with an RSL we will speak to the Chief Executive or other senior staff. When we have to discuss potentially serious problems in the RSL which relate to the senior staff or the governing body it is important that we speak directly to the governing body. The governing body's role is to lead and direct the RSL and it is responsible for effective governance. Meeting the governing body lets us hear from and listen to the members, explain the issue, discuss our expectations, and set out what the RSL can expect.

We are aware that when we need to engage with a governing body about a serious issue that it can be a new experience. That is why it is important that we meet with the governing body, talk through the issue and answer any questions from the governing body. We will write to the governing body to explain the purpose of the meeting, outline the issue we need to discuss, and who will attend from SHR. We may need to meet with the governing body more than once and we will make clear in writing the purpose of each meeting.

This type of meeting is an opportunity for an open discussion and for the governing body to ask us questions, give us more information and tell us their views. This helps us to get assurance that the governing body understands and is willing and able to tackle the issue and that it will work positively and constructively with us.

The governing body will need to consider who should be present at such meetings. This will depend on the nature of the issue, for instance a matter relating to staff where personal information may be discussed. In most circumstances a governing body would be supported and advised by its senior staff. The exception to this will be where the issue relates to the Chief Executive and/or other senior staff; in these circumstances it would not be appropriate for the governing body in its role as employer to involve those members of staff in the meeting. The governing body will need to identify and handle conflicts of interest in accordance with the RSL's employment or grievance procedures, rules and codes of conduct. In these circumstances, the governing body may wish to consider whether it needs to access other sources of professional advice and support, including from a body to which it is affiliated.

We will:

- write to the governing body explaining the purpose of the meeting, the issue we need to discuss, and who will attend from SHR; and
- encourage the governing body to consider what appropriate professional advice and support it needs for a meeting with us.

We will not:

- ask the governing body to meet us without its senior officers being present unless the issue for discussion relates to the role or conduct of those officers.

4.3 What's in writing

When we first contact and meet the governing body about an issue we will always explain in writing what the issue is. After we meet with the governing body we will always set out in writing:

- the reasons why we need to work with the RSL;
- our objectives for the work and the outcomes to be achieved;
- what we will do and what the RSL should do;
- any timescales associated with these actions; and
- whether and when we will reflect this in a published Regulation Plan for the organisation.

We will treat sensitively and confidentially any discussion with the governing body that relates to the Chief Executive or other staff. We will provide the governing body with a written record of the discussion, but it may want to have a confidential minute of its discussions and decisions; it should consider how it will do this to maintain confidentiality and personal data and avoid placing any member of staff in an inappropriate and difficult position. The RSL is free to keep whatever record it chooses of all discussion with us and we will always provide a formal written outcome of our engagements.

We will:

- confirm in writing what we intend to do and what we have agreed with the governing body; and
- keep discussion of personal issues confidential.

We will not:

- discourage the governing body from taking its own confidential minutes.

4.4 Communicating with lenders

The RSL should communicate with its lenders and provide any necessary information or assurance about our regulatory strategy and work with the RSL. The RSL should consider what its lenders expect to be told about as a condition of their loans. We can explain to an RSL's lenders what our role is and what our strategy is as set out in the published Regulation Plan. It is for the RSL to manage its relationship with its funders. In general, where there is a serious regulatory matter, lenders will expect to be told about it by the RSL.

We will:

- expect the RSL to inform and assure its lenders; and
- where we are asked by lenders, explain and provide assurance about our role and regulatory strategy to the RSL's lenders.

We will not:

- manage the RSL's relationship with its lenders.

4.5 The RSL's handling of grievances against the Chief Executive

We have no role in employment matters in RSLs. Handling employment issues is entirely a matter for the governing body as employer. The governing body should be aware of its role and responsibilities as employer and properly discharge its duties as employer. The governing body should handle complaints or grievances against a Chief Executive in accordance with the RSL's own grievance policy and procedures. The governing body may need to take appropriate professional and expert advice to ensure that it complies with its employment responsibilities and employment legislation. The appendix to our notifiable events guidance provides more detail about an RSL's handling of a complaint about a Chief Executive.

We will:

- encourage the governing body to consider if it needs expert, professional employment advice; and
- expect the governing body to be aware of and follow its own employment and grievance procedures.

We will not:

- provide employment advice to the governing body.

4.6 Whistleblowing and allegations

All landlords should have whistleblowing policies and procedures and an open culture which welcomes staff coming forward with concerns.

SHR is a prescribed body in the Public Interest Disclosure Act 1998. This means that we are designated a proper authority to receive disclosures from whistleblowers. Allegations may also be brought to us which may not be from people who can be defined as whistleblowers but the allegations relate to potentially serious issues of misconduct. We consider each whistleblowing concern or allegation on its merits, looking at the evidence provided. We are aware that some whistleblowing can be vexatious or frivolous.

We will then decide whether we need to take any action and whether we need to contact the RSL concerned. Typically, we take no further action on around two thirds of whistleblowing / allegations made to us, mainly because we assess that they lack sufficient information or credibility. We will not contact the landlord concerned where we decide to take no action.

Where we need to work with a governing body about whistleblowing or allegations we will do so in confidence. We will tell the governing body about all the pertinent information which need to be investigated. We will not reveal details, including the use of language or tone, which could potentially identify the whistleblower. We will discuss with the governing body the best approach to establishing the facts around the allegations; this could be an independent investigation commissioned by the RSL or conducting our own investigation. We will set out in writing the issues to be investigated and the agreed approach. We recognise that in such cases we and the landlord need to establish the facts and the veracity of the allegations. It is important that the reputation of the RSL and its staff is protected during these initial inquiries so we will normally adopt a confidential approach in such cases. Our published factsheets provide more detail about how we deal with whistleblowing concerns which are brought to us.

We will:

- put in writing the issues to be investigated and the approach agreed with the governing body; and
- keep the whistleblowing concerns confidential.

We will not:

- act on whistleblowing concerns where they lack information or credibility;
- reveal any details which could potentially identify a whistleblower.

4.7 Investigations

In some cases, the RSL needs to commission an independent, objective and expert investigation to establish the facts and evidence around the issue to be investigated. We will look to the governing body to assure us that:

- the investigation is properly conducted by a competent and independent person who is able to establish the facts; and
- it has a clear and comprehensive remit for the investigation to ensure it will establish the facts around the issue.

An investigation that is competently conducted and thorough will give both the RSL and SHR confidence in the outcome and on the reliability of the investigation findings. The investigator's skill, knowledge and experience will be critical to a reliable outcome. It is for the RSL to commission any independent investigator in accordance with its own rules and commissioning and procurement processes. If an RSL asks us, we can give names of people and firms who we know have done similar types of investigations in the past.

We may carry out an investigation where we have serious concerns, or the matter needs to be dealt with urgently. We will always tell the governing body about this and set out our decision in writing.

Where there is doubt about the completeness or accuracy of the RSL's financial information we may ask the RSL to commission an independent financial review. This gives us and the governing body assurance about the financial health of the RSL and confirms whether or not there are any financial concerns.

We will:

- seek assurance that any commissioned investigation is independent, expert and can be relied on; and
- confirm in writing the issues to be investigated.

We will not:

- carry out an investigation unless we have serious concerns or the matter needs to be addressed urgently.

4.8 Co-optees

In some cases the governing body may need the support of members who can bring an independent perspective and additional skills and experience relevant to the issue facing the RSL. Co-optees will often be governing body members or staff from other RSLs and may have faced and successfully resolved similar issues. The governing body may be able to identify suitable co-optees or it may ask us to help by seeking out potential co-optees.

Co-optees to the governing body are bound by the rules of the RSL and must act in the best interests of the organisation in the same way as other governing body members. They are not accountable to, or directed by, the Regulator. Co-optees, as with any other members of the governing body, need to take responsibility for handling the issues the RSL faces.

It is important that RSLs work constructively and positively with co-optees and ensure they are able to fully participate in the governing body meetings and discussions. We may need to confirm with co-optees that they are able to contribute fully to the governing body. We may also ask the co-optees for their views about progress in addressing the issue that led to their appointment. We would expect the co-optees to share these views with the governing body.

We will:

- identify potential co-optees for the governing body, if asked; and
- ask the co-optees to confirm that they are able to fully participate in the governing body.

We will not:

- tell the co-optees what to do or to report to us.

4.9 Interim managers

An RSL may need an interim manager to work directly with it; for example where the Chief Executive is no longer with the organisation. Where this is necessary, the governing body will need to have a clear remit for the role including the skills and expertise required.

In cases where the RSL is facing serious organisational problems and even potential insolvency then it is vital that the organisation has someone with appropriate skills to manage the situation effectively. The governing body may need to commission a manager with proven experience in turning around organisations in crisis. In such cases it is important that the governing body assures us that the proposed person has the necessary skills and experience. We can help the governing body to identify suitable candidates.

We will:

- help to identify suitable interim manager candidates, if asked.

4.10 Rescue

Some situations may be so serious that an RSL may need to act to avert insolvency by seeking another RSL as a rescue partner to provide access to cash to avert an immediate financial crisis and ultimately take the RSL into a group structure. This secures the interests of tenants and allows the RSL to continue to operate in its community. In these situations we will work closely with the RSL to identify potential rescue partners. Any potential rescue partner needs to assure us that it has the financial and organisational capacity to help the troubled RSL. Importantly, we need to be fully assured that tenants' interests will be protected by any partnership arrangement.

We will:

- seek assurance that any rescue and partnership arrangement will protect tenants' interests.

We will not:

- approve a potential rescue partnership which does not have the capacity to help the troubled RSL.

4.11 Communications

We will always be as open and transparent as we can be about our regulatory engagement. Where the RSL has an existing Regulation Plan then we will update it to reflect the issue, but only after we have established the facts and to set out our regulatory strategy. If the RSL does not already have a Regulation Plan then we will publish a Regulation Plan setting out the issues, the actions the RSL is taking and any action we are taking. We may issue a press release on the action we are taking where we need to, for example because there has already been media interest.

We will:

- communicate our actions and what we expect of the RSL in the published Regulation Plan.

We will not:

- publish details about any issues or concerns before the facts are established.

4.12 Review

We have published this note to provide more information about how we work with RSLs when we need to deal with a potentially serious issue. We hope this is helpful in explaining our role. We will keep this note under review and welcome any comments or feedback.

