



Scottish Housing
Regulator

Notifiable Events

Regulatory Guidance

February 2016

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 2,000 **Gypsy/Travellers** who can use 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.



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1. Introduction and purpose

- 1.1 This guidance sets out the events that RSLs should tell us about. We explain why we have a regulatory interest in them, what we expect an RSL to notify us about, and what we will do with the information RSLs give us. We are interested in events which put at risk:
 - the interests or safety of tenants and other service users;
 - the financial health of the RSL, public investment, or the confidence of lenders; or
 - the good governance and reputation of an individual RSL or the RSL sector.
- 1.2 Our approach to regulation is risk-based and proportionate. This means that we want to avoid gathering information routinely 'just in case'. But it also means that we need RSLs to alert us to certain events as quickly as possible.
- 1.3 Our [Regulatory Standard 2.4](#) requires RSLs to inform us about any significant events. This guidance sets out what type of events RSLs should tell us about so that RSLs can be clear about what we need to know.

2. What are notifiable events?

- 2.1 An RSL should tell us about any significant or exceptional issue, event, or change within its organisation and how it intends to deal with it.
- 2.2 The lists in the Appendix 1 out examples of the type of notifiable event an RSL should immediately contact us about. They are illustrative rather than exhaustive. As a general guideline, notifiable events are serious events:
 - that may seriously affect tenant safety or service delivery arrangements;
 - that may significantly threaten the stability, efficient running or viability of the organisation, or
 - that would potentially bring the RSL into disrepute or raise public or stakeholder concern about the RSL or the social rented sector.
- 2.3 The term 'serious' or 'significant' is difficult to define in a way which applies to all RSLs. We appreciate that whether an event is 'serious' or 'significant' may depend on factors such as the size or complexity of the RSL; so each RSL should consider the risk and potential impact on the organisation when deciding whether an issue is a notifiable event. If you are unsure whether an event is a notifiable event, please contact us and we will be happy to give further guidance.
- 2.4 Appendix 1 sets out examples of the type of events RSLs need to alert us to:
 - governance and organisational issues
 - performance and service delivery issues
 - financial and funding issues
 - additional events that we require systemically important RSLs to notify us about

3. Who should notify us?

3.1 An RSL's senior officer should tell us about a notifiable event which relates to performance and service delivery issues or financial and funding issues. The Chair of the governing body should tell us when the notifiable event relates to a governance or organisational issue, for instance if the senior officer has left or if there is an issue about the senior officer or the governing body. We expect the governing body to be aware of all notifiable events that happen in the RSL, even those which the senior officer is responsible for reporting to us. Where the issue affects a subsidiary also refer to the [Group Structures and Constitutional Partnerships guidance](#). In some cases the RSL may need to notify other organisations, for instance lenders, if it is a financial issue.

4. What information do we need and how is it submitted?

4.1 RSLs should submit a notifiable event to us through the Landlord Portal ('the portal'). There are user instructions available on this [here](#). The portal includes a template you must complete which sets out the type of information we need about each event. We need to know:

- what the significant event is;
- when it happened or is going to happen;
- who is involved and/or affected;
- what the RSL is planning to do or what action it has already taken; and
- when the governing body was informed/will be informed.

4.2 When we receive the notifiable event through the portal we will aim to respond within eight working days.

4.3 Some RSLs which currently have a regulation plan may be unsure whether an event should be reported under the notifiable events guidance if it relates to an issue already noted in the regulation plan. If so, you should call the lead officer noted in the regulation plan for advice.

4.4 The Data Protection Act requires organisations that process personal data to register as a data controller with the Information Commissioner's Office (ICO). RSLs must ensure that their ICO registration appropriately covers their obligation to provide data to the Scottish Housing Regulator for regulatory purposes.

5. When should you notify us?

5.1 RSLs should alert us to a notifiable event as soon as is reasonably practical. Sometimes this will mean alerting us before an event happens so that we have an early warning. There should be no delay, for instance, until after a scheduled governing body meeting. And where a major incident occurs, we would expect to be alerted as soon as possible. We would not expect an event to be completely concluded before you alert us to it.

5.2 We may engage directly with an RSL where it does not notify us, or delays notifying us, about a significant event affecting the RSL.

6. What will we do with the information you give us?

- 6.1 RSLs are responsible for managing their own organisation and for dealing with the events that occur. Requiring RSLs to tell us about certain events does not transfer that responsibility to the regulator. We expect RSLs to have an effective strategy in place to deal with the event and we need to be satisfied that the action the RSL takes will protect the interests of its tenants and other service users.

If we have concerns about the RSL's strategy to deal with the event, we will make clear what we expect the RSL to do to allay our concerns.

- 6.2 We may inform, or ask the RSL to inform, another regulator or authority if that is appropriate. We may also ask the RSL to get specialist or impartial advice, for instance, legal, financial, or employment advice.
- 6.3 If an RSL gives us information in confidence we will respect that confidentiality, provided it does not compromise our ability to safeguard the overall interests of the RSL or the sector, or breach our legal obligations, for example, under the Data Protection Act.

7. RSLs' internal policies and procedures

- 7.1 RSLs are responsible for managing their own organisations. However, internal policies and procedures should reflect the requirement to alert SHR to notifiable events as this is a regulatory standard. No matter how an RSL chooses to reflect notifiable events within its policies and procedures, senior staff and governing body members should understand the notifiable events process.

8. Links to other guidance

- 8.1 Whistleblowing: We have produced a separate regulatory fact sheet about how RSLs should deal with [Whistleblowing](#). Whistleblowing is when someone within the RSL believes that there has been improper conduct in the organisation and reports this to someone within the RSL who is in a position to deal with it. If there has been whistleblowing within the RSL, the RSL should notify us about the allegations and tell us about how it is responding to them.
- 8.2 Section 72: SHR has issued guidance on [Section 72](#) of The Housing (Scotland) Act 2010. This places a duty on external auditors and reporting accountants to disclose events of material significance to us. If an RSL is aware that an auditor has reported an issue to us under Section 72, it does not need to report this issue as a notifiable event. This is because we will ask for any additional information from the RSL should we need it. However, if an RSL reports an issue as a notifiable event, this does not preclude an auditor from reporting the same issue to SHR under Section 72.
- 8.3 Group Structures and Constitutional Partnerships: We have produced separate regulatory guidance on [Group Structures and Constitutional Partnerships](#). If an RSL is considering either a change to its group structure or joining a group structure, it should refer to the guidance and where appropriate ask for our consent. Where an RSL is asking for our consent to a group structure proposal, it does not need to separately report this as a notifiable event to us.

An RSL should also refer to the Group Structures and Constitutional Partnerships guidance if it is considering establishing a non-registered subsidiary, in this situation we would expect to receive a notifiable events notification.

- 8.4 Business Planning: An RSL should inform us as soon as it knows that the senior officer intends to leave and we expect appropriate management arrangements to be put in place while the governing body reviews its options.
- 8.5 It is for the governing body to decide the future strategic direction of the organisation. RSLs should have an up-to-date business plan in line with our recommended practice. The governing body should refer to its business plan and use this to decide its next steps following the departure of the senior officer. We may ask to see the RSL's business plan.
- 8.6 Our interest is in being assured that the governing body has considered the strategic options open to the organisation and has assured itself that its chosen option is in the best interests of its tenants and service users and is supported by robust financial plans. This process should be part of the governing body's ongoing consideration of its business plan rather than being explored only on the departure of the senior officer.
- 8.7 If the RSL's business plan is not up-to-date or does not meet our recommended practice, we would expect the governing body to consider the future of the RSL by carrying out a strategic options appraisal. Our [Recommended Practice on Business Planning](#) gives further information on options appraisals.

9. Equalities

- 9.1 Our current [Regulatory Framework](#) and [Equalities Statement](#) set out our commitment to mainstreaming equalities and diversity and working in a way which meets our statutory obligations under the Housing (Scotland) Act 2010 and the Equality Act 2010.
- 9.2 We regulate to safeguard and promote the interests of tenants and other service users. These are diverse groups with different needs and priorities. We expect social landlords to meet their equalities obligations, to work to understand the individual needs of their customers and to deliver services that recognise and meet these needs. We further expect social landlords to tell us if and how they have considered equalities impacts in decisions that require our consent, and the outcome of that consideration. In order for us to meet our statutory duty, in some circumstances we may ask landlords to provide further information and evidence of this.
- 9.3 We promote, monitor and assess equal opportunities across Scottish social landlords in a number of ways, including through annual returns on the Scottish Social Housing Charter. We would encourage social landlords to make use of available guidance and practical support materials on complying with equalities legislation and to seek advice where appropriate. Further guidance is available here: [SFHA Guidance on Equalities](#); [CIH Guidance on Equalities](#); [EHRC Guidance on Equalities for Social Landlords](#).

Examples of Notifiable Events

Governance and organisational issues:

- The membership calls a special general meeting
- Removal of any governing body member by the RSL
- Resignation of governing body members for non-personal reasons
- The membership of the governing body falls, or is going to fall, to seven or below
- Serious complaint, allegation, investigation, or disciplinary action about a governing body member
- A breach of the RSL's code of conduct by governing body members
- Resignation or dismissal of the RSL's senior officer
- Serious complaint, allegation, investigation, or disciplinary action about the senior officer – (see Appendix 2).
- The senior officer is absent (or partially absent) for an extended period of time
- First formal notification of an employment tribunal
- Breach of the Regulatory Standards
- Major organisational change or restructuring within the current RSL or group
- Plans to set up a non-registered subsidiary
- Potentially serious breach of legislation by the RSL or serious legal action taken against the RSL
- Serious failure of governance within an RSL's subsidiary
- Serious issue regarding a parent, subsidiary or connected organisation
- A serious dispute with another member of an alliance, consortium or non-constitutional partnership
- Breach of charitable obligations or no longer meeting the charity test
- Whistleblowing allegation

Performance and service delivery issues:

- Any incident involving the Health & Safety Executive or a serious threat to tenant safety; or where a regulatory or statutory authority has notified its concerns for example the Fire Brigade, etc.
- Serious accidental injury or death of a tenant:
 - where there has been a service failure by the RSL; or
 - which could potentially affect other tenants' confidence in the landlord and the landlord's reputation
- Major failure of key service delivery arrangements (for example, repairs cannot be carried out because a contractor goes into liquidation)
- Breach of ballot commitment to tenants or stock transfer contractual agreement
- Adverse report by statutory agencies, regulators, inspectorates (or similar) about the RSL (for example a Care Inspectorate report with a 'weak' or 'unsatisfactory' grade or an upheld Care Inspectorate complaint)
- A significant natural disaster for example, fire, flood or building collapse which affects the RSL's normal business
- Serious or significant adverse media reports or social media interaction, which could potentially affect tenants' confidence in the landlord.

Financial and funding issues:

- Fraud or the investigation of fraud
- Breach or potential breach (including technical breaches) of any banking covenants
- Serious financial loss; actual or potential
- Default or financial difficulties of major suppliers or service providers
- Any material reduction in stock or asset values; actual or potential
- Serious concern raised by lenders or auditors
- Serious and immediate potential cash flow issue
- Proposed assignation or transfer of the existing lender's security to another lender
- Notification of the outcome of an adverse financial assessment of the RSL or its parent/subsidiaries/related companies/connected bodies from Pensions Trustees
- A material change to the asset disposal strategy agreed with the Regulator
- A serious or material reduction in the funding for care and support services for example for RSLs with significant care elements in their business, where a local authority withdraws funding.

Additional issues that we require systemically important RSLs to notify us about:

- Any change in senior staff
- Any material variation in the business plan or strategic direction of the organisation
- Any problems in relationships with key stakeholders for example local authorities or funders
- The RSL changes its auditors.

Please note: This list is illustrative not exhaustive.

Handling a serious complaint against the Director/Chief Executive of an RSL

Purpose

- 1 This note sets out what we expect a governing body to do when dealing with a serious complaint or grievance against the senior member of staff (Director/Chief Executive) of the registered social landlord (RSL).
- 2 We require an RSL to tell us when there is a **serious** complaint, investigation or disciplinary action relating to senior staff. These serious complaints do not arise often but because of their nature and sensitivity and potential impact on leadership arrangements, they have the potential to seriously damage the organisation. Our experience of these cases has shown us that if the governing body does not have a clear process to deal with matters like this then it can get into difficulties and the original issue can be made worse by the complaint being handled inappropriately. This note sets out our regulatory expectations so that RSLs can deal properly with this type of situation.
- 3 We do not become involved in employment matters. Employment issues are for the governing body as employer to resolve with the individual employee. But we do need to be assured that the governing body will handle a serious complaint or grievance about its Director/Chief Executive properly and will get external advice and support to help it manage these situations and discharge its employment responsibilities fully and properly.

Our expectations

- 4 RSLs should have effective governance systems that set out clear procedures for dealing with serious complaints or grievances about the Director/Chief Executive and the role of the governing body. And we expect RSLs to be open and transparent about their decision-making processes for handling such matters.
- 5 When dealing with a serious complaint or grievance about a Director/Chief Executive, we expect the RSL to:
 - tell us about it, in accordance our guidance on notifiable events; and
 - take prompt, independent and professional advice as appropriate to the individual complaint or grievance.

Notify SHR

- 6 RSLs should deal with and resolve minor issues informally, at a local level, and we would not expect to be notified about minor grievances. Even serious complaints can be dealt with informally, but some serious complaints cannot be successfully resolved at the informal stage or if they are raised formally.
- 7 The Chair of the RSL should notify us if there is a formal **serious** complaint against the Director/Chief Executive -for example serious allegations from an individual employee of bullying or harassment by the Director/Chief Executive. The Chair should also tell us how the governing body intends to handle the complaint.

- 8 We recognise the highly sensitive nature of such serious complaints. If RSLs give us information in confidence we will respect that confidentiality, provided it does not compromise our ability to safeguard the overall interests of the RSL or the sector, or breach our legal obligations.

Take prompt, independent and professional advice

- 9 We need to be assured by the governing body that it is seeking independent professional advice to support it to handle the complaint. In normal circumstances it is the Director/Chief Executive who provides advice to the governing body. But where it is the Director/Chief Executive who is the subject of the serious complaint or grievance, he/she has a clear conflict of interest and cannot be involved in any way in managing the complaint made against him/her. In cases like this the governing body should obtain external advice and support to manage the complaint.
- 10 The governing body needs to act quickly when a staff member raises a serious grievance about the Director/Chief Executive. For instance, if the grievance is about bullying or aggressive behaviour then the governing body must take immediate action. Given the likely sensitive nature of the grievance it should be handled carefully with independent, expert support and advice. The RSL may need to get an employment/personnel specialist to assist or a consultant with expertise in investigating such matters.
- 11 Where a serious complaint has been made against the Director/Chief Executive by a governing body member or someone else who is not an employee, then we also expect the governing body to ensure that it is taking independent advice about how to handle the complaint and that the Director/Chief Executive takes no part in any investigation other than co-operating with the investigator.

Have clear procedures

- 12 An RSL must have clear procedures setting out how it will investigate serious complaints or grievances against the Director/Chief Executive. We expect RSLs to apply the available good practice in dealing with the grievance and to meet our expectations as set out in this note.

The governing body's role

- 13 Most RSLs have a standing sub-committee, such as a staffing sub-committee, with delegated authority to deal with personnel matters or consider serious staff complaints. In the case of a serious complaint against the Director/Chief Executive, we would always expect the staffing sub-committee to be informed and involved, rather than the Chairperson dealing with the complaint alone. The staffing sub-committee is likely to be involved in hearing and deciding on the grievance. But in some cases, it may be more appropriate to commission an independent party to conduct the investigation and report back to the sub-committee. Where there is an investigation then the sub-committee must oversee the investigation and record all decisions to ensure transparency.
- 14 Where the decision is taken to investigate a serious complaint, then the full governing body should be informed. However it should not be told any of the detail, this **must** be kept confidential. This is to ensure:
- the full governing body retains control over the RSL's affairs;
 - the details of the grievance remain confidential (the individuals at the centre of allegations have the right to confidentiality);
 - the full governing body knows the grievance is being dealt with, for example, by the staffing sub-committee;
 - if the RSL needs to bring in outside help, then the full governing body is aware of the

- situation from the outset and can authorise any associated costs;
- the governing body can monitor if a pattern of grievances emerges and decide what action to take; and
- by keeping the substance of the grievance confidential then there is a clean route for any appeal to be heard by other members of the governing body who are untainted by detailed knowledge about the issue.

15 At the end of the process, the full governing body should be told about the outcome of the grievance.

SHR involvement

16 If we have concerns about the action the governing body is proposing to take, or it appears that the Director/Chief Executive is involved in advising the governing body or in handling the grievance, and then we may need to act to support the governing body to carry out its role effectively and properly.



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