



**Scottish Housing**  
Regulator

# Lessons from Statutory Intervention

**December 2018**

# About us

We are the independent regulator of social landlords in Scotland.

## We safeguard and promote the interests of:

Around:

**600,000**

Tenants who live in homes provided by social landlords

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Over:

**123,000**

Home owners who receive services of social landlords

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Over:

**45,000**

People and their families who may be homeless and seek help from local authorities

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Around:

**2,000**

Gypsy/Travellers who can use official sites provided by social landlords

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## We regulate:

Around:



Social landlords

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Around:

**160**  
**32**

Registered social landlords

Local authorities

## Our equalities commitment

Promoting equalities and human rights is integral to all of our work. We set out how we will meet our equalities duties in our Equalities Statement.

## Our role:

To monitor, assess and report on social landlords' performance of housing activities and RSLs' financial wellbeing and standards of governance. We intervene, where we need to, to protect the interests of tenants and service users.

Our Regulatory Framework explains how we regulate social landlords. It is available from: [www.scottishhousingregulator.gov.uk](http://www.scottishhousingregulator.gov.uk)

## About this report

Most social landlords in Scotland are well-run and deliver good quality homes and services for their tenants and other service users. But things can go wrong that put the interests of tenants and service users at risk, and this is when we use our statutory intervention powers.

In this report we set out the lessons from our statutory interventions. These includes things that we have learned as well as the things registered social landlord (RSLs) can learn from.

## Our statutory interventions

We have used our statutory intervention powers in **11** registered social landlords (RSLs) since 2014.

RSL 	Our intervention		Outcome
	Start	End	
Wellhouse	Dec 2014	Nov 2016	The RSL improved and now complies with regulatory requirements
Muirhouse	Dec 2014	June 2016	The RSL improved and now complies with regulatory requirements
Ferguslie Park	Feb 2016	Aug 2018	The RSL improved and now complies with regulatory requirements
Antonine	Aug 2016	Sept 2018	The RSL transferred its homes to another RSL
Arklet	Feb 2017	Present	-
Wishaw & District	Feb 2017	Present	-
Molendinar Park	Mar 2017	Oct 2017	The RSL improved and now complies with regulatory requirements
Kincardine	Nov 2017	Present	-
Dalmuir Park	Dec 2017	Present	-
Ruchazie	Mar 2018	Present	-
Thistle	Aug 2018	Present	-

## Why we intervened

In all 11 cases, we intervened because, in our judgement, the landlord had failed to meet the standards of Governance and Financial Management or other regulatory requirements. In each case, the landlord was unable to remedy the failures. This presented a serious risk to the interests of tenants and service users.

We found the root of the problems lay in weak governance. In almost all of the RSLs there was a failure of leadership. The cultures in some of the RSLs left them vulnerable to poor behaviours and incompetence that caused serious problems. Some of those in leadership disregarded the controls that were there to protect the RSL.

## Common characteristics

- > Governing body members did not know what they did not know – they were not provided with, did not ask for, or failed to understand the information needed to carry out their role
- > The governing body did not seek or receive appropriate assurance and did not effectively challenge senior officers
- > A poor understanding of conflicts of interest and how to manage them
- > Little encouragement or value placed on feedback from customers or staff
- > A disregard of whistleblowing
- > No internal audit function or poorly directed internal audit activity
- > Governing body members in post for more than nine years and the RSL had not assessed their continuing effectiveness
- > The senior officer had been in post for a long time
- > A lack of transparency, including in its relationship with its lenders
- > An inadequate system of internal control or senior management had overridden the system of internal control

### Auditors

In the first three intervention cases none of the issues that led to intervention had been raised by the RSLs' statutory auditors. Since then, we have had more reports to us by auditors under Section 72 of the Housing (Scotland) Act. In one of the more recent interventions, we used the information provided by the statutory auditor to help us determine that intervention would be proportionate and appropriate.

## Taking swift action

We know that well-run landlords take quick and effective action to tackle any problems they find. They advise us when they find problems and tell us what they are doing to fix them.

Where we have had to intervene, all but one of the RSLs had failed to recognise or tackle the problems they had. But in our intervention at Molendinar Park, the RSL itself identified that its governing body was not properly constituted, it acted positively by bringing the issue to us and it worked with us to swiftly and effectively put things right.

The failures that lead to intervention have serious implications for an RSL. There can be costs for the RSL, including the cost of any statutory appointments needed to fix the failures, and from the risk of repricing or calling-in of loans. Given this, it is important that RSLs act to avoid the need for us to intervene, including engaging quickly and constructively with us when they find problems.



## What SHR learned

- > Our proportionate use of statutory powers was essential to safeguard the interests of tenants and service users and address the serious weaknesses we found in each of the 11 RSLs.
- > Interventions almost always take place in organisations with complex, significant and deep-rooted weaknesses.
- > It can take time for an RSL, supported by the statutory appointees, to identify and tackle everything that needs to be fixed.

The skills, experience and objectivity statutory appointees bring has been instrumental in achieving good outcomes from the interventions. All of the people who volunteered as statutory appointees are RSL governing body members or staff.

We want to work with representative bodies such as SFHA and GWSF to explore how RSLs can draw on skills and expertise already in the sector to support governing body members and help prevent the need for statutory intervention

- > The capacity of the RSL's governing body is the key to the final outcome. It is important that the RSL determines quickly if it has or can establish, and can then maintain, a governing body with the necessary insight and skills. Where a governing body is able to address its weaknesses, with the support of appointees, our experience tells us that this is likely to be the most effective solution.
- > We now better understand how critical it is to establish early in the intervention the way forward for the RSL. This helps the RSL to move as quickly as possible to the preferred outcome. This can include appointing a new senior officer, where that is needed; this can be an important step to deliver and embed the change that is needed.

- > Identifying risks early can prevent an RSL from failing and prevent the need for us to intervene. We have adapted how we assess risk with an increased focus upon indicators based on the characteristics of RSLs in which we have had to intervene. While recent legislative changes mean we cannot use our statutory powers until an RSL has failed, we will engage with an RSL when we identify a risk that it may fail.
- > It is important that we work closely with lenders when we need to intervene in an RSL. In all cases lenders have been part of the solution, working with us to achieve an outcome that safeguarded the interests of tenants and other service users.
- > The proposals in our regulatory framework that promote a culture of assurance, openness and transparency are aimed at supporting landlords to avoid getting to a position that would mean we had to intervene.

We have focused our thematic inquiries on some of the weaknesses that lead to statutory intervention, including Self-Assessing against Regulatory Standards (August 2017) and Development of Affordable Housing in Scotland (March 2017).

## What RSLs can learn

RSLs that are well governed achieve their objectives and deliver good outcomes for their tenants and service users. The good governance in these RSLs also protects them from the problems that can lead to intervention. From our intervention work we've identified the building blocks to good governance.

### Building blocks of good governance

- > A culture of openness, transparency and constructive challenge
- > A clear ethical framework to guide the actions of governing body members and staff
- > Governing body members who understand regulatory requirements and standards and appreciate the importance of appropriate assurance of compliance
- > Governing body members who are supported to fully understand and exercise their role, particularly around effective internal challenge
- > Governing bodies who understand the role and value of appropriate independent assurance and advice, and how to get this when it is needed
- > Each governing body member demonstrates continuing objectivity and provides independent challenge
- > Effective appraisal of governing body members, and particularly for those with nine or more years of service
- > A clear approach to identifying and managing conflicts of interest
- > A positive approach to whistleblowing, that makes clear to staff that the RSL will take seriously any concerns raised by them and they will be supported to do the right thing
- > Regular testing of the effectiveness of internal controls
- > An effective and open relationship with lenders
- > A positive and constructive relationship with the Regulator

## The importance of whistleblowing

Many of the interventions started with information being brought to us by whistleblowers. These individuals felt that they did not have anyone to go to within their RSL to talk about their concerns. Some did not feel safe to raise concerns within the RSL. Whistleblowing was often not viewed positively nor used constructively in the RSLs where we have intervened. This in itself can be an indicator of problems in the RSL's culture.

## Lenders

An effective and open relationship with its lenders is critical for an RSL, especially when it is experiencing difficulties. It is important that RSLs keep their lenders informed of any engagement with us. Lenders and potential lenders and investors consistently tell us that for an RSL, a positive and constructive relationship with the Regulator is a key consideration in determining whether they wish to invest.

## More information...

We publish information about the statutory intervention powers available to us, including when and how we use in our [Regulatory Framework](#).

We also publish individual reports on each intervention after we end our statutory action.

Visit [www.scottishhousingregulator.gov.uk](http://www.scottishhousingregulator.gov.uk)

