

Southside

HOUSING ASSOCIATION

Notifiable Events Policy

Approved: 28 November 2019

Review Date: November 2022

1 INTRODUCTION

- 1.1 The Scottish Housing Regulator published its revised Regulatory Framework – *Regulation of Social Housing in Scotland – Our Framework*. The framework sets out how it regulates Registered Social Landlords (RSL) and the housing and homelessness services provided by local authorities in Scotland
- 1.2 The Framework incorporates a range of extensive regulatory requirements including the Standards of Governance and Financial Management which RSLs such as Southside Housing Association (the Association) must meet
- 1.3 Section 3.7 of the Framework sets out that “*Landlords should adhere to our statutory guidance*”. The SHR published a range of updated Statutory Guidance in February 2019. This includes updated Statutory Guidance on Notifiable Events. This guidance details the circumstances in which RSLs should notify the SHR about events that present a significant risk, particularly those 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 private lenders; and
 - The good governance and reputation of an individual RSL or the RSL sector.
- 1.4 The Housing (Scotland) Act 2010 also requires the Association to notify the SHR about certain disposals of land and assets, and constitutional and organisational changes.
- 1.5 Standard 2.5 of the Standards of Governance and Financial Management requires the Association to inform the SHR about certain events as quickly as possible after they happen, or before they happen if they are anticipated.
- 1.6 This policy aims to set out the Association’s position, in terms of the Management Committee and staff, in relation to informing the SHR about Notifiable Events and complying with its Statutory Guidance on Notifiable Events.

2 WHAT ARE NOTIFIABLE EVENTS?

- 2.1 The Association should inform the SHR about any material, significant or exceptional issue, event or change within the organisation and how we intend to deal with it.
- 2.2 Appendix 1 sets out examples of the type of Notifiable Event the Association should immediately contact the SHR about. The examples listed at Appendix 1 are illustrative rather than exhaustive. As a general guideline, Notifiable Events are those serious events that may:
- Seriously affect the interests and safety of tenants, people who are homeless or other service users;
 - Threaten the stability, efficient running or viability of service delivery arrangements;
 - Put at risk the good governance and financial health of the organisation; or,
 - Bring the Association into disrepute or raise public or stakeholder concern about the Association or the social rented sector

- 2.3 What is 'material', 'significant' or 'exceptional' is difficult to define in a way which relates to every RSL. The SHR notes that deciding on whether an event is 'material', 'significant' or 'exceptional' may depend on factors such as the size or complexity of the Association. The Association then must consider the risk and potential impact on an organisation when deciding whether an issue is a Notifiable Event.
- 2.4 If the Association is unsure whether an event is a Notifiable Event we will take further guidance directly from the SHR.
- 2.5 Appendix 1 sets out a range of broad areas of events the Association are required to contact the SHR about:
- Governance and organisational issues;
 - Performance and service delivery issues;
 - Financial and funding issues; and,
 - Additional events that the SHR requires systemically important RSLs to notify them about.
- 2.6 The Association will consider the impact of the issue or event on our compliance with the Standards of Governance and Financial Management and Financial Management and other regulatory requirements including compliance with our legal obligations. The Association will notify the SHR of any material changes to the assurances or supplementary information reported in our Annual Assurance Statement.
- 2.7 The Association is also required to notify the SHR about the outcome of tenant consultation, of a ballot or written agreement, certain disposals of land, assets or leases, constitutional and organisational changes. These and the relevant timescales for notification as set out at Appendix 2 of the SHR Notifiable Events Statutory Guidance.
- 3. WHO SHOULD NOTIFY THE REGULATOR?**
- 3.1 The Association's Director will inform the SHR about a Notifiable Event which relates to performance and service delivery issues or funding and finance issues.
- 3.2 The Chair of the Management Committee will inform the SHR when the Notifiable Event relates to a governance or organisational issue, for instance if the Director has left or if there concerns about the Director or the Management Committee. The Chair of the Management Committee must also inform the SHR about any changes to the Annual Assurance Statement.
- 3.3 Any employee who has been authorised by the Association to do so will notify the SHR in relation to the disposals and changes set out in Appendix 2. This is reflected in the Association's Scheme of Delegated Authority.
- 3.4 The Association's Management Committee is accountable and responsible for the effective management of the Association and should be aware of all Notifiable Events, even those which the Director is responsible for reporting to the SHR. Management Committee meetings will contain Notifiable Events as a monthly standing item on the meeting agenda in order to ensure that the Management Committee are able to raise issues that may be Notifiable Events and are informed about Notifiable Events which have been reported to the SHR

- 3.5 In some case the Association may need to notify other organisations of a Notifiable Event, for instance our lenders, if it is a financial issue or where a loan agreement specifies that certain events require to be notified to a lender.

4. WHAT INFORMATION THE SHR REQUIRES AND HOW IT IS SUBMITTED

- 4.1 The Association will submit a Notifiable Event to the SHR through the SHR's Landlord Portal. The Landlord Portal includes a template for the Association to complete which sets out the type of information the SHR needs about each event. This includes:

- What the significant event, disposal or change is;
- When it happened or is going to happen;
- Who is involved and/or affected;
- Whether there are equalities or human rights implications and how the Association is ensuring we meet our legal duties in these areas;
- What we are planning to do or what action the Association has already taken; and,
- When the Management Committee was informed/ will be informed.

- 4.2 For notification of tenant consultation, the Association will refer to the SHR Statutory Guidance on Tenant Consultation and Approval which explains the SHR's information requirements.

- 4.3 For Notifiable Events in relation to disposals and constitutional or organisational changes (see Appendix 1), the Association will comply with Standard 7 of the Standards of Governance and Financial Management.

- 4.4 Where the Association may be unsure whether an event should be reported under the Notifiable Events Statutory Guidance, if it relates to an issue already noted in the Association's Engagement Plan, the Association will seek advice from the named Regulation Manager in the Engagement Plan.

5. WHEN WE WILL NOTIFY THE REGULATOR

- 5.1 The Association will alert the SHR to a Notifiable Event as soon as is reasonably practical. Sometimes this will mean alerting them before an anticipated event happens so that the SHR are aware in advance. The Association will not delay notifying the SHR for instance, until a scheduled Management Committee meeting. Where a major incident occurs the Association will alert the SHR as soon as possible and not wait until the incident is completely concluded.

- 5.2 When the Association is considering a disposal or organisational change which requires us to consult with tenants in line with the requirements of the Housing (Scotland) Act 2010, The Association will notify the SHR at an early stage in its deliberations.

- 5.3 The Association recognises the importance of honesty, transparency and accuracy in relation to the submission of the Association's Annual Assurance Statement including how we are meeting the Standards of Governance and Financial Management. The Association will notify the SHR of any matters which materially affects our on-going compliance with the Standards.

- 5.4 Where the SHR finds that the Association are not materially compliant with any part of the regulatory requirements and the Association have not previously notified them about this, the SHR will engage directly with the Association to determine any action they may need to take. Where the Association's regulatory status is shown as 'Compliant' the SHR may amend this to 'Under Review'.
- 5.5 The SHR may look at whether the Association have notified them in accordance with its Statutory Guidance as part of its work to verify our Annual Assurance Statement, or during a visit or other engagement activity.

6. WHAT THE SHR WILL DO WITH THE INFORMATION WE PROVIDE

- 6.1 The Association are responsible for managing our own organisation and for dealing with the events that may occur. Requiring the Association to inform the SHR about certain events, does not transfer that responsibility for dealing with the implications of an event to the SHR. There is a regulatory expectation that the Association have an effective strategy in place to deal with the event, and that the SHR is satisfied that the action we take will protect the interests of our tenants and other service users.
- 6.2 If the SHR have concerns about how we propose to deal with an event, the Association will communicate with the SHR around what its expectations are and how we can address the concerns that they have.
- 6.3 The SHR may inform, or ask the Association to inform another regulator or authority if that is appropriate. The SHR may also ask the Association to obtain professional or impartial advice, for instance legal, financial, or employment advice. Depending on the nature of the event, we will consider whether there are any matters that we need to report to the police. The SHR will also report matters to the police if it suspects that an offence may have been committed.
- 6.4 The SHR Statutory Guidance on Notifiable Events states that they will respect the confidentiality of information provided to them by the Association in confidence, provided that it does not compromise the SHR's ability to safeguard the overall interests of the Association's tenants or the RSL sector, or breach the SHR's legal obligations, for example under the Data Protection Act 2018 or General Data Protection Regulation (EU) 2016/679, or where it is concerned that an offence may have been committed.

7. OUR POLICIES AND PROCEDURES

- 7.1 The Associations' relevant policies and procedures will reflect the requirement to alert the SHR to Notifiable Events in accordance with this policy. The Association's Management Committee and Senior Management Team understand Notifiable Events requirements, and assure themselves and the SHR that the Association are complying with this through our Annual Assurance Statement.
- 7.2 If an Association employee, or Management Committee member is aware of a Notifiable Event which has not been submitted to the SHR, they should report it to

the Association in line with our Whistleblowing Policy. If it not possible for them to do this, or the attempt to report it to the Association has been unsuccessful, then they can whistleblow directly to the SHR.

8. DATA PROTECTION

- 8.1 The Association handles the personal data we use in line with our obligations under data protection legislation and the Association's Privacy Policy. Information about how we handle personal data and the legal basis for processing personal data is available through the Association's Fair Processing Notice

9. EQUALITY AND HUMAN RIGHTS

- 9.1 This policy reflects the Association's commitment to meeting our Equality obligations in advancing equality, promoting good relations between protected characteristics and eliminating discrimination in the way we provide our services
- 9.2 It also aims to reflect our commitment to considering the Equalities and Human Rights impacts of what we do as an RSL, including how we communicate and provide information to tenants and other service users.

10. POLICY REVIEW

- 10.1 This policy will be reviewed every three years or earlier to reflect any legislative or regulatory changes

11. LINKS TO OTHER GUIDANCE

- 11.1 **Notifiable Events:** Statutory Guidance on Notifiable Events has been published by the SHR, which this policy closely reflects.
- 11.1 **Tenant Consultation and Approval:** The SHR have produced Statutory Guidance on tenant consultation and approval for RSLs proposing to, for example, sell or transfer tenanted homes, which require an RSL to consult tenants under the Housing (Scotland) Act 2010.
- 11.2 **Whistleblowing:** The SHR has produced advisory guidance and a fact sheet about how RSLs should deal with whistleblowing events. Whistleblowing is when someone within an RSL believes that there has been improper conduct in the organisation and reports to someone within the RSL who is in a position to deal with it. If there has been a whistleblowing incident within the Association, it is a regulatory requirement that we notify the SHR about the allegations and tell them how we are responding to them.

- 11.3 **Section 72:** The SHR has produced Statutory 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 the SHR. If the Association is aware that an auditor has reported an issue to the SHR under Section 72, we do not need to report this issue as a notifiable event. The SHR will ask the Association for any additional information if they require it.
- 11.4 **Group Structures and Constitutional Partnerships:** The SHR have produced separate Statutory Guidance on Group Structures and Constitutional Partnerships for RSLs that are part of a group structure and RSLs which are considering joining or setting up a group structure.
- 11.5 **Annual Assurance Statement:** The SHR have issued Statutory Guidance for RSLs on how to prepare their Annual Assurance Statement. This includes guidance on how to report any material and significant non-compliance with the Standards of Governance and Financial Management and regulatory requirements.

Examples of Notifiable Events

Governance and organisational issues:

- Any material changes to the assurances and supplementary information contained in the Annual Assurance Statement
- The membership calls a special general meeting
- Removal of any governing body member by the Association
- 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 Association's code of conduct by governing body members
- Resignation or dismissal of the Association's senior officer
- Severance payment to and/or settlement agreement with a staff member
- Serious complaint, allegation, investigation or disciplinary action about the senior officer
- The senior officer is absent (or partially absent) for an extended period of time.
- Receipt of intimation that a claim has been submitted to an employment tribunal
- Major changes or restructuring within the current RSL or group
- Plans to set up a non-registered subsidiary
- Potentially serious breaches of statutory or common law duties by the RSL, including equalities and human rights duties, whether or not these have resulted in the submission of a claim or a legal challenge
- Any legal proceedings taken against the RSL which may have significant consequences for the RSL in the event of success
- Serious failure of governance within an RSL's subsidiary
- Serious issue regarding a parent, subsidiary or connected organisation
- A dispute with another member of an alliance, consortium or non-constitutional partnership which may have significant consequences for the RSL
- Breaches of charitable obligations or no longer meeting the charity test
- Whistleblowing allegations

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, or insurance provider, has advised the RSL of concerns for example the Fire Brigade etc.
- Serious accidental injury to, or the death of a tenant in their home or communal areas:
 - Where there has been a service failure by the RSL; or
 - Where there has been a failure, or perceived failure in how the RSL has assessed and managed risk; or

- Which could potentially affect other tenants' confidence in the RSL or the RSL's reputation
- Major failure of key service delivery arrangements (for example, repairs cannot be carried out because a contractor goes into liquidation)
- Breaches of ballot commitment to tenants or of any stock transfer contractual agreement
- Adverse reports 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)
- Any 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 RSL or that is damaging to the reputation of the RSL

Financial and funding issues:

- Fraud or the investigation of fraud either internally, or by the Police or by an external agency or organisation
- Breach or potential breach 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 imminent 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 Pension Trustees
- A serious or material reduction in the funding for care and support services for example for RSL's with significant care elements in their business, where a local authority withdraws funding
- Change of internal or external auditor

Additional issues the SHR requires systemically important RSLs to notify them 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

Tenant consultation:

The Housing (Scotland) Act 2010 requires RSLs to notify the SHR if the results of tenant consultation, such as the outcome of a ballot or written agreements.

Disposal of land and assets:

- Disposals by way of sale of tenanted social housing dwellings (and ensure that RSLs comply with their legal obligations to consult tenants under sections 115, 115A and 115B of the 2010 Act)
- Disposals by way of granting security over social and non-social housing dwellings land or other (including non-residential) assets over £120,000
- Disposals by way of sale or excambion of untenanted social and non-social housing
- Disposals by way of lease of social housing dwelling
- Disposals by way of roof space of residential, tenanted properties for renewable energy sources (for example solar panels) or telecommunications (for example aerials) and ensure that they comply with their legal obligations to consult tenants under s110 of the 2010 Act.
- Disposals by way of lease of residential property to an RSL, group subsidiary or any other body for market or Mid-Market Rent or other non-social housing purposes (except where property is leased to a local authority for temporary accommodation for people who are homeless)
- Any other disposals not listed above which could have significant implications for tenants or other service users

Constitutional and organisational changes

- Change of name, office or constitution (s92)
- Restructuring a society (s97) or company (s101)
- Voluntary winding up or dissolution of a society (s98-99)
- Converting a company into a registered society (s102)
- Entering into a company voluntary arrangement (s103)
- Voluntary winding up of a company (s104)
- Becoming a subsidiary of another body (s104A)

This list is illustrative not exhaustive.