



*1986-2016: Celebrating 30 years working in the community*

<b>Policy and Procedures on :</b>	<b>Serious Complaints against the Chief Executive</b>
-----------------------------------	---

<b>Compliant with SHR's Regulatory Framework:</b>	<b>Guidance provided by SHR. Guidance has been taken from ACAS on the procedures to be followed. Sample letters can be obtained from this guidance dated Feb 2019 if required.</b>
<b>Compliant with Tenant Participation Strategy:</b>	<b>n/a</b>
<b>Compliant with Equal Opportunities:</b>	<b>Yes</b>
<b>Compliant with Internal Business Plan; Corporate Business Plan; Health and Safety and Business Continuity Action Plans</b>	<b>N/a</b>

<b>Date for Approval:</b>	<b>October 2019</b>
<b>Date for Review:</b>	<b>October 2022</b>

<b>Responsible Officer for Policy:</b>	<b>Chief Executive</b>
--	------------------------

Version 1 draft August 2019 (procedure)  
 Final approved October 2019

## **Policy on handling a serious complaint against the Chief Executive of our Association**

1. This note sets out what the Scottish Housing Regulator (the Regulator) expects our governing body to do when dealing with a serious complaint or grievance against the senior member of staff (Chief Executive) of the Association.

2. The Regulator requires us to tell them when there is a serious complaint, investigation or disciplinary action relating to our senior staff member. 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. The Regulator's experience of these cases has shown them that if our governing body does not have a clear process to deal with matters like this then the Board can get into difficulties and the original issue can be made worse by the complaint being handled inappropriately. This Policy sets out the Regulator's regulatory expectations so that we can deal properly with this type of situation.

3. The Regulator does not become involved in employment matters. Employment issues are for our governing body, our Board, as employer, to resolve with the individual employee. But they do need to be assured that the governing body will handle a serious complaint or grievance about our Chief Executive properly and will get external advice and support to help the Board manage these situations and discharge its employment responsibilities fully and properly.

### **What is defined as a serious complaint?**

4. A serious complaint against the Chief Executive would include:

- An allegation by a staff member of bullying or harassment
- Inappropriate behaviour which may bring the Association into disrepute
- Allegation of fraud

### **The Regulator's expectations**

5. The Association should have effective governance systems that set out clear procedures for dealing with serious complaints or grievances about our Chief Executive and the role of the governing body. And the Regulator expects us to be open and transparent about our decision making processes for handling such matters.

6. When dealing with a serious complaint or grievance about our Chief Executive, the Regulator expects us to:

- Tell them about it, in accordance their guidance on notifiable events; and
- Take prompt, independent and professional advice as appropriate to the individual complaint or grievance.

## **Notify SHR**

7. We should deal with and resolve minor issues informally, at a local level, and the Regulator 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.

8. The Chair of our Governing Board will notify the Regulator if there is a serious complaint against the Chief Executive - for example serious allegations from an individual employee of bullying or harassment by the Chief Executive. The Chair should also tell the Regulator how the governing body intends to handle the complaint.

9. The Regulator recognises the highly sensitive nature of such serious complaints. If the Association gives them information in confidence, they will respect that confidentiality, provided it does not compromise their ability to safeguard the overall interests of the Association or the sector, or breach their legal obligations.

## **Take prompt, independent and professional advice**

10. The Regulator needs to be assured by our governing body that we are seeking independent professional advice to support how we handle the complaint. In normal circumstances it is the Chief Executive who provides advice to the governing body. But where it is the Chief Executive who is the subject of the serious complaint or grievance, s/he has a clear conflict of interest and cannot be involved in any way in managing the complaint made against them. In cases like this, our governing body will obtain external advice and support to manage the complaint.

11. The Association's governing body needs to act quickly when a staff member raises a serious grievance about the Chief Executive. For instance, if the grievance is about bullying or aggressive behaviour then our 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 Association will need to get an employment/personnel specialist to assist or a consultant with expertise in investigating such matters. The Association must ensure that its investigation of the complaint, and any subsequent action, complies with our legal duties including those in relation to equalities and human rights

12. Where a serious complaint has been made against the Chief Executive by a governing body member or someone else who is not an employee, then the Regulator also expects our governing body to ensure that we are taking independent advice about how to handle the complaint and that the Chief Executive takes no part in any investigation other than co-operating with the investigator.

## **Have clear procedures**

13. The Association must have clear procedures (See Appendix) setting out how we will investigate serious complaints or grievances against the Chief Executive. The Regulator expects the Association to apply the available good practice in dealing with the grievance and to meet their expectations as set out in their guidance (Notifiable Events Final Guidance February 2019).

## **The governing body's role**

14. The Association has a standing Staffing and Health and Safety sub-group with delegated authority to deal with personnel matters or consider serious staff complaints. In the case of a serious complaint against the Chief Executive, the Regulator would always expect the Staffing and Health and Safety sub-group to be informed and involved, rather than the Chairperson dealing with the complaint alone. The Staffing and Health and Safety sub-group is likely to be involved in any hearing and deciding on the complaint / 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-group. Where there is an investigation then the sub-group must oversee the investigation and record all decisions to ensure transparency.

15. Where the decision is taken to investigate a serious complaint, then the full governing body will be informed. However it will not be told any of the detail, this must be kept confidential. This is to ensure:

- The full governing body retains control over the Association'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 and health and safety sub-group;
- If the Association 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.

16. At the end of the process, the full governing body will be told about the outcome of the complaint.

## **The Regulator's involvement**

17. If the Regulator has concerns about the action our governing body is proposing to take, or it appears that the Chief Executive is involved in advising the governing body or in handling the grievance, and then the Regulator may need to act to support the governing

body to carry out its role effectively and properly in accordance with its regulatory standards.

## **Appendix 1**

### **Procedure for dealing with serious complaints against the Chief Executive**

1. If a formal serious complaint or grievance is received concerning the Group Chief Executive, the Chairperson of the Association will be informed immediately – Director of Customer Services will contact the Chairperson by telephone the day the notification is received. Formal normally means that the complaint has been submitted in writing. However there may be occasions where a member of staff receives a verbal complaint. In this instance, the complainant will be asked to confirm their complaint in writing to ensure the issues raised are clearly stated.
2. Due to the sensitive nature of such situations, it would be inappropriate for any employee to be directly involved in the investigation or handling of a complaint/grievance against the Chief Executive. Access to independent advice must therefore be sought immediately by the Chairperson on behalf of the Staffing and Health and Safety sub-group. The Chairperson will immediately seek professional advice in the first instance by contacting the Chief Executive of one of the FLAIR partner organisations, and thereafter by contacting EVH (0141 352 7435) or other independent advisor (including the Association's employment specialist TC Young 0141 221 5562) as suggested by FLAIR. Current FLAIR chief officers are:
  - Ian McLean, Bridgewater HA – 0141 812 2237 (DD 0141 814 5154)
  - Adele Fraser, Linstone HA – 01505 384 101 (M 07827 930 737)
  - Kathleen McCutcheon, Paisley HA – 0141 889 7105 (DD 0141 583 4108)
  - Vacant, Williamsburgh HA – 0141 887 8613 (DD 0141 847 6370)
  - Catrina Miller, Ferguslie Park HA – 0141 887 4053FLAIR is available for advice only on procedural issues and not for overseeing or taking any part in the complaint.
3. The Chairperson with assistance of an independent advisor will in turn inform the Scottish Housing Regulator (SHR) of receipt of such a complaint through the landlord portal, in accordance with the SHR guidance note and the Association's policy on Notifiable Events. This will be completed in strictest confidence by the Chairperson contacting SHR to gain access to the SHR's portal log in. ([www.scottishhousingregulator.gov.uk/portallogin](http://www.scottishhousingregulator.gov.uk/portallogin))
4. Acknowledgement of the complaint/grievance should be sent to the complainant as soon as is practicable, ideally within 3-5 working days. This will be completed by the independent advisor assisting the Chairperson with this task by sending the Chairperson the attached pro forma letter – appendix 3.
5. The Chairperson will instruct the independent advisor to convene the Hearing at the Staffing and Health and Safety sub-group responsible for handling the complaint. This sub-

group will have a quorum of 3 members. One member will be designated chair for the purposes of handling the complaint. Members of the sub-group will then be responsible for hearing and deciding on any action from the complaint/grievance.

6. Due to the highly sensitive nature of complaints at this level, it is vital that confidentiality is observed and maintained throughout. The full Governing Board (and if appropriate LPS Governing Board) may be told that a complaint/grievance has been received and is being dealt with but not about any of the detail, as described in section 14 above.

#### Independent advice and support

7. As employee matters are complex, such advice will be sought from an employment law specialist. The Chair or the Staffing and Health and safety Sub-Group Convener will ask our solicitors, TC Young for such specialist employment advice. TC Young can be contacted at their West George Street, Glasgow office.

#### Principles for hearing the complaint/grievance

8. The steps to be taken and matters to be considered during the hearing of any complaint/grievance are noted in the guidance at Appendix 2.

The general principles which the sub-group must follow however, are:

- Investigate the complaint and gather information and evidence – this may require a meeting with the complainant and other relevant parties/witnesses. It may be appropriate to commission an independent party (e.g. an employment law expert as referred to in section 6.2 above) to undertake the investigation, but all findings will be reported to the Staffing and Health and Safety sub-group.
- Meet with the Chief Executive and allow them to put forward their case in response to the complaint/grievance.
- Allow the Chief Executive to be accompanied at the meeting by a representative of their choosing.
- Investigate further if required.
- Adjourn the meeting if required to consider the information presented.
- Notify the Chief Executive of the outcome decision and the right of appeal.

9. Following the investigation, hearing and consideration of the information presented, it should be borne in mind that the findings may lead to the instigation of disciplinary action which would activate the disciplinary process.

10. At all stages it is important to keep accurate and appropriate records to document and evidence decision making.

#### Updating of this procedure

11. The procedure will be reviewed as necessary in accordance with any future SHR guidance.

## **Appendix 2 Complaint / Grievance Hearing**

1. If it is decided that there is a case for the Chief Executive to answer, then a hearing should be arranged. It is important that the employee is given the chance to put his or her case forward in response to the allegations, and that a fair process is followed when preparing for, and conducting, the hearing. Here, we set out some principles for the Association to follow to ensure that disciplinary hearings are conducted fairly. Those conducting the hearing should always ensure that the basic principles of fairness are followed throughout the disciplinary procedure, and that they familiarise themselves with the principles in the ACAS code of practice.
2. The Staffing sub-group will carry out an appropriate investigation into the complaint/grievance. This will normally be with the assistance of an independent advisor.
3. The Chief Executive will be informed in writing of the time, date and place of the hearing, who will be conducting the hearing and who else will be present. They will be advised of their right to be accompanied and asked for the name of the person who will accompany them. At least five working days' notice of a hearing should be given. The Chief Executive will be expected to attend the hearing in person unless there are exceptional circumstances (an example might be where the Chief Executive is on long term absence and is unlikely to return within a reasonable period).
4. The aim of any hearing is to reach a conclusion which is satisfactory to all parties. It is important to deal with such matters as quickly as possible to remove periods of uncertainty. Unless there are strong reasons why the complaint/grievance cannot be dealt with quickly (e.g. one of the parties is on holiday), the Staffing sub-group should collect all the relevant information and aim to hold the hearing within 10 working days of receipt of the complaint.
5. At the hearing, the Convener of the Staffing sub-group will outline to the Chief Executive the details of the complaint and findings from any subsequent investigations. The Chief Executive will be invited to discuss these findings and present their response to the detail of the complaint/grievance. The meeting can be adjourned to consider information presented. It can be reconvened on the same day or if that is not appropriate further arrangements can be made for a new meeting. There is no need for the Staffing sub-group to present their decision at this stage.
6. An independent person should be identified to take notes of the hearing.

### **After the investigation and meeting**

7. After the hearing, the decision of the Staffing sub-group should be conveyed in writing to the Chief Executive within seven working days of the date of the hearing. The decision letter must record:

- Nature of the grievance/complaint raised
  - Date of the meeting and who was present
  - Key points made in discussions at the hearing
  - Names of any witnesses or other parties who provided information
  - Reasons for the decision
  - Outcome
  - Right of appeal
8. It is particularly important that the decision letter contains information which will enable all parties to understand how the conclusions and decision(s) were reached.

#### Potential outcomes from the hearing

9. Once the Staffing sub-group is satisfied that it has come to a satisfactory conclusion it must then decide whether to: - Uphold the complaint - Partially uphold the complaint - Not uphold the complaint
10. If upholding or partially upholding, the sub-group must decide the action to take against the Chief Executive. This can include no further action, verbal warning, written warning, final written warning or dismissal (in the case of gross misconduct).

#### Right of Appeal

11. If the Chief Executive is not satisfied with the outcome of the hearing, an appeal may be submitted in writing to the EVH JNC appeals process. The appeal should specifically outline the reasons why the Chief Executive believes the decision was unfair or unreasonable and/or why they believe the grievance procedure has not been properly applied. EVH will take over the administration of the process from this point and will notify the Chair of the outcome of the appeal hearing.
12. Grounds for appeal can include:
- Procedural irregularities
  - Unfairness of the judgement
  - New evidence which could not have been available at the time of the original decision or was unreasonably withheld and which could have materially affected the outcome

#### Records

13. Detailed records should be kept detailing the nature of the complaint/grievance, the response given, any action taken and the reasons for it. An independent person should be appointed to prepare a comprehensive note of the grievance hearing. In certain circumstances some information may be withheld, for example, to protect a witness.

In accordance with the Association's records retention schedules, records will be kept of all meetings detailing:

- the nature of the complaint/grievance raised
- a note of the meeting held to hear the grievance
- the Association's response
- any action taken and the reasons for this
- whether there was an appeal
- a note of the appeal meeting
- The outcome of the appeal meeting.

### **Appendix 3**

Date

Name

Address

Dear

SERIOUS COMPLAINT AGAINST THE CHIEF EXECUTIVE, BARRHEAD HOUSING ASSOCIATION

I am writing to confirm that the Association (or its subsidiary) has received a serious complaint against you in relation to (details of the allegation to be summarised here).

I am acknowledging receipt of this complaint which was received on (date). Our formal policy and procedure for dealing with serious complaints against the Chief Executive has been activated (copy enclosed) and you will hear from the Association by (date) with regard to how the complaint will be dealt with.

If required, you have the write to be accompanied should there be a full investigation.

Yours sincerely

Chairperson  
Barrhead Housing Group

