



<b>Policy on:</b>	<b>Notifiable Events Policy</b>
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<b>Compliant with Scottish Housing Regulator's Regulatory Framework:</b>	<b>Regulatory Standard 2.4. New guidance issued February 2019 effective from 8<sup>th</sup> March 2019</b>
<b>Compliant with Tenant Participation Strategy :</b>	<b>N/A</b>
<b>Compliant with Equal Opportunities:</b>	<b>Yes, as part of Equality and Diversity Policy</b>
<b>Compliant with Business Plan:</b>	<b>Actions: revise scheme of delegation for disposals and consents; check if chair has access to landlord portal; develop a procedure for dealing with CEO serious complaints; develop policy for settlement agreements</b>

<b>Date for approval :</b>	<b>March 2019</b>
<b>Date for Review :</b>	<b>March 2022</b>

<b>Responsible Officer :</b>	<b>Chief Executive</b>
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**History:**  
**Last version approved 2016**  
**Updated March 2019**

## **1. Introduction and purpose**

1.1 This guidance sets out the events that (registered social landlords/RSLs) Barrhead Housing Association (us) should tell the Scottish Housing Regulator (the Regulator) about. The guidance, dated February 2019 explains why the Regulator has a regulatory interest in us, what they expect an Association to notify them about, and what they will do with the information we give them. The Regulator is 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 private lenders; or
- The good governance and reputation of an individual RSL or the RSL sector.

1.2 The Housing (Scotland) Act 2010 (2010 Act) also required that we notify the Regulator about certain disposals of land and assets, and constitutional and organisational changes. This is covered in this guidance.

1.3 The guidance on notifiable events is statutory guidance for us to meet in relation to the requirements of chapter 3 of the Regulatory framework and obligations under the 2010 Act

1.4 The Regulator's approach to regulation is risk-based and proportionate. This means that they will gather only information that they need to regulate effectively. This also means they need us to alert them to certain events as quickly as possible. We must comply with the regulator's wider statutory duties including those set out in the 2010 Act.

1.3 Standard 2.5 of the Standards for Governance and financial Management requires us to inform the Regulator about any significant events. This guidance sets out what type of events we should tell them about so that we can be clear about what the Regulator needs to know.

## **2. What are notifiable events?**

2.1 Barrhead Housing Association (the Association) should tell the Regulator about any material, significant or exceptional issue, event, or change within our organisation and how we intend to deal with it, or where appropriate provide them with a reasonably detailed explanation as to why a significant change has been implemented.

2.2 The lists in the Appendix 1 provide examples of the type of notifiable event our Association should immediately contact the Regulator about. They are illustrative rather than exhaustive. As a general guideline, notifiable events are those that may:

- seriously affect the interest and safety of tenant, people who are homeless or other services users;
- threaten the stability, efficient running or viability of service delivery arrangements;
- put at risk the good governance and financial health of the organisation
- 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' will depend on the nature of the event and the particular Association. Whether an event is 'material' or 'significant' may depend on factors such as the size or complexity of the Association; so each Association should consider the risk and potential impact on our organisation when deciding whether an issue is a notifiable event. If we are unsure whether an event is a notifiable event, we will take further guidance directly from the Regulator. If in doubt, the Regulator recommends that we notify them.

2.4 Appendix 1 sets out examples of the type of events we need to alert the Regulator about:

- Governance and organisational issues
- Performance and service delivery issues
- Financial and funding issues
- Additional events that the Regulator requires systemically important RSLs to notify them about

2.5 As Barrhead HA is part of a group, we are required to notify the Regulator if we are exercising constitutional powers to 'step-in' to deal with serious problems in our subsidiary.

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 other regulatory requirements including compliance with our legal obligations. We will notify the Regulator of any material changes to the assurances or supplementary information reported in our Annual Assurance Statement.

2.7 We are also required to notify the Regulator about the outcome of tenant consultation of a ballot or written agreement, certain disposals of land, assets or leases, constitutional and organisational changes and the timescales for notification as per the SHR's notifiable event guidance – see appendix 2.

### **3. Who should notify the Regulator?**

3.1 Our senior officer, Chief Executive, should tell the Regulator about a notifiable event which relates to performance and service delivery issues or financial and funding issues. The Chair of our governing body should tell the Regulator when the notifiable event relates to a governance or organisational issue, for instance if our senior officer has left or if there are concerns about our senior officer or our governing body. The Chair must tell the Regulator about any changes relating to the Annual Assurance Statement. Any staff member who is authorised by the Association (our senior management team) to do so can notify the Regulator in relation to the disposals and changes set out in Appendix 2. This will be set out in our scheme of delegation.

3.2 Our governing Board is accountable and responsible for the effective management of the organisation, so should be aware of all notifiable events, even those which the senior

officer is responsible for reporting to the Regulator. In some cases, we may need to notify other organisations of a notifiable event, for instance lenders, if it is a financial issue or where a loan documentation specifies that certain events require to be notified to a lender.

3.3 Where this affects our subsidiary, Barrhead HA as the parent will notify the Regulator and tell them what it is doing to ensure that it is resolved. We will check the Group Structures and Constitutional Partnership guidance for further information.

#### **4. What information does the Regulator need and how is it submitted?**

4.1 The Association should submit a notifiable event to the Regulator through the Landlord Portal ('the portal'). The portal includes a template for us to complete which sets out the type of information the Regulator needs about each event. They need to know:

- 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 we have already taken; and
- When the governing body was informed/will be informed.

4.2 For notification of tenant consultation, we will refer to the Regulator's statutory guidance Tenant consultation and approval which explains the regulator's information requirements

4.3 For notifiable events about disposals, and constitutional or organisational changes, we will comply with Regulatory Standard 7 for details of the change

4.4 When the Regulator receives the notifiable event through the portal, they will aim to respond within eight working days.

4.5 Where we may be unsure whether an event should be reported under notifiable events guidance if it relates to an issues already noted in an engagement plan, we will seek further advice from the Regulator. This does not currently affect Barrhead Housing Association as we do not currently have a regulation plan. This is reviewed annually by the Regulator.

4.6 We will ensure that our Information Commissioner Office registration appropriately covers our obligation to provide data to the Scottish Housing Regulator for regulatory purposes.

#### **5. When should we notify the Regulator?**

5.1 The Association will alert the Regulator to a notifiable event as soon as is reasonably practical. Sometimes this will mean alerting them before an anticipated event happens so that they are aware in advance. There should be no delay, for instance, until after a

scheduled Governing body meeting. Where a major incident occurs, we will alert the Regulator as soon as possible. The Regulator does not expect an event to be completely concluded before the alert is made to them. In particular when we are considering a disposal or organisational change which requires us to consult tenants under the 2010 Act, we will notify the Regulator at an early stage of deliberations.

5.2 Where we have told the Regulator in our Assurance Statement that we are meeting the Standards of Governance and Financial Management and Requirements and they find we are not, and we have not notified them of this, the Regulator will engage with us to determine the significance of the non-compliance. It is a serious matter if we have failed to tell the Regulator about a material or significant event or issue, or we have delayed notifying them of it and it will be treated as such.

5.3 The Regulator will engage directly with us to determine any action they may need to take. Where our regulatory status is shown as 'compliant', the Regulator may amend this to indicate that it is 'under review'. Chapter 6 and 7 of the Regulatory framework provides an explanation of how they will respond to serious concerns.

5.4 The Regulator may look at whether we have notified them in accordance with this guidance as part of work to verify its Annual Assurance Statement, or during a visit or other engagement activity.

5.5 Further information on timescales for notifications of disposals and constitutional changes are in Appendix 2.

## **6. What will the Regulator do with the information we give them?**

6.1 The Association is responsible for managing our own organisation and for dealing with the events that occur. Requiring us to tell the Regulator about certain events does not transfer that responsibility to the Regulator. The Association is expected to have an effective strategy in place to deal with the event and need to satisfy the Regulator that the action we take will protect the interests of our tenants and other service users.

6.2 If the Regulator needs more assurance about how we propose to deal with an event, they will engage with us.

6.3 The Regulator may inform, or ask us to inform, another regulator or authority if that is appropriate. They may also ask us to get 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 Regulator will also report matters to the police if we suspect that an offence may have been committed.

6.4 If we give the Regulator information in confidence, they will respect that confidentiality, provided it does not compromise their ability to safeguard the interests of our tenants or the sector, or breach any legal obligations, for example, under the Data Protection Act and

General Data Protection Regulation (GDPR), or where they are concerned that an offence may have been committed.

## **7. Barrhead Housing Associations' internal policies and procedures**

7.1 Our internal policies and procedures should reflect the requirement to alert SHR to notifiable events in accordance with the Regulator's guidance. No matter how we choose to reflect notifiable events within our policies and procedures, senior staff and governing body members should understand the notifiable events requirement and assure themselves, and the Regulator, that we are complying with this through our Annual Assurance Statement.

7.2 If a staff member, or governing body member is aware of a notifiable event which has not been submitted to the Regulator, they should report it within the organisation through our whistleblowing policy. If this is not possible, or the attempt to report internally has been unsuccessful, they can whistleblow to the Regulator.

## **8. Links to other guidance**

8.1 Tenant consultation and approval: see SHR's separate regulatory guidance on tenant consultation and approval for proposals to sell or transfer tenanted homes, which require us to consult tenants under the 2010 Housing (S) Act.

8.2 Whistleblowing: The Regulator has produced a separate advisory guidance and a fact sheet about how we should deal with Whistleblowing. Whistleblowing is when someone within the Association believes that there has been improper conduct in our organisation and reports this to someone within the Association who is in a position to deal with it, for example the Chief Executive or a Senior Officer. If there has been whistleblowing within our Association, we will notify the Regulator about the allegations and tell them about how we are responding to the issues.

8.3 Section 72: the Regulator 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 them. If we are aware that an auditor has reported an issue to the Regulator under Section 72, we do not need to report this issue as a notifiable event. This is because the Regulator will ask for any additional information from us should they need it.

8.4 Group Structures and Constitutional Partnerships: The Regulator has produced separate statutory guidance on Group Structures and Constitutional Partnerships. If we are considering either a change to our group structure.

8.5 Annual Assurance Statement: the Regulator has issued statutory guidance for the completion of our 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.

## Appendix 1

### Examples of Notifiable Events

#### Governance and organisational issues:

- any material change 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 – (see Appendix 3).
- 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 change or restructuring within the Association or group
- Plans to set up a non-registered subsidiary
- Potentially serious breach of statutory or common law duties by the Association 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 Association which may have significant consequences for the Association in the event of success
- Serious failure of governance within the Association'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 Association
- Breach 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 notified its concerns for example the Fire Brigade, etc.
- Serious accidental injury or death of a tenant in their home or communal areas:
  - where there has been a service failure by the Association;
  - Where there has been a failure, or perceived failure, in how the Association has assessed and managed risk; or
  - which could potentially affect other tenants' confidence in us as the landlord and our 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 stock transfer contractual agreement

- Adverse report by statutory agencies, regulators, inspectorates (or similar) about the Association (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 Association's normal business
- Serious or significant adverse media reports, or social media interaction, which could potentially affect tenants' confidence in the **Association or that is damaging to the reputation of the Association.**
- **Financial and funding issues:**
  - Fraud or the investigation of fraud either internally, **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 immediate potential cash flow issue
  - Proposed assignment or transfer of the existing lender's security to another lender
  - Notification of the outcome of an adverse financial assessment of the Association or its parent/subsidiaries/related companies/connected bodies from Pensions Trustees
  - A serious or material reduction in the funding for care and support services, for example, for Associations with significant care elements in their business, where a local authority withdraws funding.
  - **Change of internal or external auditor**
- **Additional issues that the Regulator requires systemically important Associations 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

Please note: This list is illustrative not exhaustive.

**Appendix 2 – Notification of tenant consultation, disposals, constitutional and organisational change – see SHR full guidance note - [here](#)**

**In summary, this relates to:**

**Tenant consultation – outcome of a ballot or written agreement**

**Disposal of land and assets – (notify as soon as possible or within 28 days for SST transfers).**

### **Disposals relate to:**

- **Sale of tenanted social housing dwellings**
- **Granting security over social and non-social housing dwellings land or other assets**
- **Sale or excambion of untenanted social and non-social housing dwellings, land or other assets over £120,000**
- **Lease of social housing dwellings**
- **Lease of roof space of residential, tenants properties for renewable energy sources (e.g. solar panels or telecommunications including aerials)**
- **Lease of residential property to an RSL, group subsidiary or any other body for market or mid-market rent or other non-social housing purpose (except leased to local authority for temporary accommodation for people who are homeless)**
- **Any other disposal which could have significant implications for tenants or other service users**

### **Constitutional and organisational changes including:**

- **Change of name, office or constitution**
- **Restructuring of society or company**
- **Voluntary winding up or dissolution of a society**
- **Converting a company into a registered society**
- **Entering into a company voluntary arrangements**
- **Voluntary winding up of a company**
- **Becoming a subsidiary of another body**

## **Appendix 3**

### **Handling a serious complaint against the Chief Executive of our Association**

#### **Purpose**

1 This note sets out what a governing body should 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 note sets out the Regulator's regulatory expectations so that we can deal properly with this type of situation.

### **Notify Scottish Housing Regulator (Regulator)**

3 We should deal with and resolve minor issues at a local level, and we do not need to notify the Regulator.

4 The Chair should notify the Regulator if there is a formal **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 tell the Regulator how the governing body intends to handle the complaint.

5. The Regulator recognises the highly sensitive nature of such serious complaints. If we give the Regulator information in confidence we will respect that confidentiality, provided it does not compromise their ability to safeguard the overall interests of the Association or the sector of breach a legal obligation to disclose that information.

6. Employment issues are for our governing body, our Board, as employer, to resolve with the individual employee. But the Regulator does need to be assured that the governing body will handle a serious complaint or grievance about our Chief Executive in a manner that is compliant with regulatory standards and will get external advice and support to help the Board manage these situations and discharge its employment responsibilities fully and properly.

7. 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.

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

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

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

9. The Regulator needs to be assured by the governing body that we will seek independent advice to support us to 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, 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 appropriate advice and support to manage the complaint.

10 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. We must ensure that our investigation of the complaint, and any subsequent action, complies with our legal duties, including in those in relation to equalities and human rights.

11 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 our governing body should 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**

12 The Association must have clear procedures setting out how we will investigate serious complaints or grievances against the Chief Executive. The Association should apply good practice in dealing with the grievance and to meet their expectations as set out in this note.

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

13 The Association has a standing sub-committee, our staffing sub-group, with delegated authority to deal with human resource matters or consider serious staff complaints. In the case of a serious complaint against the Chief Executive, the staffing sub-group will be informed and involved, rather than the Chairperson dealing with the complaint alone. The staffing sub-group 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-group. Where there is an investigation then the sub-group 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 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 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.

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

### **The Regulator's involvement**

16 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, then the Regulator may need to act to support the governing body to carry out its role in accordance with regulatory standards.