



**"Offering our community more than a home"**

## Notifiable Events Policy

Management Committee submission: 28 November 2023

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Guidance update

### CHA Objectives:

- To ensure that our resources are adequate to deliver our objectives by investing in our people, demonstrating value for money and through robust procurement practices.
- To promote social inclusion by applying principles of equality and diversity to everything we do.

### Regulatory Standards:

- The governing body leads and directs the RSL to achieve good outcomes for its tenants and other service users.
- The RSL is open about and accountable for what it does. It understands and takes account of the needs and priorities of its tenants, service users and stakeholders. And its primary focus is the sustainable achievement of these objectives.
- The RSL manages its resources to ensure its financial well-being and economic effectiveness.
- The governing body bases its decision on good quality information and advice and identifies and mitigates risks to the organisation's purpose.
- The RSL conducts its affairs with honesty and integrity.
- The governing body and senior officers have the skills and knowledge they need to be effective.

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## **1. Introduction and purpose**

**The aims and objectives of this policy are to ensure Clydebank Housing Association (CHA) has a robust framework in place to ensure regulatory requirements in relation to Notifiable Events are met at all times and any events arising are submitted to the Scottish Housing Regulator (SHR) in accordance with the guidance issued. The policy further sets out to ensure any Notifiable Events that do occur are managed effectively and safeguard the association, its tenants and service users from any negative effects resulting from any events.**

- 1.1 This Policy is in line with the Scottish Housing Regulator's (SHR) Guidance on Notifiable Events and sets out the events that Clydebank Housing Association should tell the Scottish Housing Regulator about.**

The SHR guidance, 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 lenders; or
- The good governance and reputation of an individual RSL or the RSL sector.

- 1.2 The Regulator's approach to regulation is risk-based and proportionate. This means that they want to avoid gathering information routinely 'just in case'. But it also means that they need RSLs to alert them to certain events as quickly as possible.**
- 1.3 Regulatory Standard 2.4 requires RSLs to inform the Regulator about any significant events. Their guidance sets out what type of events RSLs should tell them about so that RSLs can be clear about what the Regulator needs to know.**

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

- 2.1 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 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 serious events:**

- Seriously affect the interests and safety of tenants, people who are homeless or other service users;
  - That may significantly threaten the stability, efficient running or viability of service delivery arrangements,
  - Put at risk the good governance and financial health of CHA or
  - That would potentially bring the Association into disrepute or raise public or stakeholder concern about the Association or the social rented sector.
- 2.3 The term ‘serious’ or ‘significant’ is difficult to define in a way which applies to all RSLs. The Regulator appreciates that whether an event is ‘serious’ or ‘significant’ may depend on factors such as the size or complexity of the Association; so the 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.
- 2.4 The Association must 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. The Association must notify the SHR of any material changes to the assurances or supplementary information reported in our Annual Assurance Statement
- 2.5 Appendix 1 sets out examples of the type of events we need to alert the Regulator about and the timescales for notification:
- 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

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

- 3.1 Our Chief Executive (senior officer), should tell the Regulator about a notifiable event which relates to performance and service delivery issues or financial and funding issues. The senior officer must also tell the SHR about any changes relating to the Annual Assurance Statement.

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 is an issue about our senior officer or our governing body.

The Regulator expects our governing body to be aware of all notifiable events that happen in our Association, even those which the senior officer is responsible for reporting to us. Where the issue affects our subsidiary, we will also refer to the Group Structures and Constitutional Partnerships guidance. In some cases, we may need to notify other organisations, for instance lenders, if it is a financial issue.

All Management Committee meetings will include a standing agenda item on notifiable events in order to ensure that Management Committee have the opportunity to raise notifiable events and are aware of them when they occur. This process will also be set out in the Standing Orders Policy under 'Delegated Authority'.

In some cases, the Association may need to notify other organisations of a notifiable event, for instance our lenders, OSCR or ICO dependent on the issue identified.

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

- 4.1 The Association will 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. The SHR need to know:
  - What the significant event, change or disposal is;
  - When it happened or is likely/going to happen;
  - Who is involved and/or affected?
  - Whether there are equalities or human rights implications and how the Association is ensuring it meets its 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 When the Regulator receives the notifiable event through the portal, they will aim to respond within eight working days with the Chief Executive being responsible for informing the Management Committee of the response.
- 4.3 RSLs that currently have a regulation plan should call the lead officer noted in the regulation plan for advice as to whether an event should be reported under the notifiable events guidance if it relates to an issue already noted in the regulation plan. This does not currently affect Clydebank Housing Association as we do not currently have a regulation plan. This is reviewed annually by the Regulator.
- 4.4 The Data Protection Act requires our Association, as we process personal data, to register as a data controller with the Information Commissioner's Office (ICO). Our ICO registration appropriately covers our obligation to provide data to the Scottish Housing Regulator for regulatory purposes.

## **5. When we should 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 event happens so that they 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 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.
- 5.2 The Association will contact the SHR where we have any uncertainty whether an event is notifiable. We will seek the advice of the SHR in assessing whether it is notifiable.
- 5.3 The Association recognises the importance of accuracy in completion of our Assurance Statement and notifying the SHR of any matters that may affect our ongoing compliance with the Standards of Governance and Financial Management and Regulatory Requirements. We understand that the SHR will treat matters seriously where we fail to tell them about a material or significant event or issue, or we have delayed notifying them of a matter.
- 5.4 The Regulator may engage directly with the Association where we have not notified them, or have delayed notifying them, about a significant event affecting us.
- 5.5 The Regulator will engage directly with the Association to determine any action they may need to take. Where CHA's regulatory status is shown as 'compliant', the SHR may amend this to indicate that it is 'under review'. The SHR sets out how it will respond to serious concerns about an RSL in Chapters 6 and 7 of the Regulatory Framework.
- 5.6 The Regulator may look at whether CHA has notified them in accordance with the SHR's Statutory Guidance on Notifiable Events as part of their work to verify our Annual Assurance Statement, or during a visit or other engagement activity.

## **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. If the Regulator is concerned about our strategy to deal with the event, they will make clear what is expected we do to allay any concerns.
- 6.2 The Regulator may inform, or ask us to inform, another regulator or authority if that is appropriate. They may also ask us to get specialist or

impartial advice, for instance, legal, financial, or employment advice. Depending on the nature of the event, the Association 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 they suspect that an offence may have been committed

- 6.3 If we give the Regulator information in confidence, they will respect that confidentiality, provided it does not compromise their ability to safeguard the overall interests of our Association or the housing 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. Our Policies and Procedures

- 7.1 We are responsible for managing our own organisation. However, internal policies and procedures should reflect the requirement to alert the Regulator to notifiable events as this is a regulatory standard. 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 process.

Where an employee is aware of a notifiable event but failed to follow procedure to bring this to attention, this may be dealt with in accordance with the associations Disciplinary Policy.

## 8. Links to other guidance

- 8.1 Whistleblowing: The Regulator has produced a separate regulatory 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.
- 8.2 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. However, if we report 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: The Regulator has produced separate regulatory guidance on Group Structures and Constitutional Partnerships. If we are considering either a change to

our group structure or joining a group structure, we should refer to the guidance and where appropriate ask consent from the Regulator. Where we are asking for the Regulator's consent to a group structure proposal, we do not need to separately report this as a notifiable event.

We should also refer to the Group Structures and Constitutional Partnerships guidance if we are considering establishing a non-registered subsidiary. In this situation, the Regulator would expect to receive a notifiable events notification.

- 8.4 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.
- 8.5 Business Planning: We should inform the Regulator as soon as we know that the senior officer intends to leave and the Regulator expects appropriate management arrangements to be put in place while our governing body reviews our options.
- 8.6 It is for our governing body to decide the future strategic direction of our organisation. We should have an up-to-date business plan in line with the Regulator's recommended practice. Our governing body should refer to our business plan and use this to decide our next steps following the departure of the senior officer. The Regulator may ask to see our business plan.
- 8.7 The Regulator's interest is in being assured that our governing body has considered the strategic options open to our organisation and has assured itself that our 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 our business plan rather than being explored only on the departure of the senior officer.
- 8.8 If our business plan is not up-to-date or does not meet recommended practice, the Regulator would expect the governing body to consider the future of the RSL by carrying out a strategic options appraisal. The Regulator's Recommended Practice on Business Planning gives further information on options appraisals.

## 9. Equalities and Human Rights

- 9.1 The Regulatory Framework and Equalities Statement sets out the Regulator's commitment to mainstreaming equalities and diversity and working in a way which meets their statutory obligations under the Housing (Scotland) Act 2010 and the Equality Act 2010. The Association similarly sets out our equality statements within our Equality and Diversity and Equality and Diversity (Employment) Policies.
- 9.2 The Regulator regulates to safeguard and promote the interests of tenants and other service users. These are diverse groups with

different needs and priorities. They expect us to meet our equalities obligations, to work to understand the individual needs of our customers and to deliver services that recognise and meet these needs. The Regulator further expects us to tell them if and how they have considered equalities impacts in decisions that require their consent, and the outcome of that consideration. In order for the Regulator to meet our statutory duty, in some circumstances, they may ask us to provide further information and evidence of this.

- 9.3 The Regulator promotes, monitors and assesses equal opportunities across Scottish social landlords in a number of ways, including through annual returns on the Scottish Social Housing Charter. They encourage us 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 from: SFHA Guidance on Equalities; CIH Guidance on Equalities; EHRC Guidance on Equalities for Social Landlords.

The Association will provide equality of opportunity and fair treatment for all, ensuring that no individual or group is treated less favourably than anyone else. We work closely with community stakeholders, to provide assurance that we are achieving these aims.

The Association will meet, and where appropriate exceed our obligations under the Equality Act 2010, including the general equality duty in the Act, to ensure we do not discriminate against, harass or victimise a person because they have one or more of the nine protected characteristics described in the Act.

An Equality Impact Assessment has been carried out as part of the review of this policy, in order to assess where the aims of this policy may have a positive, negative or neutral impact upon any of the nine Protected Characteristics set out in the Equality Act 2010

#### **For Office Use Only – Required Actions**

Customer Consultation Required/Arranged	No
Intranet Update	Yes
F Drive Update	Yes
Website Update	Yes
Leaflet change required?	No
Newsletter Promotion?	No
Other information updated, e.g. posters, automatic email responses, post cards, answering machine messages, etc.	No
Equality Impact Assessment completed	Yes

## **Appendix 1 Examples of Notifiable Events**

### **Governance and organisational issues:**

- Any material change to the assurances and supplementary information contained in the Association's 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 2).
- 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
- Breach of the Regulatory Standards
- Major organisational change or restructuring within the Association or group
- Plans to set up a non-registered subsidiary
- Potentially serious breaches 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 in the event of success
- Serious failure of governance within the Association'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(s)

### **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 in their home or communal areas:
  - where there has been a service failure by the Association; or
  - 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)
- Breach 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 us as the landlord.

**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 (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 Association or its parent/subsidiaries/related companies/connected bodies from Pensions Trustees
- A material change to the asset disposal strategy agreed with the Regulator

**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
- The Association changes its internal or external auditors.

*It is important to note that this list is illustrative and not exhaustive.*

## **Appendix 2**

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

#### **Purpose**

- 1 This note sets out what the Regulator expects our Management Committee 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 note 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 Management Committee, as employer, to resolve with the individual employee. But they do need to be assured that the Management Committee will handle a serious complaint or grievance about our Chief Executive properly and will get external advice and support to help them manage these situations and discharge its employment responsibilities fully and properly.

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

- 4 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.
- 5 When dealing with a serious complaint or grievance about our Chief Executive, the Regulator expects us to:
  - tell them about it, in accordance with their guidance on notifiable events; and
  - take prompt, independent and professional advice as appropriate to the individual complaint or grievance.

#### **Notify SHR**

- 6 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.
- 7 The Chair of our Association will 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 also tell the Regulator how the governing body intends to handle the complaint.

- 8 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**

- 9 The Regulator needs to be assured by our governing body that we are seeking independent professional advice to support it 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, she has a clear conflict of interest and cannot be involved in any way in managing the complaint made against her. In cases like this our governing body will obtain external 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.
- 11 Where a serious complaint has been made against the Chief Executive by a Management Committee member or someone else who is not an employee, then the Regulator also expects our Management Committee 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.
- 12 Initial independent advice should be sought from either or both of the sources listed below for ease of reference. These advisors may recommend the use of other professional advice where necessary, e.g. investigation services, public relations, etc.:
- TC Young Solicitors: Mark Ewing, Partner  
0141 221 5562  
[mee@tcyoung.co.uk](mailto:mee@tcyoung.co.uk)
  - Employers in Voluntary Housing: Paul McMahon, Chief Executive  
0141 352 7432  
[paul@evh.org.uk](mailto:paul@evh.org.uk)

#### **Have clear procedures**

- 13 The Association must have clear procedures setting out how we will investigate serious complaints or grievances against the Chief Executive (via EVH Conditions of Service). The Regulator expects the Association to apply the available good practice in dealing with the grievance and to meet their expectations.

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

- 14 The Association has a Finance, Audit & Risk sub-committee 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 sub-committee to be informed and involved, rather than the Chairperson dealing with the complaint alone. The 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.
- 15 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 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 Finance and Corporate Services sub-committee;
  - 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 should be told about the outcome of the grievance.

## **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.