



Notifiable Events Policy

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1. Introduction and purpose

- 1.1 This policy is based on guidance issued by the Scottish Housing Regulator¹ (the SHR) and it sets out the events that the Association must tell the SHR about. It explains why the SHR have a regulatory interest in these events, what they require the Association to notify them about, and what they will do with the information we provide. The SHR are interested in events which may put at risk:
- the interests or safety of tenants, people who are homeless and other service users;
 - the financial health of ng homes, public investment in ng homes, or the confidence of lenders; or
 - the good governance and reputation of ng homes or the Registered Social Landlord (RSL) sector.
- 1.2 The Housing (Scotland) Act 2010 also requires that the Association notify the SHR about certain disposals of land and assets, and constitutional and organisational changes.
- 1.3 ng homes must comply with the SHR's statutory guidance in order to meet the regulatory requirements in chapter 3 of the Regulatory Framework and to meet their obligations under the Act.
- 1.4 Standard 2.5 of the Standards of Governance and Financial Management requires ng homes to inform the SHR about any significant events. This policy sets out what type of events ng homes must tell the SHR about.

2. What are notifiable events?

- 2.1 The Association must tell the SHR about any material, significant or exceptional issue, event, or change within the 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 ng homes must immediately contact the SHR about. The lists are illustrative rather than exhaustive. As a

¹ Draft Notifiable Events Statutory Guidance (Scottish Housing Regulator, 2018) available at: <https://www.scottishhousingregulator.gov.uk/what-we-do/how-we-regulate/our-regulatory-guidance>

general guideline, notifiable events are those 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 ng homes.
- Bring ng homes into disrepute, or raise public or stakeholder concern about ng homes or the social housing sector.

- 2.3 The SHR recognises that what is 'material', 'significant' or "exceptional" will depend on the nature of the event and the particular RSL. Whether an event is 'material' or 'significant' may depend on factors such as the size or complexity of the organisation's operation; so ng homes will consider the risk and potential impact on the organisation when deciding whether an issue is a notifiable event. The Association will contact the SHR for further advice where we are unsure if something needs to be reported.
- 2.4 Appendix 1 sets out examples of the type of events ng homes needs to alert the SHR to including:
- Governance and organisational issues.
 - Performance and service delivery issues.
 - Financial and funding issues.
- 2.5 Where ng homes forms a group structure, we must also notify the SHR where we exercise constitutional powers to 'step-in' to deal with serious problems in a subsidiary RSL.
- 2.6 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.
- 2.7 Appendix 2 explains when the Association needs to notify the SHR about certain disposals, constitutional and organisational changes, and the timescales for notification.

3. Who should notify the SHR?

- 3.1 The Chief Executive will tell the SHR about a notifiable event which relates to performance and service delivery issues or financial and funding issues. The Chairperson will tell them when the notifiable event relates to a governance or organisational issue, for instance if the Chief Executive has left or if there are concerns about the Chief Executive or the Board. The Chairperson must also tell the SHR about any changes relating to the Annual Assurance Statement. Any staff member who is authorised to do so can notify the SHR in relation to the disposals and changes set out in Appendix 2.
- 3.2 The Board of ng homes is accountable and responsible for the effective management of the organisation. We will therefore ensure that the Board are aware of all notifiable events, even those which the Chief Executive is responsible for reporting. All Board meetings will include a standing item on notifiable events in order to ensure that the Board have the opportunity to raise notifiable events and are aware of them when they occur.
- 3.3 In some cases the Association may need to notify other organisations of a notifiable event, for instance lenders, if it is a financial issue or where loan documentation specifies that certain events require to be notified to a lender.
- 3.4 Where the issue affects a subsidiary of ng homes, we as the parent organisation will notify the SHR.

4. What information the SHR needs and how it is submitted

- 4.1 ng homes will submit a notifiable event through the SHR's Landlord Portal ('the portal'). The portal includes a template to be completed which sets out the type of information the SHR need about each event. The SHR need to know:
- what the significant event, disposal or change is;
 - when it happened or is likely 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 the Association is planning to do or what action it has already taken; and
 - when the Board was informed/will be informed.

- 4.2 For notification of disposals, and constitutional or organisational changes, ng homes will include details of when the Board took the decision, and, where appropriate, confirmation that ng homes' tenants and members were consulted in accordance with the requirements of the Act (and in accordance with any other relevant legislation or with the Association's Rules). Where the issue required a tenant ballot, information about the turnout and result will be included.
- 4.3 When the SHR receive the notifiable event through the portal they will aim to respond within eight working days.
- 4.4 Where we are unsure whether an event should be reported under the notifiable events guidance if it relates to an issue already noted in our Engagement Plan, we will call the lead officer at the SHR noted in the Plan for advice.
- 4.5 ng homes must ensure that our Information Commissioner's Office (ICO) registration appropriately covers the obligation to provide data to the SHR for regulatory purposes.

5. When should we notify the SHR

- 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 they are aware in advance. There should be no delay, for instance, until after a scheduled Board meeting. Where a major incident occurs, we will alert the SHR as soon as possible and not wait until the event has been concluded.
- 5.2 ng homes 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.
- 5.3 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 indicate that it is 'under review'.
- 5.4 The SHR may look at whether the Association 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.

- 5.5 Further information on the SHR's timescales for notifications of disposals and constitutional changes is provided in Appendix 2.

6. What the SHR will do with the information we provide

- 6.1 The SHR recognises that ng homes and other RSLs are responsible for managing their own organisation and for dealing with the events that occur. Requiring RSLs to tell the SHR about certain events does not transfer that responsibility for dealing with the implications of the event to the SHR. The SHR expects the Association to have an effective strategy in place to deal with the event, and they need to be satisfied that the action we have taken, or intend to take, will protect the interests of tenants and other service users.
- 6.2 If the SHR have concerns about our strategy to deal with the event, we will seek their views on what they expect us to do to allay their concerns.
- 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 ng homes to get professional 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.
- 6.4 The Statutory Guidance states that the SHR will respect confidentiality where information has been provided in confidence, provided it does not compromise their ability to safeguard the overall interests of our tenants or the sector, or breach the SHR's 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 Our other relevant policies and procedures will reflect the requirement to alert the SHR to notifiable events in accordance with this policy. Our senior staff and Board members understand the notifiable events requirement and assure themselves, and the SHR, that the Association is complying with this through our Annual Assurance Statement.
- 7.2 If a staff member or Board member is aware of a notifiable event which has not been

submitted to the SHR, they should report this within the Association through our Whistleblowing Policy. If that is not possible, or the attempt to report internally has been unsuccessful, they can whistleblow to the SHR.

8. General Data Protection Regulation (GDPR)

8.1 We recognise the importance of data protection legislation in protecting the rights of individuals in relation to personal information that we may handle and use about them, whether on computer or in paper format. We will ensure that our practices in the handling and use of personal information during the processes and procedures outlined in this policy comply fully with data protection legislation. More information is available from our Data Protection Officer.

9. Other Related Policies

- Whistleblowing
- Disciplinary and Grievance Procedures
- Staff Code of Conduct
- Data Protection
- Rules
- Code of Conduct for Board members
- Discipline and Grievance Procedures
- Declaration of Interests
- Payments and Benefits
- Gifts, Hospitality and Donations
- Membership
- Bribery

10. Equality Impact Assessment

10.1 This Policy is equally applicable to all and has no detrimental impact on protected characteristic groups as specified within the Equality Act 2010.

11. Policy Review

11.1 This Policy will be reviewed every two years or earlier in line with legislative or regulatory guidance/changes or good practice guidelines.

12. Links to other guidance

- 12.1 **Notifiable Events:** Statutory Guidance has been produced by the SHR which this policy mirrors.
- 12.2 **Whistleblowing:** The SHR has produced separate regulatory guidance and a fact sheet about how RSLs should deal with whistleblowing. Whistleblowing is when someone within the organisation believes that there has been improper conduct in the organisation and reports this to someone within ng homes who is in a position to deal with it. If there has been whistleblowing within ng homes, we must notify the SHR about the allegations and tell them about how we are responding to them.
- 12.3 **Section 72:** The SHR 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 the SHR. If ng homes 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. This is because the SHR will ask for any additional information from the Association should they need it. However, if the Association reports an issue as a notifiable event, this does not preclude an auditor from reporting the same issue to the SHR under Section 72.
- 12.4 **Group Structures and Constitutional Partnerships:** The SHR have produced separate Statutory Guidance on Group Structures and Constitutional Partnerships. If an RSL is considering either a change to its group structure or joining a group structure, it must comply with the guidance. An RSL should also refer to the Group Structures and Constitutional Partnerships guidance if it is considering establishing a non-registered subsidiary. In this situation the SHR would expect to be notified of the RSL's intention.
- 12.5 **Business Planning:** The Association must inform the SHR as soon as it knows that the Chief Executive intends to leave and the SHR expects appropriate management arrangements to be put in place while the Board reviews its options.
- 12.6 It is for the Board to decide the future strategic direction of the organisation. ng homes must have an up-to-date business plan in line with Standard 3 and should have regard to the SHR's business planning recommended practice. The Board should refer to its business plan and use this to decide its next steps following the departure of the Chief Executive. The SHR may ask to see the Association's business plan.
- 12.7 The SHR's interest is in being assured that the Board has considered the strategic options

open to the organisation and has assured itself that its 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 Board's ongoing consideration of its business plan rather than being explored only on the departure of the Chief Executive.

12.8 If ng homes' business plan is not up-to-date or does not meet the SHR's recommended practice, the SHR would expect the Board to consider the future of ng homes by carrying out a strategic options appraisal. The SHR's Recommended Practice on Business Planning gives further information on options appraisals.

12.9 **Annual Assurance Statement:** The SHR has issued 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.

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 Board member by ng homes
- Resignation of Board members for non-personal reasons
- The membership of the Association's Board falls, or is going to fall, to seven or below
- Serious complaint, allegation, investigation, or disciplinary action about a Board member
- A breach of the Association's Board Code of Conduct
- Resignation or dismissal of the Associations Chief Executive
- Severance payment to and/ or settlement agreement with a staff member
- Serious complaint, allegation, investigation, or disciplinary action about the Chief Executive – (see Appendix 3).
- The Chief Executive 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 organisational change or restructuring within ng homes or group (if applicable)
- Plans to set up a non-registered subsidiary
- Potentially serious breaches of statutory or common law duties by ng homes, 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 ng homes which may have significant consequences for the organisation in the event of success.
- Serious failure of governance within a group subsidiary (if applicable)
- Serious issue regarding a parent, subsidiary or connected organisation (if applicable)
- A dispute with another member of an alliance, consortium or non-constitutional partnership which may have significant consequences for ng homes
- 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 ng homes 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 ng homes; 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 ng homes or 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 of any stock transfer contractual agreement
- Adverse reports by statutory agencies, regulators, inspectorates (or similar) about ng homes (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 ng h o m e s ' normal business
- Serious or significant adverse media reports or social media interaction, which could potentially affect tenants' confidence in ng homes or that is damaging to our reputation.
- Concerns raised by a local authority in relation to ng homes' contribution to providing accommodation for people who are homeless whether or not committed to writing.

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 ng homes 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 RSLs with significant care elements in their business, where a local authority withdraws funding).

Please note: This list is illustrative not exhaustive.

Appendix 2 - Notification of disposals, constitutional and organisational change

The Housing (Scotland) Act 2010 (the Act), as amended by the Housing (Amendment) Act 2018, requires ng homes to notify the SHR of certain disposals, constitutional and organisational changes.

Disposal of land and assets

The Act requires ng homes to notify the SHR of any disposal of land or other assets as soon as reasonably practicable after the disposal is made. Where a tenant who has an SST will become the tenant of another landlord as a result of the disposal, ng homes must notify the SHR within 28 days.

The Act provides for the SHR to determine when they want to be notified and when to dispense with this requirement. The following is the SHR's determination.

ng homes must notify the SHR of:

- disposals by way of sale of tenanted social housing dwellings (and ensure that they comply with the Association's legal obligations to consult tenants under sections 115, 115A and 115B of the Act);
- disposals by way of granting security over social and non-social housing dwellings land or other assets;
- disposals by way of sale or excambion of untenanted social and non-social housing dwellings, land or other (including non-residential) assets over £120,000;
- disposals by way of lease of social housing dwellings to support new funding arrangements;
- disposals by way of lease of roof space of residential, tenanted properties for renewable energy sources (e.g. solar panels) or telecommunications (e.g. aerals) (and ensure that they comply with ng homes legal obligations to consult tenants under s110 of the Act); and
- 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;
- any other disposals not listed above which could have significant implications for tenants or other service users.

The Association does not need to notify the SHR of disposals which do not fall into the categories above. If we are unsure whether notification applies, we will contact the SHR for further advice.

Constitutional and organisational changes

ng homes must notify the SHR in relation to the following constitutional and organisational changes:

- change of name, office or constitution (s92 of the Act);
- 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).

The timescales for notification are set out in the Act and summarised below. The Association must ensure that we comply with these requirements.

Type of disposal/ change (and section of the 2010 Act)	Timescale for notification
Change of name, office or constitution (s92)	Within 28 days of when the amendment is made.
Special resolution passed by a society for restructuring (s97)	As soon as reasonably practicable after sending a copy of the special resolution to the Financial Conduct Authority. Where s96A applies (where a tenant of ng homes will cease to be a tenant of ng homes) SHR must be notified within 28 days of the special resolution being sent to the Financial Conduct Authority.
Voluntary winding up of society (s98)	As soon as reasonably practicable after sending a copy of the resolution to the Financial Conduct Authority.
Dissolution of society (s99)	As soon as reasonably practicable after sending the instrument of dissolution to the Financial Conduct Authority.

Restructuring of a company (s101)	<p>As soon as reasonably practicable after the court order is made.</p> <p>Where s100A applies (where a tenant of ng homes will cease to be a tenant of ng homes) SHR must be notified within 28 days of the court order being made.</p>
Conversion of a company into a registered society (s102)	As soon as reasonably practicable after sending the resolution to the registrar of companies.
Company voluntary arrangement under Part 1 of the Insolvency Act 1986 (s103)	As soon as reasonably practicable after the voluntary arrangement takes effect.
Voluntary winding up of a company under the Insolvency Act 1986 (s104)	As soon as reasonably practicable after sending the copy resolution to the registrar of companies.
Becoming a subsidiary of another body (s104A)	As soon as reasonably practicable after the arrangement takes effect, and no later than 28 days after.
Disposals of land and assets (s109)	<p>As soon as reasonably practicable (except where SHR has determined that notification is not required- see above)</p> <p>Where s107 (4) applies (where a tenant of ng homes will cease to be a tenant of ng homes) SHR must be notified within 28 days of the disposal.</p>

Appendix 3 - Handling a serious complaint against the Chief Executive

Purpose

1. This note sets out what a Board must do when dealing with a serious complaint or grievance against the Chief Executive.
2. The SHR requires that ng homes tell them when there is a **serious** complaint, investigation or disciplinary action relating to senior staff. 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 ng homes. This note sets out what the Association needs to do to ensure they can deal properly with this type of situation.

Notify SHR

3. The Association should deal with and resolve minor issues informally, at a local level, and the SHR does 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.
4. The Chairperson of ng homes must notify the SHR 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 Chairperson must also tell the SHR how the Management Committee intends to handle the complaint.
5. The SHR recognises the highly sensitive nature of such serious complaints. If ng homes gives the SHR information in confidence they will respect that confidentiality, provided it does not compromise the SHR's ability to safeguard the overall interests of ng homes or the sector, or breach the SHR's legal obligations.
6. The SHR does not become involved in employment matters. Employment issues are for the Board as employer to resolve with the individual employee. But the SHR does need to be assured that the Board will handle a serious complaint or grievance about the Chief Executive properly and will get external advice and support to help it manage these situations and discharge its employment responsibilities fully and properly.
7. ng homes has effective governance systems that set out clear procedures for dealing with serious complaints or grievances about the Chief Executive and the role of the Board (see Employers in Voluntary Housing Disciplinary and Grievance Procedures). ng homes will be open and transparent about decisions reached, subject to relevant procedures.

8. When dealing with a serious complaint or grievance about the Chief Executive, ng homes will:
 - tell the SHR about it, in accordance this policy and the SHR's 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 SHR needs assurance from the Board that it is seeking independent professional advice to support it to handle the complaint. In normal circumstances it is the Chief Executive who provides advice to the Board. 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 Board must obtain external advice and support to manage the complaint.
10. The Board 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 the Board 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 may need to get an employment/personnel specialist to assist or a consultant with expertise in investigating such matters. Ng homes will ensure that its investigation of the complaint, and any subsequent action, complies with its 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 Board member or someone else who is not an employee, then the Board must ensure that it is 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.:

- Harper Macleod LLP:
Derek Hogg, Partner

0141 227 9297

0131 247 2543

Derek.Hogg@harpermacleod.co.uk

- Employers in Voluntary Housing:

Eamonn Connolly, Director

0141 352 7432

eamonn@evh.org.uk

Have clear procedures

13. This note will be used alongside the Employers in Voluntary Housing Disciplinary and Grievance Procedures when ng homes investigates serious complaints or grievances against the Chief Executive. This will ensure compliance with the requirements of the SHR.

The Board's role

14. In the case of a serious complaint against the Chief Executive, a sub-group of the Association's Staffing Sub-Committee will be informed and involved, rather than the Chairperson dealing with the complaint alone. This staffing Sub-group will 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 Staffing Sub-group. Where there is an investigation then the Staffing 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 Board will be informed. However, it will not be told any of the detail, this **must** be kept confidential. This is to ensure:
 - the full Board 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 Board knows the grievance is being dealt with by the Staffing Sub-group;
 - if the Association needs to bring in outside help, then the full Board is aware of the situation from the outset and can authorise any associated costs;
 - the Board 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 Board who are untainted by detailed knowledge

about the issue.

16. At the end of the process, the full Board should be told about the outcome of the grievance.

SHR involvement

17. If the SHR have concerns about the action the Board is proposing to take, or it appears that the Chief Executive is involved in advising the Board or in handling the grievance, the SHR may need to act to support the Board to carry out its role effectively and properly.