



## Notifiable Events

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## Version Control

Date	Owner	Version	Reason for Change
May 2024	Michaela Loughlin	V5.0	Cyclical review
July 2021	Fiona Ross	V4.0	3 yearly review Change to new P&P template

## Summary of Changes

Section	Change
1.0	Updated reference to the SHR's February 2024 Statutory Guidance and refreshed hyperlink
	Removed reference to other related Policy & Procedures as now included in cover page
3.0	Hyperlink to SHR Portal refreshed
6.2	Review of Notifiable Events via Exceptions Register added
Appendix 2	Added Appendix 2 – Other Notifications as stated on SHR guidance
Appendix 3	Added Appendix 3 – Handling a serious complaint against the Director/Chief Executive of an RSL as stated on SHR guidance

# Notifiable Events

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## 1.0 Arks Values

Ark values should be stated at the heading of every policy. Additional contextual information can be added here if required, relating the policy document to the values.

Arks values are true to the core purpose of the organisation and the services we deliver. They determine our behaviours towards one another and what we should expect in our relationships with one another. Working within the following values will guide and help us deliver our vision and mission of Ark being an organisation where everyone is equal:

### Trust

We have confidence in our people to deliver excellent services and trust in them to do so. We will develop trusting and honest relationships and our customers will feel assured that they can rely on us to deliver.

### Respect

We treat everyone fairly and we listen. We are respectful of each person with whom we come into contact and expect our people to respond professionally and treat others as they would wish to be treated.

### Understanding

We will operate with empathy and compassion and approach each situation with an open mind. We will question and challenge to ensure we achieve the right outcomes for customers and our people.

### Equality

We believe everyone is equal and expect our people to create positive experiences where everyone feels valued and included.

### Integrity

We will do the right thing and take responsibility for our actions. We will work together to uphold the highest standards of behaviour and practice.

## 2.0 Purpose

The Scottish Housing Regulator (SHR) requires Registered Social Landlord's (RSL's) to notify them of events which put at risk:

- the interests or safety of tenants, people who are homeless and other service users;
- the financial health of the RSL, public investment in the RSL, or the confidence of private lenders;
- or
- the good governance and reputation of an individual RSL or the RSL sector.

This procedure describes:

- Our requirements to identify material events, issues or changes that could fall into any of the categories above,
- and
- What process we will follow to notify the SHR.
- The SHR has produced a [Statutory Guidance Note on Notifiable Events](#) Published in February 2024, which provides more detail.

## 3.0 Policy Statement

Senior staff and governing body members should understand the notifiable events requirement and assure themselves, and the SHR, that we are complying with this through our Annual Assurance Statement.

If an Ark employee, or Governing Body member is aware of a notifiable event which has not been submitted to the SHR, they should report it within the organisation through Ark's Whistleblowing Policy, HR15. If that is not possible, or the attempt to report internally has been unsuccessful, they can whistleblow to the SHR.

## 4.0 Scope

Ark 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 the SHR with a reasonably detailed explanation as to why a significant change has been implemented.

The SHR is clear 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 RSL; so each RSL should consider the risk and potential impact on the organisation when deciding whether an issue is a notifiable event. If we are unsure whether an event is a notifiable event, we should contact the SHR to discuss and get further advice. If in doubt, the SHR recommends that they are notified.

RSLs which are group parents must notify the SHR if we are exercising our constitutional powers to ‘step-in’ to deal with serious problems in a subsidiary RSL. [The SHR’s Group Structures and Constitutional Partnerships guidance](#) provides further information on requirements relating to groups.

We should 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 must notify the SHR of any material changes to the assurances or supplementary information we reported in our Annual Assurance Statement.

## 5.0 Legal/Regulatory Framework

This policy sets out the necessary guidance to ensure Ark complies with:

- The regulatory requirements in chapter 3 of the Regulatory Framework and our obligations under The Housing (Scotland) Act 2010 (“the 2010 Act”).
- Standard 2.5 of the Standards of Governance and Financial Management which requires RSLs to inform the SHR about any significant events

## 6.0 Responsibilities

### 6.1 Board of Management

Ark's Board of Management is responsible for consideration and approval of this policy.

### 6.2 Executive Team

Ark's Executive Team is responsible for ensuring that this policy is reviewed in accordance with Ark's schedule for review of policies, or sooner if required.

### 6.3 Leadership Team

Ark's Leadership Team is responsible for review of the policy, and for ensuring that relevant measures are put in place in order to implement its requirements.

### 6.4 Managers

Ark's managers are required to familiarise themselves with this policy and escalate any incidents that may need to be reported as a Notifiable Event.

## 7.0 Notifiable Events

### 7.1 What are Notifiable Events

The examples listed at Appendix 1 are illustrative rather than exhaustive. As a general guideline, Notifiable Events are those serious events that may:

- Seriously affect the interests and safety of tenants, people who are homeless or other service users;
- Threaten the stability, efficient running or viability of service delivery arrangements;
- Put at risk the good governance and financial health of the organisation; or,
- Bring the Association into disrepute or raise public or stakeholder concern about the Association or the social rented sector

Examples of other notifications such as Tenant Consultation, Disposal of Land and Assets, Constitutional and organisational changes, and Steps towards insolvency are listed at Appendix 2.

## 7.2 Notifying an Event

Events will normally be notified by the Head of Compliance and Improvement (HoC&I), on behalf of the Chief Executive, failing which, the CEO or Executive Director within whose Directorate the notifiable event has taken place.

Where the event involves or affects the Chief Executive, the Governing Body or the Annual Assurance Statement the Chairperson will notify the SHR. Further guidance on this is contained within Appendix 3 of the SHR's Statutory Guidance Note on Notifiable Events.

Members of Ark's Leadership Team or Executive Team who become aware of an event occurring within their department or within Ark which they consider to be a notifiable event should make the HoC&I (or in their absence, the CEO or Executive Director within whose Directorate the notifiable event has taken place) aware of the issue immediately, in order that they can, if necessary, deal with notification.

Notification will be made using the SHR's online portal.

<https://shrportal.azurewebsites.net/Home>, where User Notes are available.

The information to be provided should include:

- 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 RSL is ensuring it meets its legal duties in these areas
- what the RSL is planning to do or what action it has already taken
- when the governing body was informed/will be informed.

Notification should be made as soon as an event happens so that the SHR has an early warning. In some cases, this will be before an event takes place. The SHR expects to be told as soon as is reasonably practicable. Notification will not be delayed, for example until after a scheduled Board or Sub-Committee meeting. However, as well as notifying the SHR of a notifiable event, Board members must be notified of the situation.

Appendix 2 of The SHR's Statutory Guidance on Notifiable Events provides information on what supporting documents should be provided by the RSL when making a notification and the timescales that this should be done within.

External auditors and reporting accountants have a duty under Section 72 of the Housing (Scotland) Act 2010 to disclose events of material significance to SHR. If an RSL is aware that



an auditor has reported an issue to the SHR under Section 72, it does not need to report this issue as a notifiable event. This is because the SHR will ask for any additional information from the RSL should they need it.

### 7.3 What Happens Next

Following notification, the SHR aims to respond within 8 working days.

Further communication to/from the SHR will depend on the type and seriousness of the event and the degree of additional information required.

In most cases if the SHR is satisfied that the event is being handled properly by Ark this will be sufficient. However, the SHR will assess whether it needs to assist or intervene to protect the interests of tenants and others, public investment and the reputation of the sector.

In some cases, the SHR may review its regulatory engagement with Ark and consider whether it needs to set that out in an Engagement Plan. Where the RSL's regulatory status is shown as 'compliant', the SHR may amend this to indicate that it is 'under review'. More information can be found about how the SHR will respond to serious concerns about an RSL in chapters 6 and 7 of their Regulatory Framework.

The SHR may:

- Inform, or ask the Ark to inform, another regulator or authority if that is appropriate;
- Ask Ark to get professional or impartial advice, for instance, legal, financial, or employment advice;
- Depending on the nature of the event, the RSL should consider whether there are any matters that it needs to report to the police. The SHR will also report matters to the police if they suspect that an offence may have been committed.

Information given in confidence will be respected, so long as this does not compromise the SHR's ability to safeguard Ark's overall interests or those of the RSL 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.

### 8.0 Learning & Development Requirements

No learning & development requirements have been identified in relation to this policy.

### 9.0 Equality Impact Assessment (EIA)

No potential equalities issues have been identified in relation to the development of this policy, and consequently an EIA has not been completed.

## 10.0 Data Protection Impact Assessment (DPIA)

No potential data protection issues have been identified in relation to the development of this policy, and consequently an DPIA has not been completed.

## 11.0 Monitoring and Review

The Head of Compliance & Improvement is responsible for ensuring that the Notifiable Events procedure is implemented when required and will ensure that Notifiable Events are reviewed regularly and are reported quarterly to the Exec team and Board of Management via Arks Exceptions Register.

## Appendix 1

### Examples of Notifiable Events

#### Governance and organisational issues:

- Any material change to the assurances and supplementary information contained in the RSL's Annual Assurance Statement
- The membership calls a special general meeting
- Removal of any governing body member by the RSL
- 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 RSL's code of conduct by governing body members
- Resignation or dismissal of the RSL'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 current RSL or group
- Plans to set up a non-registered subsidiary
- Potentially serious breaches of statutory or common law duties by the RSL, including equalities and human rights duties, regardless of whether these have resulted in the submission of a claim or a legal challenge
- Any legal proceedings taken against the RSL which may have significant consequences for the RSL in the event of success
- Serious failure of governance within an RSL's subsidiary
- Serious issue regarding a parent, subsidiary or connected organisation
- A dispute with another member of an alliance, consortium or non-constitutional partnership which may have significant consequences for the RSL
- Breaches of charitable obligations or no longer meeting the charity test
- Whistleblowing allegations.

#### Performance and service delivery issues:

- Any incident involving the Health & Safety Executive or a serious threat to tenant and resident safety; or where a regulatory or statutory authority (for example, the Fire Service etc), or insurance provider, has advised the RSL of concerns
- Serious accidental injury to, or the death of a tenant in their home or communal areas:
  - where there has been a service failure by the RSL; or
  - where there has been a failure, or perceived failure, in how the RSL has assessed and managed risk; or

- which could potentially affect other tenants' confidence in the RSL or the RSL's reputation
- Major failure of key service delivery arrangements (for example, repairs cannot be carried out because a contractor goes into liquidation)
- Breaches of any ballot commitment to tenants or of any stock transfer contractual agreement
- Adverse reports by statutory agencies, regulators, inspectorates (or similar) about the RSL (for example a Care Inspectorate report with a 'weak' or 'unsatisfactory' grade or an upheld Care Inspectorate complaint)
- Any significant natural disaster (for example, fire, flood or building collapse) which affects the RSL's normal business and puts tenants at risk
- Serious or significant adverse media reports or social media interaction, which could potentially affect tenants' confidence in the RSL or that is damaging to the reputation of the RSL or sector.

#### **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 imminent potential cash flow issue
- Proposed assignation or transfer of the existing lender's security to another lender
- Notification of the outcome of an adverse financial assessment of the RSL or its parent/subsidiaries/related companies/connected bodies from Pensions Trustees
- A serious or material reduction in the funding for care and support services for example for RSLs with significant care elements in their business, where a local authority withdraws funding
- Change of internal or external auditor.

#### **Additional issues that we require systemically important RSLs to notify us 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. If you are unsure whether an event is a notifiable event, please contact your Regulation Manager who will be happy to discuss this with you and give further advice. If in doubt, we recommend that you notify us.

## Appendix 2

### Other Notifications

The 2010 Act, as amended by the Housing (Amendment) Act 2018, requires RSLs to notify us of the outcome of tenant consultation, certain disposals, constitutional and organisational changes.

#### Tenant consultation

The 2010 Act requires RSLs to notify us of the results of tenant consultation, such as the outcome of a ballot or written agreement. Our statutory guidance Tenant consultation and approval sets out our requirements in relation to notification about tenant consultation.

#### Disposal of land and assets

The 2010 Act requires RSLs to notify us of any disposal of land or other assets as soon as reasonably practicable after the disposal is made. Where a tenant who has a Scottish Secure Tenancy will become the tenant of another landlord as a result of the disposal, the RSL must notify us within 28 days.

The 2010 Act provides for us to determine when we want to be notified and when to dispense with this requirement. The following section is our determination.

RSLs must notify us of:

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

RSLs do not need to notify us of disposals which do not fall into the categories above. If you are unsure whether notification applies, please contact your Regulation Manager for further advice. If in doubt, we recommend that you notify us.

As part of its notification about disposals by way of sale or transfer the RSL should provide us with:

- a copy of the report to the governing body and minute of the meeting which agreed to the disposal
- details of the property which has been sold or transferred (property addresses)
- if the disposal was by way of a lease, a copy of the lease agreement, and
- the value of the property transferred and if the sale or transfer was at market value (if applicable).

For disposals of heritable security the RSL should provide us with:

- a copy of the report(s) to the governing body and minute(s) of the meeting(s) where the disposal was agreed.

### **Constitutional and organisational changes**

RSLs must notify us in relation to the following constitutional and organisational changes:

- change of name, office or constitution (s92)
- restructuring a society (s97) or company (s101)
- voluntary winding up or dissolution of a society (s98-99)
- converting a company into a registered society (s102)
- entering into a company voluntary arrangement (s103)
- voluntary winding up of a company (s104)
- becoming a subsidiary of another body (s104A).

For constitutional changes the RSL should provide us with:

- the date the constitution was or will be adopted
- a signed copy of the new constitution a copy of the report and minute of the governing body meeting which agreed to adopt the new constitution, and
- confirmation if the new constitution complies with the Scottish Federation of Housing Associations model rules.

For organisational changes the RSL should provide us with:

- a copy of the report and minute of the governing body meeting which agreed to the organisational change
- the date the change was or will be made, and
- for registered societies, a copy of the submission made to the Financial Conduct Authority including a copy of the special resolution passed by members (if applicable), or

- for companies, a copy of the submission made to the registrar of companies (including the

special resolution passed by members (if applicable).

### **Steps towards Insolvency**

RSLs must notify us where a notice of a proposal of a resolution for the winding up of an RSL is given to members of the RSL entitled to vote on it (s73 of the 2010 Act).

An RSL will also be required to notify us under s73 of the 2010 Act if it takes certain other steps towards insolvency. Those steps are:

- presenting a petition for the winding up of a RSL
- applying for an administrative order in respect of a RSL which is a registered company
- appointing an administrator in respect of a RSL which is a registered company.

The timescales for notification are set out in the 2010 Act and summarised below. RSLs must ensure that they comply with these requirements.

## Appendix 3

### Handling a serious complaint against the Director/Chief Executive of an RSL

#### 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 (Director/Chief Executive) of the RSL.

#### 2.

We require an RSL to tell us 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 the organisation. Our experience of these cases has shown us that if the governing body does not have a clear process to deal with matters like this then it can get into difficulties and the original issue can be made worse by the complaint being handled inappropriately. This note sets out what RSLs should do to ensure they comply with regulatory standards in dealing with this type of situation.

#### Notify SHR

#### 3.

RSLs should deal with and resolve minor issues at a local level, and we do not expect to be notified about those.

#### 4.

The Chair of the RSL should notify us if there is a formal **serious** complaint against the Director/Chief Executive, for example serious allegations from an individual employee of bullying or harassment by the Director/Chief Executive. The Chair should also tell us how the governing body intends to handle the complaint.

#### 5.

We recognise the highly sensitive nature of such serious complaints. If RSLs give us information in confidence we will respect that confidentiality, provided it does not compromise our ability to safeguard the overall interests of the RSL or the sector, or breach a legal obligation to disclose that information.



**6.**

Employment issues are for the governing body as an employer to resolve with the individual employee. But we do need to be assured that the governing body will handle a serious complaint or grievance about its Director/Chief Executive in a manner that is compliant with regulatory standards and will get appropriate advice and support to help it manage these situations and discharge its employment responsibilities fully and properly.

**7.**

RSLs should have effective governance systems that set out clear procedures for dealing with serious complaints or grievances about the Director/Chief Executive and the role of the governing body in those procedures. RSLs should be open and transparent about their decision-making processes for handling such matters.

**8.**

When dealing with a serious complaint or grievance about a Director/Chief Executive, the RSL should:

- tell us 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.**

We need to be assured by the governing body that it is seeking independent professional advice to support it to handle the complaint. In normal circumstances it is the Director/Chief Executive who provides advice to the governing body. But where it is the Director/Chief Executive who is the subject of the serious complaint or grievance, they have a clear conflict of interest and cannot be involved in any way in managing the complaint made against them. In cases like this the governing body should obtain appropriate advice and support to manage the complaint.

**10.**

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

**11.**

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

Have clear procedures

## **12.**

An RSL should have clear procedures setting out how it will investigate serious complaints or grievances against the Director/Chief Executive. RSLs should apply good practice in dealing with the grievance and to meet our requirements as set out in this note.

The governing body's role

## **13.**

Most RSLs have a standing sub-committee, such as a staffing sub-committee, with delegated authority to deal with human resources matters or consider serious staff complaints. In the case of a serious complaint against the Director/Chief Executive, the staffing sub-committee should be informed and involved, rather than the Chairperson dealing with the complaint alone. The staffing 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.

## **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 RSL'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-committee
- if the RSL 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
- 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.

SHR involvement

**16.**

If we have concerns about the action the governing body is proposing to take, or it appears that the Director/Chief Executive is involved in advising the governing body or in handling the grievance, then we may need to act to support the governing body to carry out its role in accordance with regulatory standards.