



Notifiable Events Policy

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1. Introduction

The Scottish Housing Regulator (SHR) issued updated guidance in February 2019 on the subject of Notifiable Events. The guidance details the circumstances in which Registered Social Landlords (RSLs) should notify them about events that present a significant risk.

The guidance on Notifiable Events is statutory guidance for all RSLs to meet in relation to the requirements of Chapter 3 of the Regulatory Framework and obligations under the Housing (Scotland) Act 2010.

The SHR is interested in events which put at risk:

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

The Housing (Scotland) Act 2010 also requires that RSLs notify the SHR about certain disposals of land and assets, and constitutional and organisational changes.

The SHR aims to apply a risk-based and proportionate approach to the way they regulate RSLs. They will only gather information that they need to regulate effectively.

The RSL is responsible for alerting the SHR to important events that pose a significant risk. Regulatory Standard 2.5 requires RSLs to alert the Regulator to certain events as quickly as possible after they happen, or before they happen if they can be anticipated.

The purpose of this policy is to inform the Board and Staff about how Cadder Housing Association (CHA) will act in relation to informing the SHR about significant events (Notifiable Events) in compliance with the statutory guidance.

2. What Are Notifiable Events?

CHA will 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.

Appendix 1 provides examples of the type of Notifiable Event CHA will immediately inform SHR about and it is lifted from the Guidance.

The list is illustrative rather than exhaustive. As a general guideline, Notifiable Events are those that may:

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

What is 'material', 'significant' or 'exceptional' will depend on the nature of the event.

Whether an event is 'material' or 'significant' may depend on factors which are unique to each RSL including the size or complexity of the organisation.

CHA needs to consider the risk and potential impact on our organisation when deciding whether an issue is a Notifiable Event.

If it is unclear whether an event is a Notifiable Event, we will take further guidance directly from the SHR. If in doubt, SHR recommends that we notify them.

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

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

CHA will consider the impact of the issue or event on our compliance with the Standards of Governance and Financial Management and other regulatory requirements including compliance with our legal obligations.

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

We are also required to notify the SHR about the outcome of tenant consultation, of a ballot or written agreement, certain disposals of land, assets or leases, constitutional and organisational changes. These and the relevant timescales for notification as set out in the SHR's notifiable event guidance at Appendix 2.

3. Who Should Notify the Regulator?

In CHA the Chief Executive Officer (CEO) will inform SHR about a Notifiable Event which relates to performance and service delivery issues or financial and funding issues.

The Chair of the Board will tell SHR when the Notifiable Event relates to a governance or organisational issue, for instance if the CEO has left or if there are concerns about the senior officer or our Board.

The Chair must tell the Regulator about any changes relating to the Annual Assurance Statement.

The CEO is also responsible for notifying the SHR in relation to the disposals and changes set out in Appendix 2.

The Board is accountable and responsible for the effective management of CHA and should be aware of all Notifiable Events, even those which the CEO is responsible for reporting to the SHR.

In some cases, we may need to notify other organisations of a Notifiable Event, for instance our lenders, if it is a financial issue or where a loan agreement specifies that certain events require to be notified to them.

We will report to the Board on a monthly basis Notifiable Events which have arisen and the status until they are closed by the SHR.

4. What Information Does the Regulator Need and How Is It Submitted?

CHA will submit a Notifiable Event to the SHR through the Landlord Portal ('the portal'). The portal includes a template for completion which sets out the type of information the Regulator needs about each event. This includes:

What the significant event, disposal or change is;

- When it happened or is going to happen;
- Who is involved and/or affected;
- Whether there are equalities or human rights implications and how CHA is ensuring we meet our legal duties in these areas
- What we are planning to do or what action we have already taken; and
- When the governing body was informed/will be informed.

For notification of tenant consultation, we will refer to the Regulator's statutory guidance on Tenant Consultation and approval which explains the SHR's information requirements.

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

When SHR receives a Notifiable Event Notification through the portal their response target is within eight working days.

Where we may be unsure whether an event should be reported under Notifiable Events Guidance if it relates to an issue already noted in an Engagement Plan, we will seek further advice from our Regulation Manager.

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

5. Handling A Serious Complaint Against the Senior Officer

SHR requires all RSLs to inform them when there is a serious complaint, investigation or disciplinary action relating to the senior officer. Due to their nature and sensitivity, such issues have the potential to seriously damage the organisation and will be treated sensitively by the Board.

The SHR does not become involved in employment matters. Employment issues are for the Board as employer to resolve with the individual employee.

The SHR does need assurance that the Board will handle a serious complaint or grievance about its senior officer properly and will seek external advice and support to help it manage these.

CHA has effective governance systems that set out clear procedures for dealing with serious complaints or grievances about the senior officer and the governing body.

CHA will be open and transparent about the decision-making process.

When dealing with a serious complaint or grievance against the senior officer, the SHR will expect CHA to:

- Tell them about it, in accordance with its guidance on Notifiable Events; and
- Take prompt, independent and professional advice as appropriate to the individual complaint or grievance.

CHA will deal with and resolve minor issues informally, at a local level. The SHR does not expect to be notified about minor grievances.

The Chair of CHA will notify CHA's Regulation Manager if there is a formal serious complaint against the senior officer, for example serious allegations from an individual employee of bullying or harassment by the senior officer. The Chair will also tell SHR about how the Board intends to handle it.

If CHA gives the SHR information in confidence, this will be respected, provided it does not compromise SHR's ability to safeguard the overall interests of CHA, or the sector, or breach their legal obligations.

The SHR needs to be assured that CHA it is seeking independent professional advice to support it in handling the complaint.

The senior officer cannot provide advice to the Board due to the conflict of interest in managing a complaint against them. In such cases, the Board will seek external advice and support to manage the complaint and this advice is likely to be from EVH and/or CHA's solicitor.

The Board will act quickly when a staff member raises a serious grievance about the senior officer. For instance, if the grievance is about bullying or aggressive behaviour then the Board will be responsible for taking immediate action. Given the likely sensitive nature of the grievance, the Board will handle the complaint carefully with independent, expert support and advice. CHA will seek an employment/personnel specialist to assist, or a consultant with expertise in investigating such matters, where this is deemed necessary.

Where a serious complaint has been made against the senior officer by a Board Member or someone else who is not an employee, the Board will ensure that it is taking independent advice about how to handle the complaint and that the senior officer takes no part in any investigation.

CHA will apply the grievance procedures included within EVH's Statement of Terms and Conditions of Employment and Guidance Manual for handling discipline and grievance issues.

In the case of serious complaint against the senior officer, the Board will be informed and involved, rather than the Chair dealing with the complaint alone. The Board will normally establish a Working Group to be involved in the hearing and deciding on the grievance. In some cases, it may be more appropriate for the Board to commission an independent individual/organisation to conduct the investigation and report back to the Working Group. When there is an investigation, the Board will oversee the investigation and record all decisions to ensure transparency.

Where the decision is taken to investigate a serious complaint the Working Group Members will review the facts and recommend a course of action to the full Board.

This ensures:

- The Board retains full control over the CHA's affairs;
- The details of the grievance remain confidential (the individuals involved have the right to confidentiality);
- The full Board knows the grievance is being dealt with by the Working Group;
- If external help is required, 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 governing body who are untainted by detailed knowledge about the issue.

At the end of the process, the full governing body will be told about the outcome of the grievance and can approve any associated action.

If the SHR has concerns about the action the Board is proposing to take, or it appears that the senior officer is involved in advising the Board or in handling the grievance, then the SHR may act to support the Board to carry out its role effectively and properly.

6. When Should We Notify the Regulator?

CHA will alert the Regulator to a Notifiable Event as soon as is reasonably practical. Sometimes this will mean alerting them before an anticipated event happens so that they are aware in advance.

There should be no delay, for example, until after a scheduled Board Meeting. Where a major incident occurs, we will alert the SHR as soon as possible. The SHR does not expect an event to be completely concluded before the alert is made to them. In particular when we are considering a disposal or organisational change which requires us to consult tenants under the 2010 Act, we will notify the Regulator at an early stage of deliberations.

Where we have told the Regulator in our Assurance Statement that we meet Regulatory Standards and then find we are not, and we have not notified them of this, the SHR will engage with us to determine the significance of the non-compliance.

It is a serious matter if we have failed to tell SHR about a material or significant event or issue, or we have delayed notifying them of it and it will be treated as such.

SHR will engage directly with us to determine any action they may need to take. Where our regulatory status is shown as 'compliant', the Regulator may amend this to indicate that it is 'under review'.

Chapter 6 and 7 of the Regulatory Framework provides an explanation of how they will respond to serious concerns.

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

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

7. What Will the Regulator Do with The Information We Give Them?

CHA is responsible for managing our own organisation and for dealing with the events that occur.

Requiring us to tell SHR about certain events, does not transfer that responsibility to the Regulator.

CHA 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 SHR needs more assurance about how we propose to deal with an event, they will engage with us.

The SHR may inform, or ask us to inform, another regulator or authority if that is appropriate.

They may also ask us to get professional or impartial advice, for instance, legal, financial, or employment advice. Depending on the nature of the event, we will consider whether there are any matters that we need to report to the police. SHR will also report matters to the police if we suspect that an offence may have been committed.

If we give the Regulator information in confidence, they will respect that confidentiality, provided it does not compromise their ability to safeguard the interests of our tenants or the sector, or breach any legal obligations, for example, under the Data Protection Act and General Data Protection Regulation (GDPR), or where they are concerned that an offence may have been committed.

If a staff member, or Board Member is aware of a Notifiable Event which has not been submitted to SHR, they should report it through our Whistleblowing Policy. If this is not possible, or the attempt to report internally has been unsuccessful, they can report it directly to the SHR.

8. Policy Review

This policy will be reviewed every three years or at such times as new guidance is available.

Source: Scottish Housing Regulators Statutory Guidance – Notifiable Events (June 2019)

Appendix 1 - Examples of notifiable events

Governance and organisational issues:

- Any material changes 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, whether or not 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 safety; or where a regulatory or statutory authority, or insurance provider, has advised the RSL of concerns for example the Fire Brigade, etc
- Serious accidental injury to, or the death of a tenant in their home or communal areas; or 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 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
- 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

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.

Source: Scottish Housing Regulators Statutory Guidance – Notifiable Events

Appendix 2 - Notification of tenant consultation, disposals, constitutional and organisational change

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 an SST 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 us 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:

- a signed copy of the new constitution
- the date the constitution was or will be adopted
- 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 registered social landlord
- applying for an administrative order in respect of a registered social landlord which is a registered company
- appointing an administrator in respect of a registered social landlord which is a registered company.

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

<https://www.housingregulator.gov.scot/for-landlords/statutory-guidance/notifiable-events#section-10>