



Ark[®]
People
Housing
Care

Notifiable Events

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Owner:	Lyn Docherty	Job Title:	Head of Compliance & Improvement
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Version Control

Date	Owner	Version	Reason for Change
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 2019 Statutory Guidance and hyperlink added
	Additional reference to other relevant Policies and Procedures
	New Reference to the Whistleblowing Policy
2.0	Updated information to include reference to Group Subsidiaries, Standards of Governance and Financial and the Annual Assurance Statement
	Examples moved to Appendix 1

3.0	Hyperlink to SHR's Portal added in
	2 categories added in relating to Equalities and notifying the Governing Body
	Changed reference to Engagement Plan rather than Regulation Plan
	Addition of SHR's 8 working day timescale to respond
	New reference to the SHR's guidance on the documentation that needs to be provided and the timescales in which it should be provided
	Addition of reference to Section 72 of the Housing (Scotland) Act 2010
4.0	New Section detailing what happens after an event is notified
	Added in requirement to notify other regulatory bodies/the police
Appendix 1	Updated to reflect the examples given by the SHR in its 2019 Statutory Guidance

Notifiable Events



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1.0 Introduction

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](#) issued in February 2019, which provides more detail.

This procedure supports a number of Ark's Policies including the following:

G01 – Board Members Code of Governance

G02 – Code of Conduct for Board Members

G03 – Staff Code of Conduct

G08 – Risk Management

G11 – Entitlements, Payments and Benefits

G33 – Regulatory Standards Compliance

G34 – Equality Policy

G36 – Keeping People Safe

HS04 - Reporting of Incidents

This procedure 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

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 RSL staff member, 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.

2.0 What are Notifiable Events

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.

For notification of tenant consultation, we should refer to the SHR's Statutory Guidance Tenant Consultation and Approval which explains their information requirements.

Examples of notifiable events are listed in Appendix 1.

3.0 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 Senior 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://portal.scottishhousingSHR.gov.uk/>, 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.

4.0 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.

5.0 Implementation and Review

5.1 Implementation

The Head of Compliance & Improvement is responsible for ensuring that the Notifiable Events procedure is implemented when required.

5.2 Review

The Head of Compliance and Improvement will ensure that this procedure remains relevant and effective and is reviewed on a regular basis.

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
- 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 tests
- 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:
 - 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.