



# RCH Group Policy: Notifiable Events

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Approval Body	RCH Group Board
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## 1. Scope

- 1.1 This is a Group policy and therefore applies to Staff, Board and Committee members of The RCH Group (RCHG) of companies. As at March 2021, The RCH Group consists of River Clyde Homes and its subsidiary, Home Fix Scotland Ltd.

## 2. Introduction

- 2.1 The Scottish Housing Regulator issued updated guidance in February 2019 on the subject of [Notifiable Events](#). The guidance details the circumstances in which landlords should notify them about events that present a significant risk and this policy reflects the recent guidance changes.
- 2.2 The guidance on Notifiable Events is statutory guidance for RCHG to meet in relation to the requirements of Chapter 3 of the [Regulatory Framework](#) and obligations under the Housing (Scotland) Act 2010.
- 2.3 The Regulator is interested in events which put at risk:
- the interests or safety of tenants, people who are homeless and other service users;
  - the financial health of RCHG, public investment in RCHG, or the confidence of private lenders; and
  - the good governance and reputation of RCHG or the housing sector.
- 2.4 The Housing (Scotland) Act 2010 also requires that we notify the Regulator about certain disposals of land and assets, and constitutional and organisational changes.
- 2.5 The Regulator aims to apply a risk-based and proportionate approach to the way they regulate Registered Social Landlords (RSLs). They will only gather information that they need, to regulate effectively. RCHG is responsible for alerting the Scottish Housing Regulator to important events that pose a significant risk.
- 2.6 [Regulatory Framework 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 detail to the Board and staff, RCHG's policy in relation to informing the Regulator about significant events (Notifiable Events) in compliance with the Regulator's guidance.

## 3. Policy Statement and Responsibilities

### 3.1 What are notifiable events?

3.1.1 RCHG must 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.

3.1.2 The lists in Appendix 1 provide examples of the type of notifiable event we should immediately contact the Regulator about. They are illustrative rather than exhaustive. As a general guideline, notifiable events are those that may:

- Adversely 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 RCHG
- bring or risk bringing, RCHG into disrepute or raise public or stakeholder concern about RCHG or the social housing sector.

3.1.3 What is 'material', 'significant' or 'exceptional' will depend on the nature of the event and our organisation. Whether an event is 'material' or 'significant' may depend on factors such as the size or complexity of RSLs; so RCHG need to consider the risk and potential impact on our organisation when deciding whether an issue is a notifiable event. As only the most critical issues should be brought to the Regulator's attention, if we are unsure whether an event is a notifiable event, we will take further guidance directly from our Regulation Manager. He or She will be happy to discuss this and give us further advice. If in doubt, the Regulator recommends that we notify them.

3.1.4 Appendix 1 sets out examples of the type of events we must alert the Regulator about:

- governance and organisational issues
- performance and service delivery issues
- financial and funding issues
- additional events that the Regulator requires us to notify them about due to being a "systemically important" organisation.

3.1.5 As a group, we are required to notify the Regulator if we are exercising constitutional powers to 'step-in' to deal with serious problems in a subsidiary RSL.

3.1.6 RCHG 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 Regulator of any material changes to the assurances or supplementary information reported in our Annual Assurance Statement.

3.1.7 We are also required to notify the Regulator about the outcome of tenant consultation, certain disposals, constitutional and organisational changes and the timescales for notification as per the SHR's notifiable event guidance which is attached as Appendix 2.

### **3.2 Who should notify the Regulator?**

3.2.1 The Chief Executive should tell the Regulator about a notifiable event which relates to governance and organisational issues, performance and service delivery concerns or financial and funding issues. The Chief Executive can instruct for the notification to be made to the SHR by a member of the Governance & Executive Support Team.

3.2.2 The Chair of our governing body should tell the Regulator when the notifiable event relates to a conflict of interest for the Chief Executive, for instance if our senior officer has left or if there are concerns about our senior officer or our governing body. The Chair must tell the Regulator about any changes relating to the Annual Assurance Statement. The Chair can instruct for the notification to be made to the SHR by a member of the Governance & Executive Support Team.

3.2.3 Any staff member who is authorised by a member of the Senior Leadership Team to do so, can notify the Regulator in relation to the disposals and changes set out in Appendix 2.

3.2.4 Our Board is accountable and responsible for the effective management of the organisation, so should be aware of all notifiable events, even those which the senior officer is responsible for reporting to the Regulator. In some cases, we 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.

3.2.5 Where this affects a subsidiary RSL of RCHG, as the parent, will must notify the Regulator and tell it what we are doing to ensure that it is resolved. We will check the [Group Structure and Constitutional Partnership](#) guidance for further information.

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

3.3.1 RCHG should submit a notifiable event to the Regulator through the Landlord Portal ('the portal'). The portal includes a template for us to complete which sets out the type of information the Regulator needs about each event:

- 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 we are 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 Board was informed/will be informed.

3.3.2 For notification of tenant consultation, we will refer to the [Regulator's Statutory Guidance Tenant Consultation and Approval](#) which explains the regulator's information requirements

3.3.3 For notifiable events about disposals, and constitutional or organisational changes, we will include details of the change and will confirm that we have complied with [Regulatory Standard 7](#).

3.3.4 When the Regulator receives the notifiable event through the portal, they will aim to respond within eight working days.

3.3.5 Where we may be unsure whether an event should be reported under notifiable events guidance, if it relates to an issue already noted in our Engagement Plan, we will seek further advice from the Regulator. This is reviewed annually by the Regulator.

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

### **3.4 When should we notify the Regulator?**

3.4.1 RCHG 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 it is 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 Regulator as soon as possible. The Regulator requires us, to not wait until an event is completely concluded before we alert them to it. 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.

3.4.2 Where we have told the Regulator in our Assurance Statement that we are meeting the Standards of Governance and Financial Management and regulatory requirements and they find this is not the case, and we have not notified them of this, the Regulator will engage with us to determine the significance of the non-compliance. It is a serious matter if we have failed to tell the Regulator about a material or significant event or issue, or we have delayed in notifying them of it and it will be treated as such.

3.4.3 The Regulator 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 review this if the issue is sufficiently serious as to impact on our compliance with regulatory requirements or the Regulatory Standards of Governance and Financial Management. Chapters 6 and 7 of the [Regulatory](#)

[Framework](#) provide an explanation of how they will respond to serious concerns.

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

3.4.5 Further information on timescales for notifications of disposals and constitutional changes can be found in the SHRs Appendix 2.

### **3.5 What will the Regulator do with the information we give them?**

3.5.1 RCHG is responsible for managing our own organisation and for dealing with the events that occur. The requirement to tell the Regulator about certain events does not transfer that responsibility to the Regulator. RCHG is expected to have an effective strategy in place to deal with the event. We need to satisfy the Regulator that the action we take will protect the interests of our tenants and other service users.

3.5.2 If the Regulator needs more assurance about how we propose to deal with an event, they will engage with us.

3.5.3 The Regulator 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. The Regulator will also report matters to the police if they suspect that an offence may have been committed.

3.5.4 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 Regulations (GDPR), or where they are concerned that an offence may have been committed.

### **3.6 RCHGs' internal policies and procedures**

3.6.1 Our internal policies and procedures should reflect the requirement to alert SHR to notifiable events in accordance with the Regulator's guidance. No matter how we choose to reflect notifiable events within our policies and procedures, senior staff and governing body members should understand the notifiable events requirement and assure themselves, and the Regulator, that we are complying with this through our Annual Assurance Statement.

3.6.2 If a staff member, or governing body member is aware of a notifiable event which has not been submitted to the Regulator, they should report it within the organisation through our [whistleblowing policy](#). If this is not possible, or the

attempt to report internally has been unsuccessful, they can “whistleblow” directly to the Regulator. ([SHR Information about whistleblowing](#))

### **3.7 Links to other guidance**

- 3.7.1 [Tenant consultation and approval](#): see SHR’s separate regulatory guidance on tenant consultation and approval for proposals to sell or transfer tenanted homes, which require us to consult tenants under the 2010 Housing (S) Act.
- 3.7.2 [Whistleblowing internal procedure management](#): The Regulator has produced a separate advisory guidance and a fact sheet about how we should deal with Whistleblowing. Whistleblowing is when someone within RCHG believes that there has been improper conduct in our organisation and reports this to someone within RCHG who is in a position to deal with it, for example the Chief Executive or a Senior Officer. If there has been whistleblowing within our organisation, we will notify the Regulator about the allegations and tell them about how we are responding to the issues.
- 3.7.3 [Section 72](#): The Regulator has issued guidance on Section 72 of The Housing (Scotland) Act 2010. This places a duty on external auditors and reporting accountants to disclose events of material significance to them. If we are aware that an auditor has reported an issue to the Regulator under Section 72, we do not need to report this issue as a notifiable event. This is because the Regulator will ask for any additional information from us should they need it.
- 3.7.4 [Group Structures and Constitutional Partnerships](#): The Regulator has produced separate statutory guidance on Group Structures and Constitutional Partnerships.
- 3.7.5 [Annual Assurance Statement](#): the Regulator has issued statutory guidance for the completion of the 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.

## **4. Equality Impact Assessment**

- 4.1 An EIA has been undertaken. RCHG will apply this policy fairly and consistently. In implementing it we will not directly or indirectly discriminate against any person or group of people because of their race, religion or belief, gender, disability, age, sexual orientation or on any other grounds. Our commitment to equality and fairness will apply irrespective of factors such as age, disability, gender reassignment, sex, sexual orientation, or other personal attributes.



## **5. Review**

5.1 This policy will be reviewed in its entirety every 3 years, unless an earlier review is required due to changes in legal, regulatory or best practice requirements, or because monitoring and reporting reveals that a change in policy is required sooner.

## Appendix 1 - Examples of Notifiable Events

### **Governance and Organisational Issues:**

- Any material change to the assurances and supplementary information contained in the Annual Assurance Statement
- The membership calls a special general meeting
- Removal of any governing body member by RCHG
- Resignation of governing body members for non-personal reasons
- The membership of the governing body falls, or is going to fall, to seven or less
- Serious complaint, allegation, investigation, or disciplinary action about a governing body member
- A breach of RCHG's code of conduct by governing body members
- Resignation or dismissal of RCHG'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 (CEO) – Refer to 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 RCHG
- Plans to set up a non-registered subsidiary
- Potentially serious breach of statutory or common law duties by RCHG 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 RCHG which may have significant consequences for RCHG in the event of success
- Serious failure of governance within the RCHG'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 RCHG
- Breach 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 notified its concerns for example the Fire Brigade, etc.
- Serious accidental injury or death of a tenant in their home or communal areas:
  - o where there has been a service failure by RCHG;

- o Where there has been a failure, or perceived failure, in how RCHG has assessed and managed risk; or
  - o which could potentially affect other tenants' confidence in us as the landlord and our reputation
- Major failure of key service delivery arrangements (for example, repairs cannot be carried out because a contractor goes into liquidation)
- Breaches of ballot commitment to tenants or stock transfer contractual agreement
- Adverse report by statutory agencies, regulators, inspectorates (or similar) about RCHG (for example a Care Inspectorate report with a 'weak' or 'unsatisfactory' grade or an upheld Care Inspectorate complaint)
- A significant natural disaster for example, fire, flood or building collapse which affects RCHG's normal business
- Serious or significant adverse media reports, or social media interaction, which could potentially affect tenants' confidence in RCHG or that is damaging to the reputation of RCHG.

#### **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 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 RCHG or our 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 RCHG's with significant care elements in their business, where a local authority withdraws funding.
- Change of internal or external auditor

#### **Additional issues that the Regulator requires systemically important like RCHG, to notify them about:**

- Any change in senior staff
- Any material variation in the business plan or strategic direction of the organisation
- Any problems in relationships with key stakeholders for example local authorities or funders.

**Please note: These lists are illustrative not exhaustive.**

## **Appendix 2 - Notification of tenant consultation, disposals, constitutional and organisational change – see SHR full guidance note.**

In summary, this relates to:

Tenant consultation – outcome of a ballot or written agreement

Disposal of land and assets – (notify as soon as possible or within 28 days for SST transfers). Disposals relate to:

- Sale of tenanted social housing dwellings
- Granting security over social and non-social housing dwellings land or other assets
- Sale or excambion of untenanted social and non-social housing dwellings, land or other assets over £120,000
- Lease of social housing dwellings
- Lease of roof space of residential, tenants' properties for renewable energy sources (e.g. solar panels or telecommunications including aerials)
- Lease of residential property to an RSL, group subsidiary or any other body for market or mid-market rent or other non-social housing purpose (except leased to local authority for temporary accommodation for people who are homeless)
- Any other disposal which could have significant implications for tenants or other service users.

Constitutional and organisational changes including:

- Change of name, office or constitution
- Restructuring of society or company
- Voluntary winding up or dissolution of a society
- Converting a company into a registered society
- Entering into a company voluntary arrangement
- Voluntary winding up of a company
- Becoming a subsidiary of another body

We will also be required to notify the Regulator under s73 of the 2010 Act if we take certain other steps towards insolvency. Those steps are:

- Presenting a petition for the winding up of RCHG
- Applying for an administrator in respect of RCHG as a registered company
- Appointing an administrator in respect of RCHG as a registered company

## Appendix 3 - Handling a serious complaint against the Chief Executive of RCHG

### Purpose

1. The Regulator requires us to tell them when there is a serious complaint, investigation or disciplinary action relating to our 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 our organisation. The Regulator's experience of these cases has shown them that if our Board does not have a clear process to deal with matters like this then the Board can get into difficulties and the original issue can be made worse by the complaint being handled inappropriately. This note sets out the Regulator's regulatory expectations so that we can deal properly with this type of situation.

### Notify Scottish Housing Regulator (Regulator)

2. We should deal with and resolve minor issues at a local level, and we do not need to notify the Regulator about those.
3. The Chair should notify the Regulator if there is a formal **serious** complaint against the Chief Executive, for example serious allegations from an individual employee of bullying or harassment by the Chief Executive. The Chair should tell the Regulator how the Board intends to handle the complaint.
4. The Regulator recognises the highly sensitive nature of such serious complaints. If we give the Regulator information in confidence, they will respect that confidentiality, provided it does not compromise their ability to safeguard the overall interests of RCHG or the sector or breach a legal obligation to disclose that information.
5. Employment issues are for our Board as an employer to resolve with the individual employee. However, the Regulator does need to be assured that the Board will handle a serious complaint or grievance about our Chief Executive in a manner that is compliant with regulatory standards and that we will get external advice and support to help the Board manage these situations and discharge its employment responsibilities fully and properly.
6. RCHG should have effective governance systems that set out clear procedures for dealing with serious complaints or grievances about our Chief Executive and the role of the in those procedures. The Regulator expects us to be open and transparent about our decision making processes for handling such matters.
7. When dealing with a serious complaint or grievance about our Chief Executive, the Regulator expects us to:
  - tell them 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**

8. The Regulator needs to be assured by the Board that we will seek independent professional advice to support us to handle the complaint. In normal circumstances it is the Chief Executive who provides advice to the Board. However, where it is the Chief Executive who is the subject of the serious complaint or grievance, he or 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 should obtain appropriate advice and support to manage the complaint.
9. Our 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 our Board must take immediate action. Given the likely sensitive nature of the grievance, it should be handled carefully with independent, expert support and advice. RCHG will need to get an employment/personnel specialist to assist or a consultant with expertise in investigating such matters. We must ensure that our investigation of the complaint, and any subsequent action, complies with our legal duties, including those in relation to equalities and human rights.
10. Where a serious complaint has been made against the Chief Executive by a Board member or someone else who is not an employee, then our Board should ensure that we are taking independent advice about how to handle the complaint and that the Chief Executive takes no part in any investigation other than co-operating with the investigator.

### **Have clear procedures**

11. We must have clear procedures setting out how we will investigate serious complaints or grievances against the Chief Executive. RCHG will apply good practice in dealing with the grievance and to meet the Regulator's expectations as set out in this note. Our process is as outlined below:
  - 11.1. The Remuneration and Nominations (R&N) Committee, which is a sub-committee of the RCH Group Board, has delegated authority to deal with human resource matters or consider serious staff complaints. In the case of a serious complaint against the Chief Executive, the R&N Committee will be informed and involved, rather than the RCH Group Chairperson dealing with the complaint alone. The R&N Committee is likely to be involved in hearing and deciding on the grievance. However, in some cases, it may be more appropriate to commission an independent party to conduct the investigation and report back to the R&N Committee. Where there is an investigation, then the R&N Committee must oversee the investigation and record all decisions to ensure transparency.

11.2. Where the decision is taken to investigate a serious complaint, then the full governing body should be informed but will not be told any of the detail. This is to ensure that:

- the full governing body retains control over RCHG'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 R&N Committee;
- if RCHG 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 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.

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

### **The Regulator's involvement**

12. If the Regulator has concerns about the action our Board is proposing to take, or it appears that the Chief Executive is involved in advising the Board or in handling the grievance, then the Regulator may need to act to support the Board to carry out its role in accordance with regulatory standards.