



THE SCOTTISH HOUSING REGULATOR

Governance Matters

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Introduction

1. A big part of our regulatory work with Registered Social Landlords (RSLs) is dealing with everyday issues that in some cases have become problems. This isn't as public a part of our regulation work as inspection, but it is important in protecting the interests of tenants. This report offers an insight into how we work with an RSL when things have gone wrong. The cases in this report reflect the routine, and usually short-term, cases that we get involved in. We haven't included the serious, long-term cases where we undertake significant intervention. We hope to issue a separate report in the future that will focus on those.

Why governance matters

2. Most of the problems in this report arose because there was some weakness in the governance of the RSL. The key to being able to deal well with problems is having a strong governance framework. By this we mean all the elements that go towards an RSL having strong, effective and accountable leadership and control; with a governing body and senior staff with the right skills and knowledge, who work well together, and direct the organisation to do the right things.
3. But these problem cases shouldn't paint a negative picture of the RSL sector. They are isolated incidents in the context of a successful sector that performs well overall. The majority of RSLs are well-governed organisations, getting on with managing their businesses and making good decisions. But even the most successful organisation has to be ready for when things go wrong. We hope the governance lessons from this report will prompt you to review your own governance framework, and identify where there are potential weaknesses that need to be addressed.

Regulatory cases

4. We have pulled together examples of typical, real-life cases we have dealt with, grouped around some common themes. The cases and RSLs described here are drawn from the whole sector, and there is no correlation between particular types of problems and certain types of RSLs. We have made all the case studies anonymous as this study isn't about naming and shaming individual RSLs. But the cases are practical and relevant, and present real-life situations that will be directly applicable to many other RSLs.

5. The subjects included in this report are about:
 - a. investigating breaches of the code of conduct.
 - b. recruiting a new senior member of staff.
 - c. seeking and taking independent advice.
 - d. the procurement and management of agency services.
 - e. handling complaints properly and positively.

6. In each section, we have set out what the subject is, then described in the individual case studies what the issue was in each organisation, our involvement, and how it was resolved. We include in each section the specific lessons learned from these particular cases, what our general regulatory expectations are, and references to where there is more detailed advice and good practice available.

7. There were various reasons for us being involved in these cases. In some of them the RSL itself contacted us for advice, or told us about an event that had happened, or it came to our attention through an inspection. Sometimes we got information about an event from another source.

Our approach - risk and proportionality

8. Our involvement in these cases was based on our assessment of the risk arising from the problem. Generally our concerns arose because we weren't confident that the RSL was handling the issue properly and making decisions in the overall best interests of the organisation and its tenants. Sometimes the RSL was only looking at an issue from a limited perspective and was not taking account of the other negative consequences of what it was doing.

9. We were concerned about the risk of damage to the RSL and to the reputation of the sector because of the actions it was taking, or was not taking, to deal with an issue. In these circumstances, we needed to step in to protect tenants' interests and to ensure other stakeholders continued to have confidence in the RSL sector.

10. We targeted our action in proportion to the scale of the problem, the nature of the risk and the response of the RSL. In these cases, our actions ranged from asking the RSL to develop appropriate policies and procedures to placing statutory appointees on the governing body.

11. In a minority of these cases the problems that emerged became so serious that we had to intervene, but in most we were able to work co-operatively with the RSL to resolve them. We want to work positively with RSLs to sort out any problem, and to give our support where the RSL is committed to tackling the problem properly.

Our expectations

12. We have two fundamental expectations that apply across all these subjects, so we haven't listed them under each one. The first is that RSLs are open and transparent about their policies, procedures and decision-making processes. This helps tenants, governing body and staff members, and the regulator, to understand the actions and decisions of the RSL and it supports the RSL in being accountable to others. The second important expectation is that RSLs consider the implications for equal opportunities and diversity in how they handle all of these subjects. As employer and landlord, the RSL must make sure it is treating people fairly and with respect in everything that it does.
13. It is for each RSL to decide how it is going to run its business based on its local context and individual circumstances. But in making business decisions we do expect RSLs to be aware of the legislation, Performance Standards, regulatory guidance and good practice and to apply them in their own organisations.

Lessons for the future

14. We have found that if an organisation agrees to work with us to sort out the problem, then our involvement can be positive and shorter. In some cases we can agree that the organisation takes independent advice and gets external, expert support to help it out of its difficulties. In these situations, we would normally expect the organisation to agree the brief and choice of advisers with us.
15. Where the organisation demonstrates it is taking the problem seriously and is committed to tackling it, it is able to retain more control of the situation and is able to come to its own solution with less direction from us. If the problem isn't acknowledged by the organisation and it is defensive and doesn't co-operate with us, then the problem will take longer to resolve and we will be involved for longer. We must be able to protect tenants' interests and where the RSL won't work with us to

achieve that, it may put us in a position where we have no alternative but to use statutory powers to intervene.

16. In our experience when we get involved because of one particular problem, it is sometimes the case that other issues emerge. When we are trying to get to the bottom of a problem and understand it, we can sometimes find that it is linked to other difficulties in the organisation. This means we need to be satisfied that the RSL has a solution that will deal not only with the original problem but also with any related issues or underlying organisational weaknesses that allowed the problem to arise. But we don't want to be involved in the RSL for any longer than necessary and as soon as we are confident that the risk is being managed then we will withdraw.

Lessons for the regulator

17. We have also reflected on what we can learn from our responses to these cases. In some cases we should have stepped in sooner to support the RSL in what it needed to do. Also in some cases, with hindsight, we should have intervened to make sure the right things were done rather than relying on the RSL itself. For us as a regulator we have to be sure that the RSL is both able and willing to tackle the problem.
18. In April 2007 we issued statutory guidance setting out the type of events that we expect an RSL to notify us about. This was partly in response to some problem cases we had been involved in where the RSL had not alerted us to significant events.

Case study terms

19. We have only provided as much information in the case studies as is needed to describe the problem and what happened. We use the term *governing body* to refer to the management committee or board and we use the term *senior officer* to refer to the chief executive, director or senior member of staff. We have also referred to governing body members and staff in the masculine throughout, rather than specifying the gender of individuals.

Conclusion

20. This report offers an opportunity to share experiences from a range of RSLs and help your RSL to avoid, or be more prepared and able to deal with, some of the difficulties identified. We expect governing body members and staff to read this report and think about how they can apply the practical advice set out here in their own organisations to strengthen and improve governance. And if a problem emerges don't hesitate to speak to us; we can talk it through with you.

Code of Conduct

Investigating an alleged breach by a governing body member

Introduction

1. RSLs must have a Code of Conduct in place to set out the standard of conduct that individual members of the governing body are expected to meet, in order to uphold the values of honesty, integrity and good governance. Collectively, governing body members also have corporate responsibility for their actions. They must act in the best interests of the RSL, independent of any outside interests or activities. This is vital to maintain the good reputation of the RSL sector.
2. This section looks at issues faced by organisations when dealing with alleged breaches of their Code of Conduct.

Case Studies

Case Study - RSL A

A serious breach of RSL A's code of conduct led to legal expense and showed that governing body members needed further training.

A member of RSL A's staff contacted us to tell us about a possible breach of the code of conduct by a governing body member. The governing body member had acted as legal representative for an individual who was claiming against a partner RSL. The governing body member had not declared a conflict of interest but accepted that there was one. The member did not understand that it was his duty to act in the interests of RSL A at all times. RSL A had no clear procedures in place to set out how it would investigate alleged breaches of the code of conduct.

We referred RSL A to our Regulatory Code of Governance and asked it to formally notify us of the process it would follow to investigate this matter.

RSL A obtained legal advice from independent solicitors, who confirmed that there had been a breach. A special meeting of the governing body decided to formally reprimand the member, who accepted that he had breached the code. Other members asked for clarification in relation to conflicts of interest, which indicated that there was a general training need.

Had the governing body member understood the requirements of the code of conduct more clearly this situation may not have arisen. It resulted in additional work for staff and

governing body members, legal expense and potential risk to the RSL's reputation. RSL A arranged detailed training on the code of conduct, conflicts of interest and our Regulatory Code of Governance for all governing body members. We also required it to develop procedures for investigating any future breaches.

Case Study - RSL B

RSL B faced a difficult situation when it had no clear procedure for dealing with a governing body member's breach of the code of conduct.

A governing body member allegedly suggested at a public meeting that RSL B was favouring one local Councillor at the expense of others, by holding an annual event in that Councillor's constituency. The Chair of the governing body was a well-known supporter of that particular Councillor, and was present at this meeting. The RSL felt that this public criticism by one of its own governing body members could have damaged its reputation, and that the governing body member had potentially breached the RSL's code of conduct by speaking out against the organisation at a public meeting.

So office bearers, including the Chair, decided to investigate whether there had been a breach of the code of conduct. RSL B had no procedure to set out how investigations should be handled. The incident was not reported at the next meeting of the governing body, and it had little involvement in the investigation. As a result, the Chair's potential conflict of interest was not identified, and he led the investigation.

The Chair and chief officer requested a meeting with the member who had been accused of acting improperly, to discuss the alleged breach. The allegations were not set out clearly in this correspondence. When the meeting took place, the governing body member challenged the way in which the RSL was handling this matter.

The situation escalated because there was no clear procedure and this made it more difficult to show that the investigation was fair and impartial. RSL B contacted us to make us aware of the difficulties it was facing. We had a number of concerns about the process that it had followed, and worked with it to agree an appropriate way forward. After further meetings and correspondence, the governing body member acknowledged that he had not fully understood the requirements of the code of conduct and that he had acted inappropriately. The RSL arranged further training to address this. We asked RSL B to review its procedures to make sure that future breaches would be dealt with in line with good practice.

Lessons learned

- RSLs must have clear procedures to set out how they will investigate alleged breaches of their code of conduct by governing body members. In the event of an alleged breach, these procedures must be followed.
- The governing body, or a sub-committee, must oversee the investigation and record all decisions to ensure transparency.
- Any governing body member or employee who has a potential conflict of interest must declare this, and must not be involved in any part of the process.
- In some cases, it may be more appropriate to commission an independent party to conduct the investigation and report back to the governing body.
- The individual concerned must be given full details of the allegation made against them and the RSL's procedure for dealing with this. They must be given an opportunity to respond to the allegations.
- RSLs must make sure that their governing body members have a good understanding of the requirements of the code of conduct, and how to apply these standards in practice.

Regulatory expectations

3. We expect all RSLs to:
 - Adhere to a clear code of conduct that complies with Performance Standards, the Regulatory Code of Governance and the RSL's own constitution.
 - Ensure that governing body members fully understand the requirements of the code of conduct and receive adequate training on this.
 - Have clear complaints and whistleblowing policies to ensure that breaches of the code of conduct can be reported effectively to the governing body.

- Notify the Scottish Housing Regulator about any alleged breach of the code of conduct by a governing body member.
- Report an alleged breach to the police if it involves fraud or other criminal allegations.
- Investigate all alleged breaches of the code of conduct and have clear procedures to detail how it will carry out investigations. The procedures must set out what will happen if the investigation confirms that there has been a breach, circumstances that will result in removal of the governing body member, and the process to be followed for removal.
- Make sure that investigations are handled in an open and transparent way. In some circumstances, it may be more appropriate to appoint an independent party to conduct the investigation. Any decisions relating to breaches of the code of conduct must be made at a meeting of the governing body or delegated sub committee, and must be recorded clearly to ensure transparency.
- Take action to deal with all breaches of the code of conduct by governing body members, in line with the RSL's procedures and the requirements of the Regulatory Code of Governance.
- Comply with anti-discrimination legislation, the RSL's Equal Opportunities and Diversity policy and its Dignity at Work policy.

References and further advice

Statutory Guidance

Our regulatory expectations are set out in published statutory guidance. [SHR 17 Notifiable events](#) sets out the type of events which we expect RSLs to tell us about. Other relevant guidance is:

[Performance Standards](#)

Guiding Standard 1 - Planning and Managing Performance

1.2 *We have high-quality written policies and procedures to guide our actions.*

Guiding Standard 4 - RSL Governance and Financial Management

4.3 *We conduct our affairs with honesty and integrity and demonstrate the values of good governance through our behaviour. We promote clear values for the whole organisation.*

SHR 16 Regulatory Code of Governance and **Supporting guidance**

2.2 *Governing body members must always act in a personal capacity and in the best interests of the RSL and its tenants and service users. They must not act as representatives of any other organisation or interest group.*

3.1 *The RSL promotes clear values that guide its activities. Governing body members and employees put these values into practice through their behaviour.*

3.2 *The RSL upholds and applies the principles of equality and diversity in all areas of its work, including its governance arrangements.*

3.3 *The RSL conducts its affairs with honesty and integrity. Through its actions, it maintains the good reputation of the RSL sector.*

3.3.1 *Governing body members and employees give a written undertaking to act in accordance at all times with the RSL's code of conduct, which should exemplify good governance and reflect legal and regulatory requirements. Alleged breaches of the RSL's code of conduct are investigated fully.*

3.3.2 *Where a governing body member has seriously breached the RSL's code of conduct, they should be removed from the governing body upon a decision by the remaining members of the governing body. A serious breach by an employee should be dealt with using the RSL's disciplinary procedures.*

3.4 *The RSL complies with the law and related regulatory guidance relating to payments and benefits.*

3.5 *Any conflicts of interest that governing body members and staff may have are declared and managed openly and appropriately.*

6.7 *Employees and governing body members are able to raise concerns if they believe that there has been fraud, corruption or other wrongdoing within the RSL.*

Good Practice

Advice on good practice is available from the following sources:

Advice

The Scottish Federation of Housing Associations

www.sfha.co.uk

Employers in Voluntary Housing

www.ev.org.uk

Useful references

Code of Conduct and Model Acceptance Form
Scottish Federation of Housing Associations (2007)

Model Policy and Procedures on Dealing with Breaches of Code of Conduct
Scottish Federation of Housing Associations (2007)

Competence and Accountability 2004: Code of Governance
National Housing Federation (2004)

Good Governance: A Code for the Voluntary and Community Sector
National Council for Voluntary Organisations (2005)

Committee Members' Handbook
Employers in Voluntary Housing (2003)

Committee Members' Handbook
Scottish Federation of Housing Associations (2003)

Guidance for Charitee Trustees: Acting with Care and Diligence
Office of the Scottish Charity Regulator (2006)

The Good Governance Standard for Public Services
The Independent Commission on Good Governance in Public Services (2005)

The Code of Conduct for Councillors
The Standards Commission for Scotland (2002)

On Board: A Guide for Board Members of Public Bodies in Scotland
Scottish Government (2007)

Change at the top

Recruiting a new chief executive or director

Introduction

1. Appointing a new chief officer of an RSL is one of the most important decisions that governing body members will make. Getting the right candidate is critical for the continued success of the organisation. The chief officer has a crucial role in ensuring an effective working relationship between the governing body and senior officers and in providing strong leadership for staff.
2. This section looks at issues faced by organisations when they have had to recruit a new chief officer.

Case Studies

Case Study - RSL C

RSL C did not follow a proper process for the selection of an interim chief officer and breached Schedule 7.

The chief officer of RSL C was on long-term leave and the governing body decided to fill the post on an interim basis. The governing body members approached several consultants who they believed had the required skills and experience, to see if they were interested. The post was not advertised. The consultant who was selected was a close relative of a governing body member. The chief officer then left the RSL's employment but it did not put plans in place to recruit to a permanent post.

We became aware of this situation when we inspected the RSL. As well as being contrary to good practice in recruitment, this was also a breach of Schedule 7 of the Housing (Scotland) Act 2001, which restricts the payments and benefits that RSLs can grant to close relatives of governing body members.

We were very concerned about this situation as it had the potential to damage RSL C's reputation and the reputation of the sector. Also, by selecting an interim chief executive from a limited pool of candidates, the RSL had not made sure it was getting the best quality of candidate. The recruitment process had not been open and transparent and the governing body member could be seen to have used his position inappropriately.

We told RSL C that it should end the contract with the interim chief officer and proceed to publicly and competitively recruit a new chief officer. The RSL agreed to do so, and to seek assistance from Employers in Voluntary Housing (EVH). We also recommended that two voluntary members be co-opted on to the governing body to support it with the other areas for improvement identified in the inspection report.

Case Study - RSL D

Recruitment of a new chief officer at RSL D was delayed, due to reluctance to follow good practice guidance.

We were made aware that the chief officer of RSL D had resigned. We contacted RSL D to ask about its recruitment plans. The governing body had decided to recruit internally and appoint someone the members already knew that they could work with productively. The governing body believed that there were several suitable internal candidates. RSL D had contacted Employers in Voluntary Housing (EVH) who had told it that this was contrary to good practice, but it had decided to proceed.

We were concerned about this approach as it was not open and transparent, did not meet equalities standards, was not maximising the opportunity to get the best qualified candidate, and could have damaged RSL D's reputation. We were particularly concerned about the RSL's reluctance to follow good practice.

Before the recruitment process started, we discussed with the Chair the importance of complying with the model staff recruitment and selection procedures published by EVH. We told the RSL that the process must be accessible to all suitably qualified applicants to attract the best possible candidates for the job, and set out our concerns and expectations in a detailed letter to the full governing body.

The governing body reconsidered the matter and decided to go to an external recruitment process. Had it done so initially the new chief officer would have been in position sooner, saving time and cost, reducing organisational uncertainty and avoiding the need for us to intervene.

Case Study - RSL E

RSL E appointed an internal candidate as chief officer for an interim period, but its future plans were not clear.

We were alerted to the fact that the chief officer had left RSL E. We contacted it to ask for details of any interim management arrangements and the proposed recruitment process.

The governing body had carried out a strategic review of staffing within the RSL and had decided to combine the chief officer and another senior management post into one. The remaining post-holder had already been appointed as the new acting chief officer for an interim period. This resulted in a considerable financial saving for the RSL. RSL E intended to review the structure again at the end of the interim period.

We were concerned because this interim recruitment process was not open or accountable and good practice guidance was not being adhered to. We told RSL E that we would expect it to advertise the post externally at the end of the interim period.

Lessons learned

- All permanent RSL chief officer jobs must be advertised externally as well as internally. Any appointment which is not advertised externally lacks legitimacy, is not transparent, runs counter to equal opportunities principles, is open to challenge and above all, may not lead to the best possible appointment.
- However good internal candidates may appear to be, they must be subject to an open selection process so that their quality can be shown to have been tested against the best possible internal and external field.
- The governing body should always consider taking independent, expert advice when recruiting to the chief officer post.

Regulatory expectations

3. We expect all RSLs to:

- Notify us if the chief officer intends to leave or has left. This is so that we can be reassured that it is putting interim management arrangements in place, and that it is following a proper recruitment process.
- Regularly review its staffing and consider future options in detail. The governing body must consider the strategic direction, vision and future of the RSL and whether it needs to continue as a separate organisation. It should consider whether the chief officer post needs to be filled. If the post is to be filled, the governing body must review the job description and specification to make sure that it covers the required knowledge, skills and experience.
- Comply with anti-discrimination legislation and the RSL's equal opportunities and diversity policy. Ensuring equality of opportunity through open recruitment processes will allow employers to reach the broadest range of candidates and find the best person for the job. The decision must be based on a person's abilities, skills, experience and qualifications to do the job effectively.
- Make sure that recruitment to the chief officer post is by open competition using external advertising. The recruitment process is a very public advertisement for the individual RSL but also for the wider reputation of the sector so it must be fair, open and transparent.
- Comply with good practice when recruiting to any vacant post.

References and further advice

Statutory Guidance

Our regulatory expectations are set out in published statutory guidance. [SHR 17 Notifiable events](#) sets out the type of events which we expect RSLs to tell us about. Other relevant guidance is:

Performance Standards

Guiding Standard 2 – Social Inclusion

2.1 *We embrace diversity, promote equal opportunities for all and eliminate unlawful discrimination in all areas of our work.*

Guiding Standard 4 - RSL Governance and Financial Management

4.2 *Our governing body exercises proper control over our activities and makes informed, transparent decisions in the best interests of the organisation and its service users. We work effectively with senior staff, or agents, to bring strong overall leadership to the organisation. We develop the capacity and capability of the governing body and senior officers to be effective.*

SHR 16 Regulatory Code of Governance and Supporting guidance

2.7 *The governing body arranges for the supervision, support, remuneration and appraisal of the RSL's senior officer. The governing body receives objective professional advice on matters where it would be inappropriate for the senior officer to advise them.*

3.2 *The RSL upholds and applies the principles of equality and diversity in all areas of its work, including its governance arrangements.*

3.3 *The RSL conducts its affairs with honesty and integrity. Through its actions, it maintains the good reputation of the RSL sector.*

5.1 *The governing body and senior officers have the skills, knowledge, experience and resources needed to provide capable leadership and control, taking account of the RSL's objectives and governance needs.*

Good Practice

Communities Scotland, the Scottish Federation of Housing Associations, the Chartered Institute of Housing, and SHARE all supported the development of model staff recruitment and selection procedures by Employers in Voluntary Housing. This provides a clear and straightforward guide to filling vacant posts on a fair and equitable basis and complies with Performance Standards. Advice on good practice is available from the following sources:

Advice

Employers in Voluntary Housing

www.evh.org.uk

Equality and Human Rights Commission

www.equalityhumanrights.com

Chartered Institute of Personnel & Development www.cipd.co.uk

Association of Chief Executives of Voluntary Organisations

www.acevo.org.uk

Useful references

Model Staff Recruitment & Selection Procedure
Employers in Voluntary Housing and Positive Action in Housing (2005)

Recruitment & Induction Advisory Booklet-
ACAS www.acas.org.uk

Statutory Code of Practice on Racial Equality in Employment
Commission for Racial Equality

Essential Guide to Contracts of Employment
Association of Chief Executives of Voluntary Organisations (2005)

Essential Guide to Recruiting
Association of Chief Executives of Voluntary Organisations (2005)

Essential Guide to Recruiting a Chief Executive, Chair and Trustee
Association of Chief Executives of Voluntary Organisations (2005)

Being informed

Obtaining and following independent advice

Introduction

1. RSLs regularly require the expertise and advice of external parties such as legal experts, financial advisors or consultants. Obtaining independent advice will often form part of an RSL's risk management strategy.
2. This section looks at difficulties that can be faced by organisations when they do not seek or follow appropriate independent advice.

Case Studies

Case Study - RSL F

RSL F did not take legal advice when it should have, resulting in a serious breach of Schedule 7.

RSL F's external auditor identified a potential breach of Schedule 7 of the Housing (Scotland) Act 2001 during a routine visit and told the senior officer, who contacted us. The RSL had made one-off bonus payments to all staff, following a period of staff review and restructuring. At that time, the former senior officer had been asked by the governing body to seek professional advice as to the legitimacy of the payments. The RSL told us that the former senior officer confirmed to the governing body that he had done so, and that this was permitted. However, it later appeared he had not taken advice.

We were concerned about this situation and investigated the matter fully. RSLs may not normally provide bonus payments to a relevant person (as defined by Schedule 7) unless expressly provided for in their contract of employment. It probably made good business sense to RSL F to make these payments, in order to aid staff retention and boost morale. However this was a serious breach of Schedule 7.

By failing to obtain appropriate advice, the former senior officer risked the RSL's reputation. These payments could be viewed as an inappropriate use of tenants' rents and public funds. We understood the reasons why the governing body had wanted to make the payments but the problem was the way in which the RSL had gone about it.

Had RSL F taken legal advice it may have found an open and transparent way to reward staff for their service that complied with the legislation and guidance.

We asked RSL F to arrange Schedule 7 training for all staff and governing body members and to review its internal systems and procedures.

Case Study - RSL G

RSL G followed poor advice, resulting in considerable financial loss.

RSL G appointed an independent financial advisor to advise on possible investment opportunities. The RSL did not tender for this service, but instead appointed an advisor who had been recommended to it. It is not clear whether the advisor was told that the RSL was charitable, as there was no brief in place to set out the services to be purchased or the RSL's requirements. On the basis of the advice given, the RSL invested in products that were inappropriate for a charity. These products were not qualifying investments for taxation purposes so RSL G had to pay a considerable sum of money to HM Revenue & Customs.

We were alerted to the difficulties that RSL G was facing. We were concerned that RSL G had not sought competitive tenders before appointing an advisor, and therefore could not demonstrate that the most suitable or qualified firm had been appointed. RSL G had not sought advice from an appropriate person to confirm that the proposed investments complied with its constitution, and had relied solely on the information provided by the financial advisor. We would have expected RSL G's staff and governing body members to have acted with more caution before investing a significant amount of the RSL's resources. We also had concerns that the governing body had not exerted an appropriate level of control over the investment decisions, and that it was not doing enough to investigate what had gone wrong.

These serious failures resulted in considerable financial loss and had the potential to damage RSL G's reputation. So we decided to place statutory appointees on to the governing body of RSL G to support it to address matters properly and help minimise further risk. This matter was subject to full independent investigation, involving considerable staff time and expense. Had RSL G taken formal advice from an appropriate source, the conflict with its charitable objects should have been identified and this crisis situation could have been avoided. Also, had the RSL taken our regulatory concerns more seriously, we may have avoided statutory intervention.

Lessons learned

- An RSL should take appropriate independent expert advice when dealing with complex legal, financial or governance issues. The governing body must make sure that this has been done.
- Any advice given should be fully recorded in writing, to ensure that it can be relied upon in future if necessary.
- An RSL should select its advisors following an open, transparent process in line with good practice and its policies and procedures. It should be satisfied that the advisor has the necessary qualifications and experience.
- The RSL should set out its expectations and requirements for advisors in a clear brief.
- The governing body must fully understand the extent of liability that the advisor is taking. The RSL should check that the advisor has all relevant insurance policies in place.

Regulatory expectations

3. We expect all RSLs to:

- Establish a policy about when to obtain independent advice, as part of their overall risk management strategy. We would expect the governing body of the RSL to consider the advice given and to follow it, unless it appears to be unsound. Where the governing body decides not to follow the advice given, the reasons for this decision should be recorded clearly.
- Adhere to a clear procurement policy for the appointment of advisors that complies with Performance Standards and the Regulatory Code of Governance.
- Refer to good practice documents such as the Procurement Guide published by Communities Scotland in 2006.

- Draw up a written agreement to govern the relationship between the RSL and the advisor, and to set out respective liabilities.
- Monitor the quality of advice and level of service received and take action if this is unsatisfactory.
- Notify the Scottish Housing Regulator if there is any breach or suspected breach of legislation, charitable obligations or a financial covenant. An RSL must also notify us if it suffers significant financial loss or if concerns are raised by lenders or auditors about its financial viability.

References and further advice

Statutory Guidance

Our regulatory expectations are set out in published statutory guidance. [SHR 17 Notifiable events](#) sets out the type of events which we expect RSLs to tell us about. Other relevant guidance is:

Performance Standards

Guiding Standard 1 - Planning and Managing Performance

- 1.2 *We have high-quality written policies and procedures to guide our actions.*
- 1.5 *We have a systematic and accountable approach to finding the most efficient and cost-effective way of securing the quality of assets and services we need.*

Guiding Standard 4 - RSL Governance and Financial Management

- 4.4 *We identify and appraise the most important risks we face, and we take a prudent approach to managing them.*

SHR 16 Regulatory Code of Governance and **Supporting guidance**

- 4.5 *The RSL identifies risks that might prevent it from achieving its objectives, manages these risks and mitigates their effects, wherever possible. The governing body ensures that the RSL has effective systems for risk management, control and audit.*

Good Practice

The activities of independent advisors may be monitored by the relevant regulatory body for their profession. These bodies produce information on the quality of service that consumers should receive. Advice on good practice is available from the following sources:

Advice

The Scottish Federation of Housing Associations www.sfha.co.uk

Employers in Voluntary Housing www.evh.org.uk

Useful references

Procurement Guide for use by Registered Social Landlords

Communities Scotland (2006)

Buying in services

Procuring and managing agency services

Introduction

1. As part of the business planning process, RSLs will look at their objectives and the resources required to deliver them. In some circumstances, an RSL may decide to use agents to deliver a specific project or service area where this is the most cost-effective option for the organisation.
2. This section looks at issues faced by organisations when dealing with the procurement and management of agency services.

Case Studies

Case Study - RSL H

RSL H's service delivery arrangements kept breaking down and it could no longer continue as an independent RSL.

RSL H appointed a series of agents over the years to deliver day-to-day services. Each agency agreement only lasted for a short period. In recent years, agents resigned due to a lack of clear working agreements and unrealistic timescales to deal with the scale of RSL H's problems. The RSL relied on agents to provide a good service without giving guidelines on what it expected.

Each time an agency agreement ended, RSL H's difficulties escalated. The governing body had to spend a lot of time procuring services, rather than concentrating on other important issues. There was a lack of continuity for tenants because of interruptions in service delivery and new agents needing time to get up to speed. Irregular performance reporting made it increasingly difficult for the governing body to assess the extent of the organisation's problems and to prioritise its activities.

When we inspected RSL H we found problems with its repairs service and rent arrears collection, and it had no clear record of the condition of its stock. We had serious concerns about the RSL's governance, its ability to manage its agents and its financial management. We placed appointees onto the governing body to support it. The governing body then began working towards a transfer of engagements to another RSL.

Case Study - RSL J

We placed statutory appointees on the governing body of RSL J because it had not properly managed the use of agency services.

RSL J employed agents to provide most of its services. When we inspected the RSL we found that it had long-standing service agreements that were not based upon a detailed brief. RSL J had not fully assessed what its requirements were before it entered these agreements, and had no clear criteria for judging whether an agent had the necessary skills and experience. The RSL could not show that it was getting value for money, as it did not regularly review the standard of service that the agents delivered, or compare what other service providers had to offer.

As a result, RSL J did not have access to the support and expertise that it needed. It failed to meet some of its statutory duties and therefore exposed the organisation to a high degree of risk, for example in relation to gas safety, the right to repair and tenant participation. RSL J also had a poor approach to long term financial planning and performance reporting.

We asked RSL J to review its agency services and to develop a formal brief to set out its requirements. The RSL did not act on our advice and did not make the improvements. We made statutory appointments to the governing body to help it to review its agency services and to address the RSL's other performance issues.

Lessons learned

- RSLs wishing to buy in agency services should set out their requirements and expectations in a clear brief, providing as much detail as possible.
- RSLs should ensure that the procurement process is transparent and the best possible agent is appointed. In some circumstances, the governing body may need independent support to help it with this process.
- The RSL should set out the service standards that it expects the agent to adhere to, and seek confirmation from the agent that they have the resources and experience to deliver this. The RSL should monitor the standard of service it provides to customers.

- The parties should agree procedures for monitoring the quality of service provided, and for reviewing whether the agreement is working out successfully for both of them. Regular performance reports should be submitted to the governing body.

Regulatory expectations

3. We expect all RSLs to:

- Consider all options for service provision, and choose an approach that is cost effective and will deliver good quality services.
- Adhere to a clear procurement policy that complies with Performance Standards and the Regulatory Code of Governance.
- Refer to good practice documents such as the Procurement Guide published by Communities Scotland in 2006.
- Draw up a written agreement to detail the services to be provided, the agreed time period and procedures for varying the terms of the agreement or ending it. The agreement should ensure that the RSL retains overall control in terms of the cost, quality, time frame and specification of the service provided. Clear lines of responsibility should be established to minimise risk to the RSL. RSLs should consider whether they need to take legal advice before agreeing to purchase or provide agency services.
- Make sure that all costs are detailed clearly at the outset of the agreement, including any VAT. A process for authorising and costing any additional unforeseen work should also be agreed.
- Notify us if there is a serious failure of any of the RSL's key service delivery arrangements.

References and further advice

Statutory Guidance

Our regulatory expectations are set out in published statutory guidance. [SHR 17 Notifiable events](#) sets out the type of events which we expect RSLs to tell us about. Other relevant guidance is:

[Performance Standards](#)

Guiding Standard 1 - Planning and Managing Performance

- 1.1 *We have a robust planning process and realistic strategies and plans for achieving our goals and we work co-operatively with partners and other organisations. We monitor and control our performance and assess the outcome of our activities.*
- 1.2 *We have high-quality written policies and procedures to guide our actions.*
- 1.4 *We make the best use of our people and our physical resources to achieve efficiency, best value, continuous improvement and to deliver high-quality services that meet the needs of our service users.*
- 1.5 *We have a systematic and accountable approach to finding the most efficient and cost-effective way of securing the quality of assets and services we need.*

Guiding Standard 4 - RSL Governance and Financial Management

- 4.4 *We identify and appraise the most important risks we face, and we take a prudent approach to managing them.*

[SHR 16 Regulatory Code of Governance](#) and [Supporting guidance](#)

- 4.5 *The RSL identifies risks that might prevent it from achieving its objectives, manages these risks and mitigates their effects, wherever possible. The governing body ensures that the RSL has effective systems for risk management, internal control and audit.*

Good Practice

Advice on good practice is available from the following sources:

Advice

The Scottish Federation of Housing Associations www.sfha.co.uk

Useful references

Procurement Guide for use by Registered Social Landlords
Communities Scotland (2006)

Complaints

Handling them positively

Introduction

1. It is inevitable that RSLs will receive some complaints, given the range of services they provide. RSLs must publish a clear, accessible and comprehensive procedure for how they will deal with complaints. They must make sure that they handle complaints appropriately, to minimise damage to the relationship with the customer. And they should monitor and assess complaints to ensure that they learn lessons for the future and improve services.
2. This section looks at issues organisations have faced when they have not handled complaints properly.

Case Studies

Case Study - RSL K

The lack of a proper complaints procedure contributed to a crisis situation for the governing body of RSL K.

A governing body member of RSL K was unhappy about some staffing issues and raised his concerns in an inappropriate way at meetings. The RSL told him that his conduct breached the RSL's code of conduct, but he continued to behave in this manner. The governing body decided to remove him and wrote to tell him this.

The governing body member wanted to complain about this decision, but RSL K did not have any procedures in place to allow complaints from governing body members to be heard. Both parties asked us to become involved and, in the absence of a procedure, we recommended that RSL K should offer the governing body member a hearing, in order to demonstrate its openness and responsiveness to complaints. A hearing took place and the decision to remove him was upheld.

The governing body member remained dissatisfied with the decision and with the procedure followed. Other governing body members sympathised with his position and became involved in his complaint about the RSL. This threatened the stability of the governing body and risked RSL K's reputation.

Had a proper procedure been in place to allow the governing body member's complaint to be addressed, it may have prevented the breakdown in the relationship. We asked RSL K to develop its policies and procedures to ensure that it handles complaints from governing body members appropriately in future.

Case Study - RSL L

RSL L did not deal with a health and safety complaint properly, leading to further complaints from the customer.

The complainant had contacted RSL L about lighting near his property, which he thought was a fire risk. He contacted us because he was not satisfied that the RSL was dealing with this. We do not normally become involved in individual complaints. However because this was a health and safety issue we contacted RSL L to check that the complaint was being properly handled.

We found that RSL L had investigated and taken steps to make sure that there was no risk to safety. But it had not kept the complainant fully informed of what it was doing to address his complaint. Staff had been reluctant to do so as they had not wanted to enter into a lengthy dialogue with him. The complainant had a history of making complaints.

This lack of communication led to the complainant losing confidence in the quality of RSL L's service and he began to raise additional concerns about other matters. If the RSL had answered his initial complaint fully, it may have minimised damage to the relationship with the complainant and saved staff time. We asked RSL L to review its policy, to ensure that it keeps complainants fully informed of the outcome of any investigation, and that it deals with health and safety complaints as a matter of priority.

Case Study - RSL M

RSL M did not fully consider a complaint from one of its governing body members, leading to loss of confidence in the RSL's procedures.

A member of RSL M's governing body complained to the RSL about the way it handled the election of office bearers at one of its meetings. The governing body discussed the complaint and wrote to the complainant to tell him that there was no basis to it. The complainant contacted us because he felt that the RSL had not properly addressed his concerns.

We do not generally intervene in complaints but may do so where we feel that it is appropriate. In this case, we decided to ask the RSL about this, and found that some valid issues had been raised. In addition, some of the RSL's procedures were not very clear which led to misunderstanding. We asked the RSL to review its procedures and to ensure that staff and governing body members fully understood them.

RSL M could have used the governing body member's comments in a constructive way, to identify where its procedures were unclear and to develop them. Had it considered the complaint fully, the governing body member would not have lost confidence in the complaints handling process and would not have felt the need to contact us.

Lessons learned

- RSLs must have clear and comprehensive policies and procedures for dealing with complaints from customers and governing body members. These must outline the stages that the complaint will pass through, timescales for response and a process for appeal.
- RSLs must investigate complaints fully, and consider each complaint on its own merits, regardless of who the complainant is and how often they have made complaints in the past. The investigation must address all issues raised and the RSL must keep the complainant fully informed of the steps it is taking.
- Where the complaint involves complex legal or governance issues the RSL should take independent advice to ensure that it is responding appropriately.
- RSLs must deal with complaints relating to health and safety as a matter of priority.
- RSLs should use complaints in a positive way, to identify problem areas and feed into the continuous improvement of their policies, practices and services.

Regulatory expectations

3. We expect all RSLs to:

- Have a clear and comprehensive published complaints procedure that complies with Performance Standards, the Regulatory Code of Governance and the RSL's own constitution.
- Ensure that the complaints procedure is easily accessible to all and that the RSL addresses verbal as well as written complaints.
- Deal with all complaints in an open, fair and impartial way, ensuring that complainants have a reasonable opportunity to state their case and are kept fully informed of the steps taken to investigate and address their concerns. The RSL must provide the complainant with a full response, reasons for any decision and details of who to contact next if they are unhappy with the response.
- Ensure that anyone with a conflict of interest does not take any part in the investigation of the complaint, and consider whether it would be more appropriate to have an independent party conduct the investigation.
- Provide a means of redress to the complainant where the RSL has been at fault.
- Tell customers that they may have recourse to the Scottish Public Services Ombudsman if they remain dissatisfied. RSLs have a statutory duty under the Scottish Public Services Ombudsman Act 2002 to publicise the service, co-operate with the Ombudsman and make available copies of the Ombudsman's findings.
- Comply with anti-discrimination legislation and the RSL's Equal Opportunities and Diversity Policy. The complaints procedure must be easily accessible and available in alternative languages and formats. The complaints handling process must be monitored to ensure that there is no bias or prejudice.
- Record and monitor complaints and use this information to improve performance.
- Review their complaints procedure regularly to ensure that it is working, taking into account the views of customers.

- Have policies and procedures in place to deal with persistent or vexatious complainants or anonymous complaints.

References and further advice

Statutory Guidance

Our regulatory expectations are set out in published statutory guidance. [SHR 17 Notifiable events](#) sets out the type of events which we expect RSLs to tell us about. Other relevant guidance is:

[Performance Standards](#)

Guiding Standard 1 - Planning and Managing Performance

- 1.2 *We have high-quality written policies and procedures to guide our actions.*
- 1.3 *We actively strive for continuous improvement in all we do.*

Guiding Standard 3 - Service Delivery and Communication

- 3.1 *We place the people who want to use our services at the heart of our work. We treat people with respect and are responsive to their views and priorities.*
- 3.3 *We deal fairly and effectively with anyone wanting to appeal against , or complain about, any of our decisions or activities. We make it clear that they can complain about us to the Scottish Public Services Ombudsman.*
- 3.5 *We are open about what we do and publish information about our activities. We provide information that people ask for, unless there are justifiable reasons for withholding it.*

[SHR 16 Regulatory Code of Governance](#) and [Supporting guidance](#)

- 3.2 *The RSL upholds and applies the principles of equality and diversity in all areas of its work, including its governance arrangements.*
- 3.3 *The RSL conducts its affairs with honesty and integrity. Through its actions, it maintains the good reputation of the RSL sector.*
- 4.4 *The RSL openly communicates the governing body's decisions to tenants, service users and other stakeholders.*
- 6.2 *The RSL gives tenants and service users information that meets their needs about the RSL, its services, its performance and its future plans.*

6.7 *Employees and governing body members are able to raise concerns if they believe that there has been fraud, corruption or other wrongdoing within the RSL.*

Good Practice

A range of useful reports and guidance on complaints handling can be found on the website for the Scottish Public Services Ombudsman, under the section headed 'Valuing Complaints'. Advice on good practice is available from the following sources:

Advice

The Scottish Federation of Housing Associations www.sfha.co.uk

The Scottish Public Services Ombudsman www.spsso.org.uk

Useful references

Raising Standards in Housing Chapter 8; Customer Complaints

Scottish Federation of Housing Associations (2000)

Principles of Good Complaint Management

Scottish Public Services Ombudsman

Guidance Note: The Scottish Public Services Ombudsman Act 2002 Impact on Scottish RSLs (CSGN 2002/13)

Communities Scotland (2002)

A Modern Complaints System- The New Scottish Public Services Ombudsman Scottish Executive (2002)

How to Deal with Complaints: A Best Practice Guide

Service First: Cabinet Office

<http://archive.cabinetoffice.gov.uk/servicefirst/1998/complaint/>

How to gather views on service quality- guidance for social landlords

Communities Scotland (2006)



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