



Scottish Housing
Regulator

**Information note for statutory
appointees to governing
bodies of registered social
landlords**

July 2019

About us

We are the independent regulator of social landlords in Scotland.

We safeguard and promote the interests of:

Around:

600,000

Tenants who live in homes provided by social landlords

Over:

125,000

Home owners who receive services of social landlords

Over:

45,000

People and their families who may be homeless and seek help from local authorities

Around:

2,000

Gypsy/Travellers who can use official sites provided by social landlords

We regulate:

190

Social landlords

158

Registered social landlords

32

Local authorities

Our role:

To monitor, assess and report on social landlords' performance of housing activities and RSLs' financial wellbeing and standards of governance. We intervene, where we need to, to protect the interests of tenants and service users.

Our Regulatory Framework explains how we regulate social landlords. It is available at:
www.scottishhousingregulator.gov.uk



HAPPY TO TRANSLATE

Purpose

1. We have powers under the Housing (Scotland) Act 2010 (the Act) to appoint additional officers to the governing bodies of RSLs. We refer to these appointments as “statutory appointees”. This note describes some of the practical details about what is involved in being a statutory appointee including the general rationale for such appointments.

The importance of appointees

2. We make statutory appointments where an RSL does not comply with regulatory requirements or standards and we judge that using our statutory powers in this way is an appropriate and proportionate response. If there are serious problems within an RSL that result in non-compliance with regulatory requirements and standards the governing body is required to address the problems and lead the organisation towards compliance. Where an RSL has got into serious difficulties it is often because of failings in governance. In these circumstances it is likely that the governing body will need support to understand what it needs to do to deal with on-going problems and ensure good standards of governance. Appointing experienced people to the governing body who know how a well-governed and well-run organisation operates has proven an effective approach to achieve compliance.

‘Thinking back to when DPHA went into high engagement, the transformation to DPHA today is incredible. All of the committee and staff team have worked really hard to achieve this. We pass our sincere thanks to the team at the SHR and to our Statutory Manager and appointees for all their help and support over this period to help us achieve what we have and to set us on a strong course for the future to best serve our tenants and service users.’

Dalmuir Park Housing Association

3. In every RSL where we have had to intervene these statutory appointments have been central to our strategy to protect the interests of tenants and service users. The support that they have provided has been essential to helping the organisation to improve and ensure that tenants and service users have the benefit of a landlord which complies with regulatory requirements. We recognise and value the support which colleagues in the sector provide to RSLs experiencing difficulties. This voluntary commitment from appointees is important not just to help out individual RSLs but to protect the reputation of the RSL sector as being effectively managed and well-governed. Statutory appointees have told us that their own organisations have also benefitted from the experience.

‘Being an appointee was an exceptionally rewarding experience and provided the opportunity to work alongside many dedicated and professional people. I gained significant skills and experience across every area of the RSL’s business and broadened my horizons. The experience was more valuable than any training course or qualification and I was able to take back everything I learned to my own organisation. I believe this has made me better at my job and made my employing organisation even stronger.’

Fiona Murphy

Director of Spireview and Copperworks Housing Association and former statutory appointee at Ferguslie Park Housing Association.

Who do we appoint?

4. We identify potential appointees from people whose skills and expertise we are already aware of, most often this is from our engagement with individual landlords who have handled complex issues well. We consider what each troubled RSL needs from its appointed governing body members and then identify appointees who, in our judgment, have the right experience and knowledge to assist the RSL. The vast majority of our statutory intervention cases involve RSLs with serious governance and financial management weaknesses so we will identify potential appointees with those skills and experience. They tend to be experienced senior staff and governing body members from other RSLs. If the RSL has other weaknesses such as service quality issues or particular challenges such as a development programme we may identify appointees with that expertise. We also take account of the composition of the existing governing body when we are identifying potential appointees and include that in our consideration of the skills and experience the RSL needs to deal with its problems.
5. Often the RSL's stakeholders, particularly its lenders, are interested in who the appointees are, where they are from and what expertise they bring. Where an RSL is experiencing difficulties lenders can take much reassurance from experienced people being appointed to its governing body. Lenders have told us that they take comfort from the track record of SHR in identifying appropriate statutory appointees when this is required. And that this makes it possible for them to continue to lend to such RSLs when they are non-compliant with regulatory requirements and in breach of their loan agreements.
6. If RSLs are to continue to develop new homes they need to be able to access private finance on affordable terms. So intervention in this way protects landlords, tenants and future tenants from the consequences of poor governance.

Statutory provisions

7. We have powers to make appointments (section 65 of the Act) when we consider that an additional officer (statutory appointee) needs to be appointed.. The Act allows us to make these appointments in the following circumstances:
 - in place of a governing body member who has been removed by the Regulator, or
 - where there are no governing body members, or
 - where the RSL hasn't enough governing body members under its constitution to appoint further governing body members, or
 - it is considered necessary for the proper management of the RSL's affairs to have an additional governing body member.
8. The Act also empowers us to determine how long the period of appointment will be and to specify the terms of the statutory appointment. There is no limit to the number of appointments that we can make to a governing body although we will only make such appointments where necessary and where intervention is proportionate. We can make appointments even if it causes the maximum number of governing body members allowed in the RSL's constitution to be exceeded or if the RSL's constitution normally prohibits the appointment of non-members.

What can a statutory appointee do?

9. A statutory appointee has a statutory entitlement to:
 - attend, speak and vote at any general meeting of the RSL and to receive all notices of and other communications relating to any general meeting which a member of the governing body would be entitled to receive;
 - move a resolution at any general meeting;
 - require a general meeting or extraordinary general meeting to be convened within 21 days of a written request being made to the governing body; and
 - resign from office at any time in accordance with the RSL's constitution.

In effect a statutory appointee has the same powers, rights and responsibilities as any other elected member of the governing body. They are required to act in accordance with the RSL's constitution. They must also have regard to any duties that they owe to the RSL as company directors and/or as charity trustees. In addition they must act in accordance with any policies and procedures that have been adopted by the RSL including any code of conduct for governing body members.

Why we appoint

10. In our Regulatory Framework we explain when we will intervene and the criteria for intervention. We will not normally need to intervene where we are confident that the landlord is able and willing to address our concerns and we will not normally intervene without discussing our concerns with the governing body. When we decide that intervention is necessary we will always set out in writing the reasons for intervention and explain what we require from the organisation and any applicable timescales. These details will also be reflected in the RSL's published Engagement Plan.
11. In any regulatory context it is important for the Regulator to have confidence in the ability of those charged with governance to fulfil their responsibilities. When we engage with an RSL which is in difficulty or is showing serious failures, we need to be satisfied that the governing body understands the problems and is able to tackle them. If we are not satisfied on these points, then in order to protect the interests of the RSL's tenants, we may support the governing body by appointing additional members as statutory appointees to bring the needed experience and skills. In our experience this type of intervention can be highly effective in supporting governing bodies to tackle deep-seated problems and turn around their [organisations](#).
12. The governing body is responsible for ensuring that the RSL is properly managed and governed and that it is viable. Our Regulatory Standards of Governance and Financial Management describe what we require for the good governance of RSLs. 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.
13. Good governance is critical to the wellbeing of an organisation. Our experience is that when an RSL gets into difficulties, poor governance is often at the root of the problems. Examples of the sorts of issues that we have come across include:
 - governing body members not understanding and failing to properly carry out their role and responsibilities;
 - poor understanding and control of the RSL's strategic direction, service standards or finances;
 - poor quality information being provided to governing body meetings and a lack of awareness of this on the part of governing body members;

- failure to investigate concerns raised by whistleblowers and others;
- poor control of finances leading to a high risk of insolvency;
- failure to maintain appropriate and constructive relationships between governing body and staff members, and with us;
- failure by governing body members or staff to observe the organisation's standards of conduct.

The role of an appointed governing body member

14. The Act states that it is for us to determine the terms on which a statutory appointee is appointed. We will do this in writing for each statutory appointee. Depending on the issues and risks in the organisation requiring intervention, this could be to help ensure that the RSL takes steps to avert a potential insolvency, or ensure independent investigations are carried out and then acted upon, or to assist and support the governing body to discharge its role effectively and ensure that it meets the Regulatory Standards of Governance and Financial Management.
15. Statutory appointees have the same rights as other governing body members to receive notices and papers for all meetings. They are entitled to attend, speak at and vote at all meetings including Annual and Special General Meetings. Statutory appointees also have the right to convene general meetings. A statutory appointee can act with the full authority and legal status of a governing body member but is also bound to act in accordance with the RSL's code of conduct, the Regulatory Standards of Governance and Financial Management, and all relevant good practice and codes of governance.
16. Appointees will bring knowledge, experience and skills to the governing body, however their role and responsibilities are identical to those of other governing body members; their role is not to act as consultants or provide professional advice to the RSL. The governing body should decide if consultants or professional advisers are needed and, if so, take steps to engage them. Equally it is not part of the duties of statutory appointees to undertake the work of the staff or agents of an RSL. If the RSL's failures are attributable to the performance of staff and/or agents, it is the governing body's responsibility to take the necessary steps to remedy the situation. For instance, this could be through performance management with the support of professional HR/legal advice or bringing in interim staff support.
17. It is expected that statutory appointees will attend meetings at the RSL's offices or in the premises in which the governing body ordinarily meets. Appointees should participate in any relevant training sessions which are organised for the governing body.

Payments to statutory appointees

18. A statutory appointee is entitled to be reimbursed for appropriate expenses incurred in acting as a governing body member. Section 65(5) of the Housing (Scotland) Act requires the RSL to pay appointees remuneration and expenses. Section 65(2) gives SHR the power to determine the terms of any remuneration and expenses. In practice we look to the RSL to pay relevant remuneration and expenses in accordance with its own policies. Appointees should make any claims in respect of appropriate expenses direct to the RSL in accordance with the RSL's policy and the RSL is required to pay them.
19. Statutory appointees are entitled to be sure they will not be put at personal or financial risk where they have acted reasonably, responsibly and in good faith in fulfilling their duties as governing body members. The Act empowers us to require the RSL to purchase and maintain personal indemnity insurance for the appointees, where we consider this appropriate.

Selecting statutory appointees

20. We identify potential statutory appointees at the time that we need to make such appointments. We use our knowledge of people in the social housing sector to identify people whom we judge will have the right experience and skills to help the RSL to tackle the particular problems it is experiencing. We also take account of potential conflicts of interest that may exist in the particular case. This is why we carry out an exercise specific to each RSL that we need to make such appointments to.
21. Where an RSL provides housing support services which are registered with the Care Inspectorate we will liaise closely with the Care Inspectorate and ensure that any statutory appointees to the RSL are considered suitable by the Care Inspectorate. If the RSL is a subsidiary of a body registered with the Regulator of Social Housing (RSH) we will advise the RSH about our statutory appointments.
22. We will contact potential statutory appointees and give them sufficient information, in confidence, about the RSL to allow them to decide if they are able and willing to take up the appointment. We would also identify any potential conflict of interest which would rule out the appointment. Prospective statutory appointees who are staff members in other organisations may need to obtain their employer's approval to the appointment, for example, under their employer's code of conduct or other policies. Prospective appointees who are RSL governing body members may also need to obtain approval from the governing body of their RSL.
23. In most cases where we decide that intervention is required we would appoint a minimum of two statutory appointees but it has been our practice to appoint four to five statutory appointees depending upon the circumstances of each case. Appointing a minimum of two will help ensure there should always be a statutory appointee presence at governing body meetings even if an individual statutory appointee is not able to attend every meeting. It also gives statutory appointees more of an opportunity to have a stronger voice and effect change in the governing body although they are in no way required to agree with one another on all matters that are decided by the governing body. This approach also helps to ensure that statutory appointees will have support from each other in their role. We will try to appoint a mix of more experienced and newer statutory appointees so any statutory appointees who are relatively new to the role will have the support and guidance of an experienced colleague, although statutory appointees are required to exercise their own judgement on matters that are decided by the governing body.

24. We will keep progress towards regulatory compliance under review and, if we find that insufficient progress is being made, we may consider other statutory options including increasing the number of appointments to the governing body. We can also reduce the number of statutory appointees if the immediate risks are addressed and the organisation is making progress or, for example, where new members with the appropriate skills are elected to the governing body.
25. One of the terms of each appointment is its length. We will set the initial period of appointment with a start date and state how many months it will be for – usually for a period of six or twelve months depending on the circumstances and the reasons for the appointment. It normally takes at least this length of time for the problems within the RSL to start to be addressed. We will formally review progress that has been made to address the problems that have been identified when the initial period of appointment is coming to an end. If we consider that the organisation still needs statutory support we will ask each appointee about their willingness to continue or whether we need to identify others to take on the appointee role.
26. Each appointment will be set for a certain period but may be extended if we consider that it is necessary and proportionate to do so. We may review or terminate the appointment in the event of a change of circumstances which materially affects the statutory appointee's ability to carry out the role. In these circumstances we may consider whether the statutory appointee should be replaced and may make a further appointment.
27. We will provide the RSL with formal notification of the appointments to the RSL. As we are likely to have had ongoing engagement with the RSL about its difficulties and our intention to make statutory appointments, the governing body and senior management will have a fair amount of information about the appointments before they are made. However, we will normally arrange to attend the earliest possible governing body meeting to introduce the appointees, explain their role, and to answer any questions the governing body may have.
28. Prior to their appointment to the governing body, we will meet the appointees to provide a briefing. Our briefing will describe the background to our intervention, the organisational context, and the immediate priorities and explain in more detail what we are expecting of them. The briefing is also an opportunity for the appointees to meet each other and exchange contact details for liaising with each other.
29. We will require the RSL to provide governance and management documents such as the standing orders, code of conduct, staff structure details, business plan, internal management plan, etc, and copies of:
 - the RSL's rules, or memorandum and articles of association;
 - its most recent accounts;
 - its most recent ARC; and
 - any other documents relevant to their role as appointees.

Relationship of statutory appointees to the Scottish Housing Regulator

30. We will set out terms and conditions of the appointment in a letter and ask the appointee to accept the appointment by signing and returning a copy of the letter to us. The letter will also explain what it is that we expect the appointment will help to achieve. The statutory appointee will report directly to us on progress. We also write to the RSL and confirm the names of the appointees, the date and period of the appointments, and the purpose of the appointments.
31. We will publish the fact that appointments have been made and our requirements of the RSL in the Engagement Plan. Through statutory intervention we require the governing body (including the statutory appointees) to promote and safeguard the interests of tenants and service users by addressing the organisation's failures to comply with regulatory requirements and by making progress so that statutory intervention is no longer required. The terms of the appointment will be tailored to the particular circumstances and immediate priorities for the RSL. For instance, if the RSL is in crisis and facing a pending insolvency then the immediate priority would be to help avert that. If the RSL is facing problems such as serious misconduct then the strategy will be to address those.
32. We will ask for the statutory appointees' views and update reports on the RSL's progress on a regular basis. Statutory appointees can of course contact us at any time for guidance or to discuss any issues of concern. We would expect any appointee to notify us of any issues of regulatory concern, even if such issues were not apparent at the time of their appointment.
33. We will keep under review the relevance of the appointments and if necessary update the statutory appointees as progress is made or if new priorities emerge. We will at all times retain an open and transparent relationship with the governing body.
34. We will provide named points of contact, usually the regulation manager and analyst who have been leading on our engagement with the RSL.
35. Statutory appointees must keep confidential all information they receive in connection with their role as a governing body member. They must not comment publicly about the RSL or their role, but should work within the RSL's own communications plan and refer any press enquiries to the RSL or to us as appropriate. We will expect the RSL to communicate with its tenants and other stakeholders about the appointments.

Working with a statutory manager

36. In many of the cases where we have had to intervene, we have appointed a manager under the Act either to manage its housing activities and/or to manage its financial or other affairs. We refer to these appointees as statutory managers. So statutory appointees to an RSL's governing body may be working with a statutory manager (and other senior officers including the chief executive). In the same way as officers and governing body members fulfil complementary but distinct roles, the statutory manager's general role is to oversee the regulated body and to remedy serious problems or failures affecting the provision of its housing services or management of its financial or other affairs as set out in the remit. This complements the statutory appointees' support to the governing body at a governance level. It is important to note that the statutory manager has the ability to act without reference to the senior officer and governing body, including the statutory appointees, where required.
37. Where we decide to appoint a statutory manager we will set out their remit and decide upon their powers and publish them in the RSL's Engagement Plan. The statutory manager's remit will to a large degree complement the basis for the appointments of statutory appointees given that each of the appointments is designed to take forward our regulatory strategy for the RSL.
38. Notwithstanding the appointment of a statutory manager, there may be immediate priorities which neither the statutory manager nor the RSL's own staff can undertake so the governing body may need to consider commissioning specialist reviews or investigations.

Ending appointments

39. We will review the RSL's progress and the effectiveness of our statutory intervention when a statutory appointment is about to end. We may decide to extend the appointment if insufficient progress has been made or if new concerns have emerged. But if we are satisfied that the intervention has been successful and the RSL has addressed the problems that led to intervention, then the appointments will be brought to an end.
40. If appointees resign, or do not wish to continue and if we require an extension of their appointments, we may make replacement appointments. We will give formal notification of the ending of appointments to both the statutory appointees and the RSL. This will have the effect of bringing the appointments to an end without any further action on the part of the RSL.
41. At the end of their appointments, statutory appointees are free to be co-opted by the governing body, or to fill casual vacancies or seek election, in accordance with the RSL's constitution, should the statutory appointee and governing body wish.
42. This happened at Muirhouse Housing Association and Dalmuir Park Housing Association where statutory appointees stayed on when their appointment ended and continued to support the RSLs.

Review

43. We will ask statutory appointees for feedback on their experience at the end of their appointment so we can learn from it.

