



**Scottish Housing  
Regulator**

**Report on statutory  
intervention at Kincardine  
Housing Co-operative**

July 2019

## About us

We are the independent Regulator of social landlords in Scotland.

**We protect & promote the interests of:** **We regulate:**

Around:

**600,000**

Tenants who live in homes provided by social landlords

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Over:

**125,000**

Home owners who receive services of social landlords

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Over:

**45,000**

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

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Around:

**2,000**

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

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**190**

Social landlords

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**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](http://www.scottishhousingregulator.gov.uk)



HAPPY TO TRANSLATE

## About this report

1. This report explains why we intervened in Kincardine Housing Co-operative (“KHC”) and sets out the outcomes of our intervention.
2. Our intervention ended in April 2019 when KHC was removed from the register of social landlords.

## About Kincardine Housing Co-operative

3. KHC registered as a social landlord in 1991. It was a fully mutual co-operative which owned 72 homes for social rent in Aberdeenshire. It did not employ any staff directly but managed its homes through a series of managing agents. At 31 March 2019 its turnover was £231,887. It had no loans. We de-registered KHC as a social landlord on 4 April 2019.

## Our regulatory requirements

4. Before our intervention in November 2017 we had ‘low engagement’ with KHC. This means that the information KHC was submitting routinely through its audited annual accounts, auditor’s management letter, five year financial projections and Annual Returns on the Charter did not highlight risks to tenants’ interests which required us to engage further with KHC to get assurance about how it was managing the risks. Like all registered social landlords, we required KHC to advise us of any notifiable events that arose. Notifiable events are events that could put the following at risk:
  - the interests or safety of tenants and service users
  - the RSL’s financial health
  - the good governance and reputation of the RSL or of the RSL sector.
5. Our then Regulatory Framework contained six [Regulatory Standards of Governance and Financial Management for RSLs to comply with](#).



6. Each Standard had additional guidance for landlords. We required RSLs to [self-assess](#) against the Standards and take any actions needed to make sure they complied with them. We required RSLs to notify us immediately if there was a failure to comply with the Standards.

# Our intervention in Kincardine Housing Co-operative

## Our initial engagement

7. In March 2017 KHC tendered for a new managing agent. It received no applications, so we asked KHC to set out its plans to address the situation. It was unable to give us any credible plans to secure a new managing agent. That situation put services to KHC's tenants at risk.
8. As a result of our engagement with KHC between March and June 2017 following its unsuccessful tender for a new managing agent, a number of other issues that put KHC's tenants at risk came to our attention. Those issues included:
  - that the condition of KHC's stock might not be as had been reported in its Annual Return on the Charter.
  - three Committee members resigned raising concerns about KHC's governance.
  - KHC had failed to comply with its rules when electing Committee members.
  - KHC had not investigated potential breaches of the governing body members' code of conduct.
  - KHC's Committee was incurring costs which had the potential to put the RSL's financial position at risk.
  - the Committee did not carry out its strategic role and became involved in operational issues. As a result, it did not have key strategic documents and many of its policies were out of date and referred to legislation which had been superseded.
  - Committee members had not assessed their skills or training needs for at least three years.
  - KHC had no induction process in place for new Committee members.
9. We met the Committee and its professional advisers in June 2017 to discuss our concerns about its governance arrangements and its ability to meet the Regulatory Standards of Governance and Financial Management. We asked KHC to assure us that its members had been properly elected and that each member had signed the code of conduct. We also asked it to commission an independent investigation into the Committee resignations and potential breaches of the code of conduct, and to ensure that it had appropriate governance support in place.
10. KHC confirmed that not all of the Management Committee members had been elected in accordance with its constitution. It commissioned an independent investigation into breaches of the code of conduct but failed to progress that investigation. KHC did not give us the necessary assurance that it had appropriate arrangements in place to support its governance.

## Why we intervened

11. KHC did not comply with the Regulatory Standards. The Committee did not provide leadership, it did not plan strategically or oversee performance and it was not able to manage its finances effectively. As a result, tenants' homes and its future financial viability were at risk.

12. The Committee did not manage its relationship with successive managing agents appropriately and that put services to its tenants at risk. The service agreement with its existing managing agent was due to end in December 2017 and KHC did not have plans in place to appoint a new managing agent to ensure that tenants continued to receive appropriate services.
13. KHC's operating costs had increased during 2016/17 and it had not been able to assure us that it was managing its resources to ensure its financial well-being. Committee member expenses were higher than in previous years and there were allegations about inappropriate payments.
14. In November 2017 we decided that it was proportionate and reasonable to use our powers under section 58 and section 59 of the Housing (Scotland) Act 2010 to appoint a statutory manager, and under section 66 of the Act to restrict the Committee's dealings. We also decided that it was proportionate and reasonable to serve a notice of our intention to suspend the Chair under section 61 of the Act. The Chair subsequently resigned from the Committee.
15. The statutory manager was John Mulholland.
16. We determined that using our statutory powers was the most proportionate and effective way to ensure that the failings identified were addressed quickly and effectively in order to safeguard the interests of KHC's tenants.
17. We published our regulation plan on 24 November 2017 which set out the reasons for our intervention.

### **Weaknesses/risks identified**

18. The independent investigation into the potential breaches of the code of conduct and an investigation commissioned by the statutory manager into compliance with the Regulatory Standards concluded that KHC's governance and financial management arrangements did not meet the Regulatory Standards. The investigations found that KHC failed to fully comply with any of the Regulatory Standards and that there were weaknesses in its governance and financial management arrangements. Those weaknesses placed KHC's tenants at risk.
19. There was a lack of openness and transparency on the part of the Committee, particularly in relation to expenditure. The Committee did not progress the investigation into the alleged breaches of the code of conduct in the planned timescale and, as a result, this investigation was not completed until early 2018.
20. KHC made inappropriate payments to Committee members, including a number of loss of earnings claims. The Committee did not recognise serious conflicts of interest and did not have an appropriate and up to date framework to manage them.
21. Office bearers were actively involved in the operational, day to day activities of the organisation including negotiating and awarding contracts. This was inappropriate and was against KHC's code of conduct. The office bearers did not recognise this and it went unchallenged by the rest of the Committee.
22. There was a lack of skills, capability, capacity and challenge on the Committee.

23. KHC had little effective engagement with its tenants. KHC's Committee did not recognise its accountability to tenants and others and did not seek out the views of tenants to take them into account in its decisions.
24. Membership of the Committee had fallen to below the seven members required by KHC's rules. The Committee was unable to recruit replacement members and this required us to appoint members under section 65 of the Housing (Scotland) Act 2010 to allow KHC to continue to function and make decisions on behalf of tenants. They were:
- Jason MacGilp, Chief Executive Cairn Housing Association (appointed from 1 August 2018 to 4 April 2019)
  - Simon Guest, Chair of Cairn Housing Association (appointed from 1 August 2018 to 31 March 2019)
  - Michael Allan, Vice Chair of Cairn Housing Association (appointed from 1 August 2018 to 31 March 2019)
  - Helen Barton, Board member of Cairn Housing Association (appointed from 1 August to 31 March 2019)
  - John Davidson, Director of Customer Services Cairn Housing Association (appointed from 1 August 2018 to 31 March 2019)
  - Carolyn Owens, Governance Services Manager Cairn Housing Association (appointed from 1 August 2018 to 31 March 2019)

### **Why we decided to transfer Kincardine's homes**

25. Before the statutory appointees were placed on the Committee, KHC did not understand the issues it faced. It was neither willing or able to rectify the weaknesses identified in its governance and financial management arrangements. It could not recruit the minimum number of Committee members it needed to function or attract new members with the skills needed to address its failure to comply with the Regulatory Standards. KHC could not assure us that it would be able to address its problems and become a well-governed RSL.
26. As a result of KHC being unable to address its failure to comply with the Regulatory Standards SHR's Board decided that it was proportionate and reasonable to consider directing the transfer of KHC's assets to another RSL under section 67 of the Housing (Scotland) Act 2010 and agreed to consult KHC's tenants about a potential transfer of their homes to another RSL. The new KHC Committee agreed that this was the most appropriate action to protect the interests of tenants.
27. We invited proposals from a number of RSLs with homes in the area to take over KHC's homes subject to consultation with KHC's tenants. We evaluated each of the proposals and selected Grampian Housing Association ('Grampian') as the potential recipient landlord. Grampian's offer to KHC's tenants included a minimum five-year rent guarantee, guaranteed investment in KHC's homes and access to a range of support services which KHC's tenants had not had before.

### **Tenant consultation**

28. In September 2018 we appointed the Tenants Information Service as an independent advisor for KHC's tenants. The independent advisor provided information to KHC's tenants that set out what the transfer to Grampian would mean for them. It also ran a series of face to face events including roadshows, drop-in sessions and one-to-one visits to tenants in their homes. These were backed up by freephone and FREEPOST

services for tenants. All these opportunities gave tenants the chance to get more information about the proposal, and share their views and concerns. The drop-in sessions also gave them the chance to meet staff from Grampian. The consultation period lasted 28 days.

29. Seventy percent of tenants who responded to the consultation exercise supported the transfer, eleven percent did not want the transfer to go ahead and the remainder were either not sure about the transfer or had no view on it. The independent advisor produced a report setting out the outcome of the consultation exercise and we sent a copy of it to all of KHC's tenants.
30. In October 2018 our Board considered the findings of the independent advisor's report on the tenant consultation exercise and decided that it was in the best interests of KHC's tenants for their homes to be transferred to Grampian. It therefore directed the transfer under section 67 of the Housing (Scotland) Act 2010.
31. We wrote to all tenants to tell them that our Board had decided to direct the transfer and that the transfer was expected to take place on 31 January 2019.

#### **The deregistration of Kincardine**

32. KHC's stock was transferred to Grampian on 31 January 2019.
33. As KHC no longer had any homes to rent, it no longer met the statutory criteria for registration as a social landlord under section 24 of the Housing (Scotland) Act 2010. We therefore advised KHC's Committee that it was our intention to remove it from the register under section 27 of the Act. The Committee accepted our decision to remove it from the Register of Social Landlords.
34. Once we had received and examined KHC's final financial accounts, we removed it from the register on 4 April 2019. This concluded our intervention at KHC.

#### **The cost of intervention**

35. KHC met the costs for the statutory manager's services and expenses. This covered the period from November 2017 to January 2019.

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| 2017/18 | £ 8,285.80 |
| 2018/19 | £24,520.23 |

