

Forth Housing Association Serious Complaints or Grievance Against Director Policy

Governance	Committee
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Regulatory Standards Of Governance

Standard 4 “The Governing body identifies and mitigates risk”
Standard 5 “The RSL conducts its affairs with honesty and integrity”



*Forth Housing Association Limited
GOV33/2022/adopted*

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*Serious Complaints or Grievance
Against Director
Mar 22*

1 Introduction

- 1.1 This procedure supports the Scottish Housing Regulator (SHR) Statutory Guidance on Notifiable Events, and the appendix to the Guidance specifically relating to handling a serious complaint or grievance against the Director of an RSL.

The Regulator has issued guidance explaining what events are potentially notifiable, and the process for dealing with this (“Notifiable Events, Statutory Guidance February 2019”). <https://www.housingregulator.gov.scot/for-landlords/statutory-guidance/notifiable-events#>

- 1.2 This procedure follows the principles of Forth Housing Association grievance procedures and sets out the processes to be followed by Forth’s Committee. These principles are consistent with the revised, statutory ACAS Code of Practice on Disciplinary and Grievance Procedures (published 11th March 2015)).
- 1.3 The policy is also consistent with Forth’s Delegated Authority policy, which states that any actions against the Director are reserved to the Staffing Sub Committee in the first instance to hold hearings, collect evidence and make decisions.
- 1.4 Any complaints against the Director must be made known to the Chairperson of the Association who will decide whether the complaint warrants investigation under this policy taking into consideration the SHR guidance below at section 3 on what constitutes a serious complaint.

Where a complaint against the Director is not deemed to be serious it will be dealt with under the Association’s complaints procedure at Stage 1 or Stage 2, investigation level of the Association complaints procedure .

2 Regulatory expectations

2.1 RSL’s are expected to:

- Notify the SHR if there is a formal serious complaint or grievance against the Director.
- Take prompt, independent, and professional advice as appropriate to the event.

- Put in place strong governance systems that set out clear procedures for dealing with such events and clarify the role of the governing body.
- Be open and transparent about the decision-making processes.
- Have in place procedures which will ensure that the stability, efficient running, or viability of service delivery arrangements are not threatened.
- Ensure that procedures are in place to mitigate risk to the good governance and financial health of the organisation.
- Ensure that staff conduct does not bring the RSL into disrepute or raise public or stakeholder concern about the RSL or the social housing sector.
- Depending on the nature of the event consider whether there are any matters to report to the police and if there are to do so.
- Consider whether there are equalities or human rights implications and how the RSL will ensure it meets its legal duties in these areas.

3 What constitutes a serious complaint/grievance?

3.1 It is not possible to create an exhaustive list of all the potential eventualities, but examples can include:

- allegations from an individual employee of bullying or harassment by the Director
- inappropriate behaviour which may bring the Housing Association into disrepute
- allegations of fraud

4 Immediate actions required on receipt of a formal complaint/grievance

- 4.1 If a formal serious complaint or grievance is received concerning the Association Director, the Chairperson of the Forth Committee will be informed immediately. Formal normally means that the complaint has been submitted in writing. However, there may be occasions where a member of staff receives a verbal complaint. In this instance the complainant will be asked to confirm their complaint in writing to ensure the issues raised are clearly stated and can be properly investigated.
- 4.2 Forth's Chairperson will in turn inform the Scottish Housing Regulator (SHR) of receipt of such a complaint in accordance with the SHR guidance note and the Committee Notifiable Events Policy through the Landlord portal on the SHR website. The Chairperson should also advise SHR on how the Committee intends to handle the complaint and when the Governing body was informed/or will be informed.
- 4.3 Acknowledgement of the complaint/grievance should be sent to the complainant as soon as is practicable, ideally within three working days.

- 4.4 The Director will be notified in writing of the complaint/grievance made against him/her within three working days of receipt of the complaint/grievance. The notification will contain sufficient information about the complaint/grievance and its possible consequences, to enable the Director to prepare to answer the case at a meeting with the Staffing Sub-committee.

Copies of any written evidence, including witness statements if applicable, will be provided with the notification. Forth's Company Secretary can assist the chairperson in compiling all necessary correspondence.

- 4.5 Consideration should be given at this early stage regarding whether suspension of the Director is appropriate at this time.

5 Who will hear the complaint/grievance?

- 5.1 Under Forth Standing Orders the Chairperson is expected to deal with such matters in conjunction with 2 members of the Staffing Sub Committee to give a quorum of 3. The Chairperson of the Association will be the designated chair for the purposes of handling the complaint. Members of the staffing sub-committee will then be responsible for the hearing and deciding on any action from the complaint/grievance.

- 5.2 Due to the highly sensitive nature of complaints at this level, it is vital that the full Committee be told that a complaint/grievance has been received and is being dealt with without providing any of the detail. This is for a variety of reasons:

- Forth's Committee retains control over the affairs of the Committee and retains responsibility for dealing with the Notifiable Event as required by the SHR.
- It ensures confidentiality for the Director at the centre of the allegations, as is their right.
- Forth's Committee knows that the complaint is being handled.
- If independent help is required, then any associated costs can be authorised.
- Forth's Committee can monitor any emerging patterns of grievances and decide on an appropriate course of action.
- By keeping the substance of the complaint confidential, it leaves a clean route for any appeal to be heard by other members of Forth's Committee who are untainted by detailed knowledge.

- 5.3 Committee should also consider at this stage whether it may be more appropriate to commission a completely independent party to investigate the allegation and report back.

- 5.4 Should it be required, an Appeals sub-committee will be formed from remaining members of Forth's Committee. Forth's Committee will be notified of the outcome of the complaint / grievance at the end of the full process to include any appeal hearing.

6 Independent advice and support

- 6.1 Due to the sensitive nature of such situations, it would be inappropriate for any Association employees to be involved in the investigation or handling of a complaint/grievance against the Director.
Under no circumstances should the Director participate in any part of the investigation other than to co-operate with the investigator.

Access to independent advice must therefore be sought by the Staffing Sub-committee. Investigation of the complaint/grievance, and any subsequent action taken, must comply with the RSL's legal duties, including those relating to equalities and human rights.

- 6.2 Employee matters are complex and such advice should be sought from an employment law/personal specialist with expertise in investigating such matters.
- 6.3 The Sub-Committee Chair may ask the Company Secretary for information on sources of independent advice. The Company Secretary will provide this information, and if requested, may also assist with administrative tasks such as arranging meeting space or for courier delivery of confidential documentation.

Principles for hearing the complaint/grievance

- 7.1 The full process of hearing a complaint/grievance is noted in the attached guidance (see Appendix 1).

The general principles which the Staffing Sub-committee must follow however, are:

- Investigate the complaint and gather information and evidence – this may require a meeting with the complainant and other relevant parties/witnesses. It may be appropriate to commission an independent party (e.g. an employment law expert as referred to in section 6.2) to undertake the investigation, but all findings will be reported to the Staffing Sub-committee.
- Meet with the Director and allow him/her to put forward their case in response to the complaint/grievance.
- Allow the Director to be accompanied at the meeting by a representative of their choosing.

- Investigate further if required.
 - Adjourn the meeting to consider the information presented.
 - Notify the Director of the outcome decision and the right of appeal.
- 7.2 Following the investigation, hearing, and consideration of the information presented, it should be borne in mind that the findings may lead to the instigation of disciplinary action which would activate the disciplinary process.
- 7.3 At all stages it is important to keep accurate and appropriate records to document and evidence decision making.

8 Updating of the procedure

- 8.1 The procedure will be reviewed as necessary in line with any future SHR guidance.

Appendix 1

Guidance notes for the Staff Sub-committee to investigate and hear a complaint/grievance against the Director.

1 Notification of a Hearing

- 1.1 The Staffing Sub-committee will carry out an appropriate investigation into the complaint/grievance. This may be with the assistance of an independent advisor/investigator.
- 1.2 The Director will be informed in writing of the time, date, and place of the hearing, who will be conducting the Staffing Sub-committee and who else will be present. They will be advised of their right to be accompanied and asked for the name of the person who will accompany them. At least five working days' notice of a hearing should be given.

The Director will be expected to attend the hearing in person unless there are exceptional circumstances (an example might be where the Director is on long term absence and is unlikely to return within a reasonable period).

The information provided to the Director should include;

- Information of all the allegations against him/her and that he/she will have the opportunity to state their case.
- That no formal disciplinary action will be taken until a full investigation of the allegations has been carried out.
- Details of any suspension as detailed below.
- That Forth will conduct an internal investigation irrespective of any police proceedings and make decisions in accordance with this policy based on evidence and information available at the time.
- That Forth may proceed with disciplinary action after an appropriate investigation has taken place.
- That the use of recording devices (in normal circumstances) during any part of the investigation including potential disciplinaries or appeals is not allowed.
- The aim is to reach a conclusion which is satisfactory to all parties. It is important to deal with such matters as quickly as possible to remove periods of uncertainty.

Unless there are strong reasons why the complaint/grievance cannot be dealt with quickly (e.g. one of the parties is on holiday), the Staffing Sub-committee should collect all the relevant information and aim to hold the hearing within 10 working days of receipt of the complaint.

Suspension

- Salary will be paid in full where suspension has been enacted until such time as the allegations have been fully investigated.
- Suspension will be on full pay if the allegations are gross misconduct.
- Suspension will last no longer than 2 weeks. If the investigation has not finished within this time, the Director will be informed in writing of the progress.
- While on suspension the Director should not have any contact with any other employees other than the person named on their suspension letter.
- If the allegations are not at gross misconduct level suspension may be because Forth feels the Director is/or could interfere with the investigation in some way.

2 At the Hearing

- 2.1 The Chair of the committee will outline to the Director the details of the complaint and findings from any investigations which have arisen from the original complaint/grievance. The Director will be invited to discuss these findings and present their response to the detail of the complaint/grievance.
- 2.2 The meeting can be adjourned to consider information presented. It can be reconvened on the same day or if that is not appropriate further arrangements can be made for a new meeting. There is no need for the Staffing Sub-committee to present their decision at this stage.
- 2.3 A member of the Staffing Sub-committee should take notes of the hearing and/or this duty can be carried out by the Company Secretary.

3 After the investigation and meeting

- 3.1 After the hearing, the decision of the Staffing Sub-committee should be conveyed in writing to the Director within five working days of the date of the hearing.

The decision letter must record:

- the nature of the grievance/complaint raised
- the date of the meeting and who was present
- the key points made in discussions at the hearing
- the names of any witnesses or other parties who provided information
- the reasons for the decision
- the outcome
- the right of appeal

3.2 It is particularly important that the decision letter contains information which will enable all parties to understand how the conclusions and decision(s) were reached.

4 Potential outcomes from the Hearing

4.1 Once the Staffing Sub-committee is satisfied that it has come to a satisfactory conclusion it must then decide whether to:

- Uphold the complaint/grievance
- Partially uphold the complaint/grievance
- Not uphold the complaint/grievance

4.2 If any action is taken (other than dismissal) the outcome letter makes clear the standards of improvement required, the timescale within which this is expected to be achieved, the frequency of reviews, and the consequences of inadequate or un-sustained improvement.

The outcome letter will also detail that a record will be kept on the personal file.

4.3 Notice of Decision

The outcome of the decision, including the reasons for this will be issued in writing within 5 working days of the formal hearing.

This letter will detail the reasons for any formal warning and what is expected of the Director.

If the outcome is dismissal details of the last date of employment and any outstanding payments that will be made in the final salary.

5 Right of Appeal

5.1 If the Director is not satisfied with the outcome of the hearing, an appeal may be submitted in writing to an Appeals sub-committee within five working days of the date of the decision letter. The appeal should specifically outline the

reasons why the Director believes the decision was unfair or unreasonable and/or why they believe the complaints/ grievance procedure has not been properly applied.

5.2 Grounds for appeal include:

- procedural irregularities
- unfairness of the judgement
- new evidence which could not have been available at the time of the original decision or was unreasonably withheld and which could have materially affected the outcome

5.3 The appeal hearing will be arranged within 10 working days of receiving the appeal request.

5.4 Any appeal will be taken, by someone who was not involved in the original disciplinary hearing.

Notice of Decision of Appeal

The outcome of the decision, including the reasons for this will be issued in writing within 5 working days of the appeal hearing.

This letter will detail the reasons for any formal warning and what is expected of the Director.

If the outcome is dismissal details of the last date of employment and any outstanding payments that will be made in the final salary.

6 Notification of Appeal

The Director will be informed in writing of the time, date and place of the hearing, who will be conducting the hearing and who else will be present. They should also be advised of their statutory right to be accompanied and asked for the name of the person who will accompany them. At least five working days' notice of a formal hearing should be given. In all cases the Director will be expected to attend the hearing in person unless there are exceptional circumstances (an example might be where they are on long term sickness absence and unlikely to return in a reasonable period).

7 Right to be Accompanied

7.1 The Director has the right to be accompanied at all stages of the procedure by an appropriate work colleague or a trade union representative. Appropriate in

this context means someone who does not have a conflict of interest, is not a witness to related events or involved in the facts of the complaint/grievance.

- 7.2 A work colleague who has been asked to accompany a member of staff to a formal appeal hearing is entitled to a reasonable amount of time away from their normal duties to fulfil this role. This should include not only time to attend the hearing but also time to familiarise themselves with the issues and confer with the employee both before and after the hearing.
- 7.3 No employee is required to agree a request to accompany a colleague to a hearing and no pressure should be brought to bear on them if they do not wish to do so.
- 7.4 The Staffing and Appeals sub-committees may co-opt an independent advisor to attend the original hearing or appeal meetings.
- 7.5 The Staffing or Appeals Sub-committee may also wish to seek information from any other member of staff whose names have appeared as part of the complaint/grievance. These staff members also have the right to be accompanied at any meeting to discuss the complaint/grievance and must keep the matter confidential.

8 Right of Delay

- 8.1 At all stages of the appeal procedure the Director can request to delay the appeal for up to five working days if their chosen companion is unavailable. The Staffing Sub-committee should agree to this request unless there are exceptional reasons for not doing so.

If the Staffing Sub-committee, the Director or their companion cannot attend the appeal hearing for a reason that was not reasonably foreseeable at the time the meeting was arranged, the meeting must be rearranged (i.e. illness on the day, or car breaking down).

However, if either party does not attend the meeting and the failure could be reasonably foreseen, then the meeting will not be rearranged.

9 Records

- 9.1 Records should be kept detailing the nature of the complaint/grievance, the response given, any action taken and the reasons for it. A member of the sub-committee should be appointed to prepare a comprehensive note of the appeal hearing or this may be devolved to the Company Secretary. In certain circumstances some information may be withheld, for example, to protect a witness.

Records will be kept of all meetings detailing:

- the nature of the complaint/grievance raised
- a note of the meeting held to hear the complaint/grievance
- the Association's response
- any action taken and the reasons for this
- whether there was an appeal
- a note of the appeal meeting
- the outcome of the appeal meeting
- records will be kept on the Directors personal file of any disciplinary action, which will only be seen by the Director and the Chairperson
- The Chairperson will ensure the removal of any disciplinary warning from the Director file when no longer live

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