



**Scottish Housing
Regulator**

**MEMORANDUM OF UNDERSTANDING BETWEEN THE SCOTTISH CHARITY
REGULATOR AND THE SCOTTISH HOUSING REGULATOR**

December 2016

Purpose

1. The purpose of this Memorandum of Understanding (MOU) is to set out how the Office of the Scottish Charity Regulator (OSCR) and the Scottish Housing Regulator (SHR) will work together within their respective policy and legislative frameworks in order to regulate charitable registered social landlords (RSLs) in Scotland.

Context

2. SHR is the independent regulator and registrar of social landlords in Scotland. OSCR is the independent regulator and registrar for Scottish charities. Over 85% of RSLs in Scotland are registered charities and both SHR and OSCR have a role to play in protecting the interests of tenants, service users and charitable assets. However, given that the core business of charitable RSLs is the provision of affordable housing and the delivery of housing related services SHR and OSCR have agreed that SHR will act as the lead regulator for charitable RSLs. This MOU sets out what this means in practice.

3. SHR and OSCR have distinct statutory responsibilities in relation to the regulation of charitable RSLs. This MOU aims to support joint working arrangements on the areas of interface between SHR and OSCR in order to ensure that both organisations fulfil their statutory responsibilities and to prevent any duplication of regulatory effort and any unnecessary burden on charitable RSLs.

4. This MOU does not affect the statutory responsibilities of SHR and OSCR. It does not imply any transfer of responsibility from one organisation to the other, nor does it imply the sharing of statutory responsibilities. This MOU is not a contract and is not legally enforceable. However, SHR and OSCR agree to adhere to its principles and show proper regard for each other's activities.

5. Each organisation will take steps to ensure that members of staff are aware of this MOU. They will keep staff updated about it and the responsibilities it places in each individual member of staff.

Statutory Roles

SHR

6. SHR is a Non-Ministerial Department, directly accountable to the Scottish Parliament. The SHR Board of non-executive members leads the organisation by setting its strategic direction and ensuring that it achieves and carries out its functions effectively and efficiently.

7. Section 2 of the Housing (Scotland) Act 2010 ("the 2010 Act") sets out the SHR's statutory objective; to safeguard and promote the interests of current and future tenants, homeless people and other service users. The 2010 Act requires SHR to monitor, assess and report regularly on social landlords' performance of housing activities and RSLs' financial well-being and standards of governance, and to intervene where appropriate. SHR must also keep a register of social landlords.

8. The 2010 Act gives SHR a range of regulatory powers to deliver its statutory objective. It can:

- Use its inquiry powers to obtain the information and assurance it needs from landlords, assess risks and investigate problems;
- Set standards of governance and financial management for RSLs;
- Monitor and report on landlords' performance in achieving the outcomes and standards in the Scottish Social Housing Charter;
- Use its intervention powers to secure landlord improvement and protect the interest of tenants, homeless people and other service users;
- Require RSLs to seek its consent to certain types of organisational change and disposals;
- Set registration and de-registration criteria for RSLs.

9. SHR's approach to risk based regulation is set out in its [Regulatory Framework](#) for social housing in Scotland. Registered subsidiaries of an RSL parent are also expected to comply with the standards set out in the Framework. SHR also expects that a parent RSL of a non-registered subsidiary will ensure that the organisation is well governed and managing risks. SHR's powers to carry out inquiries and obtain information relating to a social landlord extend to bodies connected with a social landlord, such as a subsidiary organisation.

10. SHR's level of engagement with an RSL will depend on the level of assurance it needs, taking account of the impact, probability and manageability of potential or actual risks. SHR will publish regulation plans based on its assessment of risk.

OSCR

11. OSCR is a Non-Ministerial Department, directly accountable to the Scottish Parliament. OSCR Board of non-executive members is responsible for strategy and future direction, oversight and governance.

12. Under section 1 of the Charities and Trustee Investment (Scotland) Act 2005 ("the 2005 Act") OSCR is responsible for an effective regulatory framework for Scottish charities including the granting of charitable status, maintenance of a public register of charities, the investigation of apparent misconduct and facilitation and monitoring of compliance with the Act.

13. OSCR's general functions are to:

- Determine whether bodies are charities;
- Keep a public register of charities;
- Encourage, facilitate and monitor compliance by charities with the provisions of the 2005 Act;
- Identify and investigate apparent misconduct in the administration of charities and to take remedial or protective action in relation to such misconduct; and,
- Give information or advice, or make proposals, to the Scottish Ministers on matters relating to OSCR's functions.

14. OSCR's approach to targeted regulation is set out in its Targeted Regulation Risk Framework (add link). This sets out how OSCR will ensure its resources are focussed on the most important issues that affect the Scottish charity sector and how it will prioritise its actions as regulator.

Objectives of the Memorandum

14. The primary objectives of this MOU are to:

- Promote the duty on both organisations to communicate;
- Ensure that SHR and OSCR fulfil their statutory duties in the most effective way possible;
- Minimise the burden of regulation for RSLs in Scotland as registered as charities; and,
- Set out the ways of working between OSCR and SHR in which SHR will act as lead regulator.

Areas for Co-operation

15. RSL Governing body members (who are the charity trustees of a charitable RSL) must act in a way that fulfils their duties under both the 2010 Act and the 2005 Act. This includes ensuring that they act in the interests of the RSL. In exercising its regulatory functions, SHR (as lead regulator) will always consider whether an RSL is a registered charity and the implications of this status. This will include considering whether governing body members, acting as charity trustees, are carrying out their business in a manner which is consistent with their organisation's charitable purposes and their governing document.

16. The following sets out how OSCR and SHR will co-operate on matters of mutual interest.

Annual Return Process

17. SHR and OSCR require RSLs to complete annual returns that provide essentially the same details and accounting information. However, both carry this out to different timescales. In order to reduce the burden on RSLs and enable collection of the information both regulators have agreed the following practice:

- End Sept: deadline for RSL submission of Annual Accounts to SHR.
- November: SHR to forward electronic version of scanned RSL annual accounts to OSCR.
- December: Deadline for completed annual returns to OSCR. OSCR will only require RSLs to check and confirm the information contained in the pre-populated return or the online version, insert gross income and expenditure figures and sign as authorised by the Trustees.

Performance Monitoring

18.. SHR will take the lead role in monitoring how charitable RSLs deliver their housing services, their financial well-being and their standards of governance. The Regulatory Framework sets out how it carries out its regulatory role. SHR will publish information about RSLs' performance in the annual Landlord Report. SHR will publish a regulation plan where it considers it is necessary to have a medium or high level of engagement with an RSL.

19. To enable SHR to fulfil its statutory responsibility OSCR will provide the objectives and operational details of any monitoring programme that will be conducted under section 28 (Inquiries about charities) of the 2005 Act. This will include the return form(s), supporting guidance and any relevant methodology.

Consent

20. The 2010 Act requires RSLs to apply to SHR for consent to organisational changes, for certain changes to the constitution and for certain types of disposals of property and land, or the granting security over assets. In considering whether to issue consent in these situations, SHR will comply with relevant legislation and consider the risk to its regulatory objective. It will also consider whether any changes sought are consistent with an RSL's charitable purposes and objectives.

21. An RSL seeking to change its charitable objects or a RSL wanting to adopt charitable status requires OSCR's in principle consent. It must apply to OSCR for this before applying to SHR for in principle approval. The exception to this is a Charitable RSL wishing to update its objects to those in the SFHA Charitable Model Rules (Scotland) 2013 (as amended 2015), in this case the RSL is not required to seek OSCRs' consent but must notify OSCR when it has made the change. The process of applying for consent for constitutional changes is set out SHR's guidance on [Constitutional Changes](#).

Notifiable Events and Section 72 Events of Material Significance

22. The [SHR Regulatory Framework](#) (standard 2.4) requires RSLs to notify SHR about events which put at risk the interests of safety or tenants and other service users; the financial health of the RSL, public investment or the confidence of lenders; or the governance and reputation of the individual RSL or the RSL sector. Examples of Notifiable Events are contained in the [SHR's published guidance](#). This includes significant events relating to the governance and financial management of an RSL, for example, when an RSL has breached charitable obligations or it no longer meets the charity test.

23. From 1 April 2016 Charities are required to report Notifiable Events to OSCR. OSCR and SHR have agreed that Charitable RSLs do not need to report notifiable events to OSCR.

23. Section 72 of the Housing (Scotland) Act 2010 places a duty on external auditors and reporting accountants to disclose events of material significance to SHR. A piece of information that has material significance may include anything that

seriously threatens the stability of an RSL's finances, operations, reputation or legality. Further information about section 72 disclosures is contained in [SHR's published guidance](#).

24. SHR will seek assurance from an RSL that it has an effective strategy in place to deal with the circumstances giving rise to a Notifiable Event or a section 72 disclosure in order to protect the interests of the organisation. SHR will assess whether it is necessary to assist or intervene to protect the interests of tenants and others, public investment and the reputation of the sector.

25. SHR will inform OSCR within 5 working days where it considers that the circumstances of a Notifiable Event or a section 72 disclosure constitute a serious matter around governance or financial mismanagement, and which may lead OSCR to consider the disqualification of a trustee. This may include, but is not limited to, the following situations:

- Serious or sustained mismanagement or misconduct by governing body members;
- Improper or illegal activity by governing body members;
- Fraudulent activity by governing body members or their involvement in the acceptance or giving of bribes from/ to other persons;

26. SHR will take the lead role in any inquiry arising from a Notifiable Event or a section 72 disclosure.

Complaints

27. Landlords have responsibilities towards tenants and other service users. OSCR and SHR will refer individual complaints about an RSL to the RSL in order to give the landlord an opportunity to put things right. This may ultimately lead to the Scottish Public Services Ombudsman (SPSO). OSCR will also refer information about a complaint to SHR within 5 working days where it receives a complaint which indicates that there may be a concern about:

- The RSL's standards of governance;
- The RSL's overall service delivery;
- A significant performance failure on the part of the landlord. This is where a landlord fails to do something, or takes action that puts that puts tenants' interests at risk. It will normally relate to the landlord's failure to meet its legal requirements or tenant commitments and it will affect many or all of the landlord's tenants. It could relate to services provided to tenants, governance or financial matters.

28. In these cases SHR may make further inquiries with the landlord in order to establish the circumstances.

Inquiries

29. SHR and OSCR both have statutory responsibilities to investigate issues of regulatory concern and to take appropriate action to protect the rights and interests of tenants, service users and charitable assets. Concerns about the administration, governance or financial management of a charitable RSL may come to light in a number of different ways such as through a complaint by a tenant or other service users, by a whistleblower, through a Notifiable Event, disclosure under section 72 of the 2010 Act or through routine regulatory engagement. Where the information of concern is raised with, or identified by OSCR in the first instance, OSCR will pass the information to the SHR within 5 working days of receipt to the point of contact named in Appendix 1 and provide any relevant information to allow the SHR to undertake an inquiry.

30. SHR will take the lead role in carrying out an inquiry into the matters of concerns.

31. SHR will notify OSCR where, in the course of carrying out an inquiry, it considers that information available to it indicates a serious concern around the governance or financial mismanagement of a charitable RSL and which may lead OSCR to consider the disqualification of a trustee. This may include, but is not limited to, the following situations:

- Serious or sustained mismanagement or misconduct by governing body members;
- Improper or illegal activity by governing body members;
- Fraudulent activity by governing body members or their involvement in the acceptance or giving of bribes from/ to other persons;

32. SHR will take the lead role in carrying out any inquiry into the matters of concern.

Criminal Offence

33. Where it appears that a criminal offence may have occurred SHR and OSCR will liaise with the Crown Office and Procurator Fiscal Service both jointly and separately in relation to their own regulatory responsibilities

Dispute Resolution

34. Both organisations are committed to joint working to enable better regulation of charitable RSLs and disagreements will normally be resolved by discussions between operational staff. Where this is not possible, the issue may be escalated initially to the contact points for each organisation listed in Appendix 1 who will aim to resolve the issue. Thereafter, it may be escalated to the Chief Executive Officers of both organisations who will be jointly responsible for reaching a mutually satisfactory resolution.

Review

35. This MOU came into effect on 01/12/2016. Both organisations will meet at least annually to review its operation. In addition, the MOU will be reviewed:

- In the event of any significant changes to the legislative and regulatory framework of guidance for each organisation;
- At the request of either organisation;

[signature]

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[signature]

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