

## **Serious Complaints or Grievance against CEO Policy**

**Policy Number – G21**

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## **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 Chief Executive/Director of an RSL.
- 1.2. This procedure follows the principles of CVG grievance procedures and sets out the processes to be followed by CVHA Board. These principles are consistent with the revised, statutory ACAS Code of Practice on Disciplinary and Grievance Procedures (effective 11 March 2015).
- 1.3. The policy is also consistent with the Scheme of Delegation, which states that any actions against the Chief Executive are reserved to a Sub-Committee of CVHA Board appointed to hold hearings and make decisions.
- 1.4. The policy is also consistent with the Whistleblowing Policy, the Code of Conduct, Grievance Policy and the Disciplinary Policy

### **What are the regulatory expectations?**

- 1.5. RSLs are expected to:
  - Notify SHR if there is a formal serious complaint or grievance against the Chief Executive.
  - 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.

## **2. What constitutes a serious complaint/grievance?**

- 2.1. It is difficult to create a list of all the possible eventualities but a few examples are noted below:
  - allegations from an individual employee of bullying or harassment by the Chief Executive
  - inappropriate behaviour which may bring the Group into disrepute
  - allegations of fraud

## **3. Immediate action required on receipt of a formal complaint/grievance**

- 3.1. If a formal serious complaint or grievance is received concerning the Chief Executive, the Chairperson of CVHA Board will be informed immediately and is then the Responsible Person. 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/grievance in writing to ensure the issues raised are clearly stated.
- 3.2. Anonymous allegations will be dealt with through the Whistleblowing Policy.
- 3.3. CVHA's Chairperson will in turn inform the Scottish Housing Regulator (SHR) of receipt of such a complaint/grievance in accordance with the SHR guidance note and the CVHA Notifiable Events Policy. The Chairperson should also advise SHR how the Board intends to handle the complaint/grievance. The Chairperson will also consider whether any other body should be notified.
- 3.4. Acknowledgement of the complaint/grievance should be sent to the complainant as soon as is practicable, ideally within three working days. An appropriate CVHA Director can assist the

Chairperson with this task.

- 3.5. The Chief Executive 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 Chief Executive to prepare to answer the case at a meeting with the Sub-Committee. Copies of any written evidence, including witness statements if applicable, will be provided with the notification. An appropriate CVHA Director can assist the chairperson in compiling the notification letter.

#### **4. Who will hear the complaint/grievance?**

- 4.1. CVHA's Chairperson would not be expected to deal with such matters alone. Therefore, a Sub-Committee of CVHA's Board members will be selected to manage the complaint/grievance. This committee will have a quorum of 3 members. One member will be designated chair for the purposes of managing the complaint/grievance. Members of this Sub-Committee will then be responsible for managing the investigation of the complaint, conducting the hearing and deciding on any action from the complaint/grievance.
- 4.2. Due to the highly sensitive nature of complaints at this level, it is vital that confidentiality is observed and maintained throughout. The full CVHA Board may be told that a complaint/grievance has been received and is being dealt with but not about any of the detail. This is for a variety of reasons:
  - CVHA's Board retains control over the affairs of the Group.
  - It ensures confidentiality for the Chief Executive at the centre of the allegations, as is their right.
  - CVHA's Board knows that the complaint is being handled.
  - If independent help is required, then any associated costs can be authorised.
  - CVHA's Board can monitor any emerging patterns of grievances and decide on an appropriate course of action.
- 4.3. By keeping the substance of the complaint confidential, it leaves a clean route for any appeal to be heard by other members of CVHA's Board who are untainted by detailed knowledge.
- 4.4. Should it be required, an Appeals sub-committee will be formed from remaining members of CVHA's Board. CVHA's Board will be notified of the outcome of the complaint / grievance at the end of the full process.

## **5. Independent advice and support**

- 5.1. Again due to the sensitive nature of such situations, it would be inappropriate for any Group employees to be involved in the investigation or managing of a complaint/grievance against the Chief Executive. Access to independent advice must therefore be sought by the Sub-Committee. The Responsible Person will notify the Group's Employment Solicitors and arrange for a brief to be drafted and issued to list of suitably qualified consultants to carry out an investigation, in line with Procurement Strategy limits. A briefing session for the sub-committee will take place asap. Solicitors will provide pro-active support service ensuring that the investigation of the complaint/grievance, and any subsequent action taken, complies with the CVHA's legal duties, including those relating to GDPR, equalities and human rights.
- 5.2. Employee matters are complex and such advice will be sought from an employment law expert.
- 5.3. The Responsible Person or Sub-Committee may also ask CVHA's Finance and Corporate Services Director for information on possible sources of independent advice. CVHA's Finance and Corporate Services Director 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.

## **6. Principles for hearing the complaint/grievance**

- 6.1. The full process of hearing a complaint/grievance is noted in the attached guidance (see Appendix 1). The general principles which the 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 Sub-Committee.
  - Meet with the Chief Executive and allow them to put forward their case in response to the complaint/grievance.
  - Allow the Chief Executive to be accompanied at the meeting by a representative of their choosing. Investigate further if required.
  - Adjourn the meeting if required to consider the information presented.
  - Notify the Chief Executive of the outcome decision and the right of appeal.
- 6.2. 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.
- 6.3. At all stages it is important to keep accurate and appropriate records to document and evidence decision making.

## **7. Updating of the procedure**

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

## **Appendix 1**

### **Guidance notes for the Sub-Committee to investigate and hear a complaint/grievance against the Chief Executive.**

#### **1. Notification of a hearing**

- 1.1. The 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 Chief Executive 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 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 Chief Executive will be expected to attend the hearing in person unless there are exceptional circumstances (an example might be where the Chief Executive is on long term absence and is unlikely to return within a reasonable period).
- 1.3. 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 Hearing sub-committee should collect all the relevant information and aim to hold the hearing within 10 working days of receipt of the complaint.

#### **2. At the hearing**

- 2.1. The Chair of the Hearing sub-committee will outline to the Chief Executive the details of the complaint and findings from any subsequent investigations. The Chief Executive 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 Sub-Committee to present their decision at this stage.
- 2.3. A member of the Sub-Committee should take notes of the hearing.

#### **3. After the investigation and meeting**

- 3.1. After the hearing, the decision of the Sub-Committee should be conveyed in writing to the Chief Executive within five working days of the date of the hearing.
- 3.2. 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
- 3.3. 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 Sub-Committee is satisfied that it has come to a satisfactory conclusion it must then decide whether to:
- Uphold the complaint
  - Partially uphold the complaint
  - Not uphold the complaint

#### **5. Right of Appeal**

- 5.1. If the Chief Executive is not satisfied with the outcome of the hearing, an appeal may be submitted in writing to an Appeals sub-committee within seven working days of the date of the decision letter. The appeal should specifically outline the reasons why the Chief Executive believes the decision was unfair or unreasonable and/or why they believe the 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

#### **6. Notification of Appeal**

- 6.1. The Chief Executive 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 Chief Executive 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 Chief Executive 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 grievance 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 Hearing and Appeals sub-committees may co-opt an independent advisor to attend hearing or appeal meetings.
- 7.5. The Hearing 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 grievance and must keep the matter confidential.

## **8. Right of Delay**

- 8.1. At all stages of the grievance and appeal procedure the Chief Executive can request to delay the hearing for up to five working days if their chosen companion is unavailable. The Sub-Committee should agree to this request unless there are exceptional reasons for not doing so.
- 8.2. If the Sub-Committee, the Chief Executive or their companion cannot attend the meeting 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 again.

## **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 grievance hearing. In certain circumstances some information may be withheld, for example, to protect a witness.
- 9.2. Records will be kept of all meetings detailing:
  - the nature of the complaint/grievance raised
  - a note of the meeting held to hear the 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