

A meeting of the Management Committee will take place on **Thursday 20 August 2020 at 7.00pm held virtually using Teams.**

Please advise staff if you are unable to attend.

**External Auditors** will be attending up to and including Agenda Item 3.4

**Joyce Bolan**  
**Secretary**

## **B U S I N E S S**

### **1.0 GENERAL**

- 1.1 Apologies
- 1.2 Declaration of Interest by Management Committee Members
- 1.3 Minutes of 28 May 2020 – **for approval**
- 1.4 Action List – for information
- 1.5 Matters Arising

### **2.0 GOVERNANCE**

- 2.1 Secretary's Report – **for homologation**
- 2.2 Key Performance Indicators 2020/21 – for information
- 2.3 Annual General Meeting: Management Committee Membership – **for approval**
- 2.4 Revised Rules – **for approval**

### **3.0 PRIORITY ITEMS**

- 3.1 Meeting the Updated Scottish Housing Quality Standard – for information

### **4.0 POLICIES**

- 4.1 Association Membership Policy Review – **for approval**
- 4.2 Sponsorship & Donations Policy Review – **for recommendation to Members**
- 4.3 Pensions Policy Review – **for approval**
- 4.4 Amendment to Shared Ownership Policy – **for approval**

### **5.0 BUSINESS MANAGEMENT**

### **6.0 ANY OTHER BUSINESS**

### **DATE OF NEXT MANAGEMENT COMMITTEE MEETING**

**AGM: Thursday 24 September 2020** at ELHA Head Office, Haddington, at 2.30pm

**Meeting: Thursday 24 September 2020** at ELHA Head Office Haddington, at 3.00pm

## Action List

### Report by Martin Pollhammer, Chief Executive – for information

---

#### 1.0 Meeting on 28 May 2020 at 7.00pm

The table below sets out the required actions agreed at the last meeting of the Management Committee on 28 May 2020, and confirms the actions taken as a result.

Minute Ref	Action Required	Action By	Action Taken
2.4	Seek further clarification in relation to Rules 4.1, 43.1.1 and 45	MP	See <b>Agenda Item 2.4</b>
2.5	Update on the current position in relation to compliance with SHQS and Tolerable Standard amendments	DM	See <b>Agenda Item 3.1</b>
3.1	Submit the ARC to the Scottish Housing Regulator	JT	Complete
4.4	Develop a temporary working away from the office approach to incorporate in the Business Continuity Plan	MP	Complete, all staff notified of the new approach

#### 2.0 Meeting on 28 May 2020 at 6.00pm

The table below sets out the required actions agreed at the meeting of the Management Committee on 28 May 2020 at 6.00pm, and confirms the actions taken as a result.

Minute Ref	Action Required	Action By	Action Taken
1.5	Clarification to be sought from EVH over appropriate subsistence payments to Management Committee members attending conferences	MP	EVH advised they have no guidance on this and are not looking to develop any but would seek to pass on any relevant policy or practice from other EVH members

## Secretary's Report – for homologation

---

### 1.0 Membership:

No new applications for membership have been received

### 2.0 Use of Seal for Homologation:

Letter of Variation to the Grant Offer between East Lothian Council and East Lothian Housing Association dated 22 and 24 January 2019 in relation to the Energy Efficiency Programmes.

Disposition – 12L Colvin Street Dunbar in favour of [REDACTED]

Minute of Agreement between East Lothian Council and East Lothian Housing Association in relation to land to the East at Newton Port, Haddington.

### Recommendation

The Management Committee is asked to Homologate the use of the Seal.

## Key Performance Indicators 2020/21

### Report by Martin Pollhammer, Chief Executive – for Information

---

#### 1.0 Introduction

The Association's Key Performance Indicators (KPI's) for the first quarter of 2020/21 are attached as **Appendix 1** to this report.

#### 2.0 ELHA Performance

The Association has missed the following targets:

##### 2.1 Non-technical Arrears as % of Rental Income

The target for rent arrears was reduced to 3% given that figures remained well below the previous target and had reached an all-time low of 2.39% in December 2019. Unfortunately, disruption caused by the Coronavirus has had a significant impact on many tenants who have lost their job or had reduced income leading to the arrears increasing slightly above target to 3.17%. This was lower than expected given the number of tenants applying for Universal Credit. All appropriate recovery action is being taken up to a point; the Coronavirus (Scotland) Act 2020, introduced longer Notice periods to prevent evictions, during lock down and Courts closed. Rental income is being monitored daily whilst prompt referrals to the Financial Inclusion Service are being made.

##### 2.2 Gold and Platinum Key Tenants

Platinum Key Tenants figures have increased this quarter but both Gold and Platinum remain under target. Emphasis is currently placed on getting those 5% of tenants who have signed up to their My Home account but who have not gone paper-free, to do so. Thereafter a focus will be placed on encouraging tenants to sign up to the Key Tenant Scheme.

##### 2.3 Percentage of tenants using their My Home Account

Given figures were just below the target at year end and are expected to increase gradually, so the target for this financial year was increased to 80%. The number of tenants using their My Home account has risen and falls just short of the new target by 4% providing further confidence that this target will be achieved this financial year.

##### 2.4 Gas Services completed within timescale

Gas Services completed within timescale were 97% against a target of 100%. This was a result of tenant refusal to allow access due to the Coronavirus pandemic.

Guidance received concerning the servicing of gas appliances through the lockdown period indicated that the service should continue wherever possible, but if there were genuine and serious health issues that precluded the servicing taking place, it could be deferred providing a clear record of events was maintained and that a risk assessment was carried out, looking at the type and age of the appliances. This guidance has been followed. Contact with tenants was maintained throughout so that appliances could be serviced as soon as access was granted.

There is now only one property remaining where the annual safety check date has expired. If the tenant continues to refuse access, then, as a last resort, forced entry or capping of the gas supply to the property will be considered, but a new appointment date has been agreed.

### **2.5 Number of Accidents Reportable to HSE**

An accident on 17 June 2020 involving an employee of R3 Repairs was reported to the Health and Safety Executive (HSE) on 19 June 2020. Any such report is also a Notifiable Event to the Scottish Housing Regulator (SHR), and this was reported to them on 24 June 2020, and closed off by the SHR who confirmed that no further action or information was required on 26 June 2020.

As yet, R3 has had no response from the HSE and, given the time since the date of reporting, it is not anticipated that any further contact will be received on this matter.

Key Performance Indicators 2020/21

Performance Indicator	Quarterly Target	Q1	Q2	Q3	Q4	2020/21 Target	2019/20Actual	Year to Date	Status
<b>Rental Income</b>									
Non-technical arrears as % of rental income	3.0%	3.17%				3.0%	2.77%	3.17%	☹️
Bad debts written off as % rental income	1.75%	1.45%				1.75%	0.30%	1.45%	😊
Voids as % of rental income	0.75%	0.45%				0.75%	0.38%	0.45%	😊
<b>Finance</b>									
Interest cover (loan covenants)	110%	461%				110%	280%	461%	😊
Gearing (loan covenants FRS102 definition)	<37%	24%				<37%	26%	24%	😊
Current assets as a % of current liabilities	100%	144%				100%	119%	144%	😊
Unit management costs	£1,663	£1,362				£1,663	£1,573	£1,362	😊
Unit reactive maintenance costs	£667	£646				£667	£906	£646	😊
<b>Asset Management</b>									
Stock condition inspections completed	cumulative	0%				20%	20%	0%	😊
Gas services completed within timescale	cumulative	97%				100%	100%	97%	☹️
Planned maintenance contracts with >5% overspend	0	0				0	0	0	😊
Average time taken to complete emergency repairs	< 2 hours	01:24				< 2 hours	01:21	01:24	😊
Average time taken to complete non-emergency repairs	< 6 days	2.8				< 6 days	5.38	2.8	😊
Repairs completed right first time	85%	96%				85%	96%	96%	😊
Repair appointments kept	93%	97%				93%	97%	97%	😊
<b>Housing Management</b>									
Properties allocated after 3 or more refusals	0	0				0	2	0	😊
Number of evictions carried out	no target	0				no target	3	0	
Number of ASBO's in force against tenants	no target	2				no target	2	2	
Gold Key Tenants	35.0%	12.3%				35%	12.4%	12.3%	☹️
Platinum Key Tenants	25.0%	16.9%				25%	16.4%	16.9%	☹️
<b>Corporate</b>									
Number of accidents reportable to HSE	0	1				0	0	1	☹️
% working days lost through long term sick leave	5%	0.2%				5%	1.26%	0.2%	😊
% working days lost through short term sick leave	2%	0.37%				2%	1.31%	0.37%	😊
Management Committee Attendance	75%	100%				75%	76%	100%	😊
Audit & Assurance Committee Attendance	75%	83%				75%	76%	83%	😊
% of Tenants using their My Home Account	80%	76%				80%	74%	76%	☹️
% of Tenants Paper Free	70%	71%				70%	70%	71%	😊

😊 Performance Excellent    ☹️ Performance Satisfactory    ☹️ Performance Poor

# Annual General Meeting: Management Committee Membership

## Report by Peter Ewart, Chairman – for approval

---

### 1.0 Background

Under the Association's Rules, adopted on 28 May 2015, the Association must give notice to all Members of the intention to hold an Annual General Meeting (and include nomination papers for the Management Committee) at least 28 days before the date of the meeting. Regulatory Standards require the Association to identify any specific priorities for recruitment following the annual assessment of what skills the Management Committee needs to meet ELHA's strategic objectives – this should emerge from the annual reviews and Succession Plan, which is due to be presented to the next Management Committee meeting in September 2020.

### 2.0 Elections to the Management Committee for 2020/21

The Management Committee of East Lothian Housing Association may consist of up to fifteen members, however the Association's Standing Orders aim for between ten and twelve places to be filled at any one time. Following last year's Annual General Meeting, the Association had twelve elected members.

On 26 February 2020, Robert McNeill resigned from the Management Committee reducing the Management Committee to eleven.

Under Rule 39.1 at least one third of the members of the Management Committee must retire (if no other members, or an insufficient number of members have indicated their intention to retire to fulfil this requirement, those with the longest period since their last election should retire). These are Joyce Bolan, Shirley Evans, Peter Hayman and David Rose.

Under Rule 37.6, the Management Committee must satisfy itself that any Management Committee member seeking re-election after a period of continuous service of nine or more years can demonstrate their continued effectiveness. Joyce Bolan, Shirley Evans, Peter Hayman and David Rose have all indicated their willingness to serve for a further term, and as Rule 37.6 applies in each case, to do so their nominations require to be endorsed by the Management Committee.

Joyce Bolan has been the Secretary of East Lothian Housing Association for a number of years and lives locally, which not only allows her to be one of the Association's main signatories (Joyce is fully trained in all aspects of the Association's payment authorisation procedures and signing protocols), but also this means Joyce has significant knowledge about local community issues.

Shirley Evans brings comprehensive legal knowledge and experience from her work as a solicitor who advises and acts for RSLs, primarily in respect of tenancy and housing management matters, but also wider issues associated with regulation and compliance.

Peter Hayman is a founder member and former Chair who brings extensive sector-related governance and policy experience, combined with local strategic and community knowledge and a broad perspective from his academic and teaching career.

David Rose is currently Chair of Employers in Voluntary Housing and therefore has specific insights and experience relating to the Management Committee's role as an employer. David lives locally and has a wide range of other interests in the community, including his longstanding membership of Longniddry Community Council, as well as business expertise from his previous employment.

In my view, all continue to make a valuable contribution to the Management Committee's discussions and activities and, having discussed this ongoing commitment to ELHA during my annual meetings with Management Committee members, I recommend that the Management Committee endorse the nominations of Joyce Bolan, Shirley Evans, Peter Hayman and David Rose for re-election at the forthcoming 2020 AGM.

Therefore, there are eight vacancies on the Management Committee; four members are eligible for nomination and four vacancies for which nominations can be sought. At the time of writing, no members have expressed an interest in joining the Management Committee.

If more nominations are received than there are places available on the Management Committee before Thursday 3 September 2020, a ballot at the AGM will be required, otherwise all nominees will be automatically appointed.

**Recommendations**

The Management Committee is asked to endorse the nominations for Joyce Bolan, Shirley Evans, Peter Hayman and David Rose for re-election to the Management Committee at the 2020 AGM, having been satisfied that their contribution continues to be effective and valuable.



## Revised Rules

### Report by Martin Pollhammer, Chief Executive – for approval

---

#### 1.0 Background and Introduction

The majority of the potential Rule changes were discussed at the last meeting of the Management Committee on 28 May 2020. This report considers only issues raised at that meeting that required further discussion, amendment or clarification.

In addition, as a result of the Coronavirus pandemic, a small addition has been made to the Model Rules to allow for virtual general meetings in the future, so this paper also introduces this new Rule.

Throughout this process, advice has been (and will continue to be) taken from the Association's solicitors, Anderson Strathern, to ensure that the appropriate processes are followed in updating the Rules.

#### 2.0 Remaining Issues

##### 2.1 Issues Requiring Clarification

Rule 43.1 refers to Trust Deeds. The Management Committee questioned whether this was appropriate, and whether this reference could be removed. This was queried with Anderson Strathern who responded as follows:

*Clause 43.1 – I appreciate that given the current climate, we are likely to see more people struggling with their finances. I have had a look through the Scottish Housing Regulator guidance in relation to governance and the Code of Conduct for members. There is a clear emphasis that there are high expectations of those who serve on the governing bodies of housing associations. Governing bodies must show that they are acting in the best interests of the Association at all times and must show that they can manage the resources of the Association effectively.*

*Despite the circumstances that may have led an individual to enter into the Debt Arrangement Scheme (e.g. it may have been no fault of their own), it is a matter of perception. Can a governing body be perceived to be able to handle public funds, if individual governing body members are struggling to manage their own finances? In my view that is the reason why that clause is there.*

On this basis, it was agreed in discussion with the Chair and Vice-Chair, that this clause should remain as drafted in the model.

Rule 45 refers to the relationship with the Scottish Housing Regulator. Again this was queried with Anderson Strathern, who responded as follows:

*Clause 45 – this wording was inserted into the Model Rules to ensure compliance with Constitutional Requirement 17 of the SHR Regulation Framework. That states that the “powers and responsibilities of the governing body are clearly set out”. However, I don’t find the wording particularly clear as it does not specify what powers the SHR can use.*

*That being said, this clause shouldn’t lead to the governing body failing to act in the best interests of the Association. If anything, it reiterates the requirement to ensure that the Association carries out effective governance.*

*I note that concerns are being raised in relation to the wording, and therefore this may be changed at some point in the future.*

Again in further discussion with the Chair and Vice-Chair, it was agreed that there was little merit in trying to explore this further as an individual Association. In any case, it is arguable that the clause cannot be enforced. The current drafting of Rule 45 is as follows:

*45 The Committee is responsible for ensuring that the Association can demonstrate its governance and financial arrangements are such as to allow The Scottish Housing Regulator to regulate effectively and exercise its full regulatory powers.*

The Management Committee has no power to influence how the SHR works.

However, there remains some concern across the sector at the wording of this clause. The Chief Executive has written to the Scottish Federation of Housing Associations to note the Association’s concern and to ask whether any alternative wording would be acceptable, and received the following reply:

*This was a line that the SHR were keen for us to add during the last review, in order to reflect the SHR’s changes to the regulatory framework last year (and the updated constitutional requirements). What it refers to is not creating a set of rules / governance structures so complex that it inhibits the SHR from regulating.*

*Specifically it covers off the SHR’s Constitutional Requirement 8: “The RSL can demonstrate its governance and financial arrangements are such as to allow the regulator to regulate effectively, and exercise our full regulatory powers” and more generally Constitutional Requirement 17 which states “the powers and responsibilities of the governing body are clearly set out.”*

*We do not have any alternative wording I am afraid, but it is like you say a model that can be amended as it is being adopted. The only thing I would say, is including this line meant it met the SHR’s constitutional standards and taking it out might mean it no longer does (depending on the alternative wording used).*

*Whilst you do not have to get prior approval, you do have to notify the SHR after they are adopted with a note of any amendments you have made and why – so you would have to explain why this was taken out.*

It is therefore suggested that the wording is adopted as per the current Model Rules with a view to changing this wording as and when any revised Model Rules become available (it should be noted that one of the benefits of the new Rules is a more streamlined approach to future revisions).

## **2.2 Amended Rules**

As set out in **Appendix 1**, a number of Rules have been updated to take account of decisions taken at the last Management Committee meeting on 28 May 2020. All changes made to the set of Rules approved at that meeting have been tracked in the final set of Rules, attached as **Appendix 2** to this report.

In addition, a new Rule (Rule 20) has been added. This is an addition to the set of Model Rules that allows for Annual or Special General Meetings to be held virtually if required. Clearly this has been added in response to the Coronavirus pandemic, and it makes sense to add this Rule whilst the opportunity exists.

## **3.0 Next Steps**

Once approved by the Management Committee, the new Rules need to be approved by the Association's Members at a Special General Meeting (SGM). The SGM will be held immediately prior to the Annual General Meeting (AGM) on Thursday 24 September 2020. Members will receive one mailing containing two set of papers – one set of papers for the SGM, and the other for the AGM.

**Appendix 3** sets out the remaining process for adoption of the amended Rules. This process will be overseen by Anderson Strathern.

### **Recommendation**

The Management Committee is asked to approve the revised Rules in order that they can be presented to the Association's Membership at a Special General Meeting on Thursday 24 September 2020.

EAST LoTHIAN HOUSING ASSOCIATION (“ELHA”)

PROPOSED ADOPTION OF NEW ELHA RULES

TO BE BASED ON

SFHA CHARITABLE MODEL RULES (SCOTLAND) 2020 (“MODEL RULES”)

This Schedule sets out (a) amendments required to the existing ELHA rules to adopt the Model Rules and (ii) optional amendments to the Model Rules which have been approved by the Scottish Housing Regulator to consider adopting (iii) purpose of and/or benefits and risks (if any) attached to the proposed amendments and (iv) existing provisions to consider retaining in ELHA Rules which are not included in the Model Rules.

The amendments will be considered by the ELHA management committee at the management committee meeting to be held on 28 May 2020. The new rules of ELHA will incorporate the amendments approved by the management committee at such meeting.

Defined terms in “Existing Rule” column are as defined in the existing ELHA rules (available in the Management Committee area of elha.com or a printed copy on request). Defined terms in the “New Rule” column are as defined in the Model Rules (attached at Appendix 2).

<b>Objects</b>			
<b>Rule No.</b>	<b>Existing Rule</b>	<b>New Rule</b>	<b>Purpose of and/or benefits and risks (if any) attached to the proposed amendments</b>
4.1	The Association shall not trade for profit.	The Association shall not trade for profit and any surplus shall only be applied for the purpose of furthering the Association’s objects and/or in accordance with these Rules.	Clarifies where any surplus should be applied.
4.2	No Rule	Nothing shall be paid or transferred by way of dividend to Members.	Required under charities legislation.

General Meetings			
Annual General Meeting			
Rule no.	Existing Rule	New Rule	Purpose of and/or benefits and risks (if any) attached to the proposed amendments
20	No Rule	Notwithstanding any other provisions of the Rules (which shall be subject to the terms of this Rule 20) a Member cannot insist on attending a general meeting of the Members, or voting at the meeting, by any particular means. Further, the following provisions shall apply to the conduct of general meetings when so determined by the Committee	<p>This provision allows the Committee to determine the means by which a general meeting should be held and to apply the provisions for a “virtual” meeting set out below when this is considered desirable or necessary.</p> <p>Where “virtual” attendance at a meeting is to be permitted the Committee must give early consideration to the platform to be used, to the format of notice to Members and the mechanics of joining and running a meeting of this kind.</p>
20.1	No Rule	A general meeting need not be held in any particular place and the meeting may be held without any number of those participating in the meeting being together at the same place.	In accordance with this provision, it is not necessary for any particular number of Members to be physically present at a venue for the meeting to proceed, i.e. virtual attendance would count towards the quorum requirements outlined at rule 24.1
20.2	No Rule	A general meeting may be held by any means which permits the Members attending to hear and comment on the proceedings during the meeting. Members attending the meeting by	This provision allows for meetings to be held “virtually”. If there was a lockdown in place - and it was not permitted to have

		such means shall be present at the meeting for the purposes of Rule 24.1.	a physical meeting a “virtual” meeting could be held.  In normal times the Committee could decide to hold a purely physical meeting in the traditional way, or allow both physical and “virtual” attendance. It is not anticipated that a Committee would hold a purely “virtual” meeting in circumstances when physical attendance was possible.
20.3	No Rule	A Member is able to exercise the right to vote at a meeting (including if a poll is required) by such means as is determined by the Chairperson and which permits the Member’s vote to be taken into account in determining whether or not a resolution is passed.	This allows appropriate voting arrangements to be put in place here there is “virtual” attendance at the meeting.
24.1	For a meeting to take place there must be at least seven Members either present at the venue or represented at the venue by a representative approved in terms of Rule 27.1. If there are more than 70 Members, at least one-tenth must either be present or represented at the venue by a representative in terms of Rule 27.1.	For a meeting to take place there must be at least seven Members either present at the meeting or represented by a representative approved in terms of Rule 27.1. If there are more than 70 Members, at least one-tenth must either be present or represented by a representative in terms of Rule 27.1.	This removes any reference to “a venue”, therefore making it possible for anyone attending virtually to count towards the quorum.
<b>Procedure at general meetings</b>			
<b>Rule no.</b>	<b>Existing Rule</b>	<b>New Rule</b>	<b>Purpose of and/or benefits and risks (if any) attached to the proposed amendments</b>

26.1	The Chairperson of the Management Committee will be Chairperson at all our meetings. If there is no Chairperson or he/she is not present or willing to act, the Vice Chair will be Chairperson of the meeting. If there is no Vice Chair or s/he is not present or willing to act, the Members present must elect a Member of the Management Committee to be Chairperson of the meeting. If no Management Committee Members are present, the Members present must elect a Member to be Chairperson of the meeting.	The Chairperson of the Management Committee will be Chairperson at all our meetings. If there is no Chairperson or he/she is not present or willing to act, the Vice Chair will be Chairperson of the meeting. If the Vice Chair is not present or willing to act, the Members present must elect a Member of the Management Committee to be Chairperson of the meeting. If no Management Committee Members are present, the Members present must elect a Member to be Chairperson of the meeting.	Removal of the words “If there is no Vice Chair”
<b>Interests</b>			
<b>Rule No.</b>	<b>Existing Rule</b>	<b>New Rule</b>	<b>Purpose of and/or benefits and risks (if any) attached to the proposed amendments</b>
38.4	If the Association’s policy on payments and benefits permits payment to Committee Members (or any of them) the Committee must take account of any independent guidance and good practice in fixing the amount of such payments. Any payments will be linked to specified duties to be undertaken by the relevant Committee Members and the Association will have in place a clear and robust process for assessing the performance of	If the Association’s policy on payments and benefits permits payment to <b>non-executive</b> Committee Members (or any of them) the Committee must take account of any independent guidance and good practice in fixing the amount of such payments <b>and can demonstrate value for money</b> . Any payments will be linked to specified duties to be undertaken by the relevant Committee Members and the Association will have in place a clear and robust process for assessing the	New rule includes reference to current charity law requirements.

	<p>Committee Members in carrying out such duties. The Association must ensure that any such payments to Committee Members are disclosed in the audited accounts of the Association.</p>	<p>performance of Committee Members in carrying out such duties. The Association must ensure that any such payments to Committee Members are disclosed in the audited accounts of the Association. <i>Where the Association has one or more subsidiaries it must ensure that any payments and benefits to the subsidiary governing body members are included in the policy. The Association must comply with the Charities and Trustee Investment (Scotland) Act 2005 and any associated guidance from the Office of the Scottish Charity Regulator when considering payment or benefits to the charity trustees.</i></p>	
--	---	---	--

The following rules have been included in ELHA’s existing Rules as they are specific to the structure of ELHA. These rules will remain in the updated version of the Rules:

Rule 18.1 – “The Association can borrow money as long as the total borrowing at any time is not more than £100,000,000.”

Rule 47 – “Amongst its most important powers, the Committee can:-

47.3 establish a subsidiary or subsidiaries of the Association within the meaning of the Companies Act 2006 or the Co-operative and Community Benefit Societies Act 2014.

47.4 grant a guarantee in respect of the liabilities and obligations of any subsidiary of the Association within the meaning of the Companies Act 2006 or the Cooperative and Community Benefit Societies Act 2014. Where the Association is granting such a guarantee it must:

47.4.1 limit its liability to a maximum of 70% of the Association’s accumulated surplus;



47.4.2 ensure the charitable status of the Association is not prejudiced; and

47.4.3 comply with any legal requirement and regulatory guidance issued by The Scottish Housing Regulator and the Office of the Scottish Charity Regulator.”

Vice Chair      References to Vice Chair will be retained in ELHA’s Rules despite being removed from the Model Rules.

These are the Rules

of

East Lothian Housing Association Limited

Based upon  
SFHA Charitable Model Rules (Scotland) 2020

Registered under the  
Co-operative and Community Benefit Societies Act 2014  
and the Housing (Scotland) Act 2010

2266RS

**Published by**  
**the Scottish Federation of Housing Associations**  
**in co-operation with The Scottish Housing Regulator**

3<sup>rd</sup> Floor, Sutherland House,  
149 St Vincent Street,  
Glasgow, G2 5NW  
Tel: 0141 332 8113  
Fax: 0141 332 9684

### **Further guidance**

#### **Further Advice**

A separate document is also available from the SFHA Rules Service, which gives guidance on the use of these rules and the options. Advice is also available from staff at The Scottish Housing Regulator.

Advice on the procedural aspects of making a Rule registration application or Rule Amendment application is also available from the SFHA Rules Service.

## CONTENTS PAGE

ITEM	PAGE NO	ITEM	PAGE NO
Introduction:	1	The Secretary and Officer Bearers	16
- Name		- Role of the Chair	
- Objects		Financial Guarantees for Officers	18
Membership	1	The Committee's Minutes, Seal, Registers and Books	18
- Applying for membership		- Minutes	
Ending your membership	2	- Execution of Documents and Seal	
Representing an Organisation	3	- Registers	
Share Capital	4	- Registered Name	
- Shares		- Documentation	
- Transferring shares		Accounts	19
Borrowing Powers	4	The Auditor	20
General Meetings	5	Annual Returns and Balance Sheet	21
- Annual General Meeting		Surpluses and Donations	21
- Special General Meeting		Investments	21
- Notice of Meetings		Inspecting the Register	21
- Procedure at General Meetings		Disputes	21
- Proxies/Representatives/Postal Votes		Statutory Applications to the Financial Conduct Authority	22
- Voting		Copies of Rules	22
- Proceedings at General Meetings		Closing Down the Association	22
The Committee of Management	9	Changing the Rules	23
- Composition of the Committee		Interpreting these Rules	24
- Interests		Appendices:	26
Electing Committee Members	10	- Appendix 1: Proxy form	
- Co-optees		- Appendix 2: Cancellation of Proxy	
- Eligibility for the Committee		Signatures of Committee Members	28
Powers of the Committee of Management	13		
Committee Procedure	14		
- Special Committee Meetings			
- Sub-committees			

## INTRODUCTION

### Name

- 1 The name of the Society shall be East Lothian Housing Association Limited (hereinafter referred to as "the Association").

### Objects

- 2 The objects of the Association are:
  - 2.1 to provide for the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage through the provision, construction, improvement and management of land and accommodation and the provision of care; and
  - 2.2 any other purpose or object permitted under Section 24 of the Housing (Scotland) Act 2010 which is charitable both for the purposes of Section 7 of the Charities and Trustee Investment (Scotland) Act 2005 and also in relation to the application of the Taxes Acts.
- 3 The permitted activities and powers of the Association will include anything which is necessary or expedient to help the Association achieve these objects.
- 4.1 The Association shall not trade for profit and any ~~profits surplus~~ shall only be applied for the purpose of furthering the Association's objects and/or in accordance with these Rules.
- 4.2 Nothing shall be paid or transferred by way of ~~profit dividend~~ to Members.
- 5 The registered office of the Association is at : 18-20 Market Street, Haddington, East Lothian, EH41 3JL.

## MEMBERSHIP

- 6 The Members of the Association shall be those persons or organisations who hold a share in the Association and whose names are entered in the Register of Members.

### Applying for Membership

- 7.1 The Committee shall set, review and publish its membership policy for admitting new Members. Subject to the provisions of Rule 7.2 the following shall be eligible to become Members:-
  - 7.1.1 Tenants of the Association;
  - 7.1.2 Service users of the Association;
  - 7.1.3 Other persons who support the objects of the Association.
  - 7.1.4 Organisations sympathetic to the objects of the Association.

- 7.2 If you are applying for membership you must send a completed and signed application form and the sum of one pound (which will be returned to you if the application is not approved) to the Association's registered office. Whilst it is the Association's intention to encourage membership, the Committee has absolute discretion in deciding on applications for membership and the following shall constitute grounds for refusal of an application for membership:-
- 7.2.1 Where membership would be contrary to the Association's Rules or policies; or
- 7.2.2 Where a conflict of interest may exist which, even allowing for the disclosure of such an interest, may adversely affect the work of the Association; or
- 7.2.3 Where the Committee considers that accepting the application would not be in the best interests of the Association.
- 7.3 Your application shall be considered by the Committee as soon as reasonably practicable after its receipt by the Association. An application for membership will not be considered by the Committee within the period of fourteen days before the date of a general meeting. The Committee has the power in its absolute discretion to accept or reject the application.
- 7.4 If the Committee approve your application, you will immediately become a Member and your name and other necessary particulars will be included in the Register of Members within seven working days. You will then be issued one share in the Association.
- 8 You can apply for membership of the Association from the age of 16.
- 9 No Member can hold more than one share in the Association.
- 10 If you change your address, you must let the Association know by writing to the Secretary at the registered office within three months. This requirement does not apply if you are a tenant of the Association and have moved home by transferring your tenancy to another property owned and managed by the Association.

## **ENDING YOUR MEMBERSHIP**

- 11.1 Your membership of the Association will end and the Committee will cancel your share and record the ending of your membership in the Register of Members if:-
- 11.1.1 You resign your membership giving seven days' notice in writing to the Secretary at the registered office; or
- 11.1.2 The Committee reasonably believes that you have failed to tell the Association of a change of address as required by Rule 10; or
- 11.1.3 For five annual general meetings in a row you have not attended, submitted apologies, exercised a postal vote or appointed a representative to attend and vote on your behalf by proxy; or
- 11.1.4 The Association receives a complaint about your behaviour and two-thirds of the Members voting at a special general meeting agree to end your membership. The following conditions apply to this procedure:

- 11.1.4.1 the complaint must be in writing and must relate to behaviour which could harm the interests of the Association.
  - 11.1.4.2 the Secretary must notify the Member of the complaint in writing not less than one calendar month before the meeting takes place;
  - 11.1.4.3 the notice for the special general meeting will give details of the business for which the meeting is being called;
  - 11.1.4.4 you will be called to answer the complaint at the meeting. The Members present will consider the evidence supporting the complaint and any evidence you decide to introduce;
  - 11.1.4.5 the Members can vote in person or through a representative by proxy;
  - 11.1.4.6 if you receive proper notice but do not go to the meeting without providing a good reason, the meeting will go ahead without you and the Members will be entitled to vote to end your membership.
- 11.2 If your membership is ended in accordance with Rule 11.1.4, you will immediately cease to be a Member from the date that the resolution to end your membership was passed and any further application for membership by you will need to be approved by two-thirds of the Members voting at a general meeting.

## **REPRESENTING AN ORGANISATION**

- 12.1 An organisation which is a Member is free to nominate any person it considers suitable as its representative to the Association. That person will represent all of the organisation's rights and powers at general meetings.
- 12.2 To confirm the identity of a representative, the organisation must send the Association a copy of the authorisation or appointment of an individual as a representative. This should be signed by a Director, Secretary or Authorised Signatory of the organisation which signature must be witnessed, or in the case of a local authority, by the Chief Executive, or properly authorised Officer of the local authority.
- 12.3 An organisation can change the identity of the person entitled to represent that organisation at any time by confirming the identity of the new representative in terms of Rule 12.2 and withdrawing the authority of the original representative.
- 12.4 If you are a representative in terms of Rule 12.2, of an organisation which is a Member, you cannot be a Member as an individual yourself. If you are already a Member as an individual when you start to represent an organisation which is a Member, the Association will suspend your membership as an individual, until such time as you are no longer a representative of an organisation which is a Member.

## SHARE CAPITAL

### Shares

- 13 The share capital of the Association will be raised by issuing one-pound shares to Members. Shares cannot be held jointly. Joint tenants of the Association may each become individual Members.
- 14 There is no interest, dividend or bonus payable on shares.

### Transferring Shares

- 15 You shall not be entitled to any property of the Association in your capacity as Member and your share is not withdrawable or transferable save in the circumstances set out in Rules 16 and 17.
- 16 You cannot sell your share but you can transfer it if the Committee agrees.
- 17.1 If you die or end your membership or have your membership ended, or you are a representative of an organisation which no longer exists, the Committee will cancel your share (except in those circumstances outlined in Rules 17.2 and 17.3) and the value of the share will then belong to the Association.
- 17.2 You can nominate the person to whom the Association must transfer your share in the Association when you die, as long as the person that you nominate is eligible for membership under these Rules and in terms of the Association's membership policies. On being notified of your death, the Committee shall transfer or pay the full value of your share to the person you have identified. Your nomination must be in the terms required by the Co-operative and Community Benefit Societies Act 2014.
- 17.3 If you die or become bankrupt and your personal representative or trustee in bankruptcy seeks to claim your share, the Committee (to the extent that your personal representative or trustee in bankruptcy has right) will transfer or pay the value of your share in terms of your representative's or trustee's instructions.

## BORROWING POWERS

- 18.1 The Association can borrow money as long as the total borrowing at any time is not more than £100,000,000.
- 18.2 In respect of any proposed borrowing for the purposes of Rule 18.1, the amount remaining undischarged of any index-linked loan previously borrowed by the Association or any deep discounted security shall be deemed to be the amount needed to repay such borrowing in full if the pre-existing borrowing became repayable in full at the time of the proposed borrowing.



- 18.3 For the purposes of Rule 18.1 in respect of any proposed borrowing intended to be index-linked or on any deep discounted security the amount of borrowings shall be deemed to be the proceeds of such proposed borrowings that would be receivable by the Association at the time of the proposed borrowing.
- 18.4 The Association will not pay more than the market rate of interest as determined by the Committee having regard to the terms of the loan on any money borrowed.
- 18.5 The Association will not accept money on deposit.
- 18.6 The Association can lend money to an organisation which is a subsidiary of the Association within the meaning of the Companies Act 2006 or the Co-operative and Community Benefit Societies Act 2014 at a market rate of interest as determined by the Committee having regard to the terms of the loan. Where the Association is using a loan facility to on lend it must comply with the Regulatory Framework and Regulatory Guidance issued by The Scottish Housing Regulator from time to time.
- 18.7 The Association may borrow money from such lawful sources as is permitted by its Treasury Management Policy subject always to the requirement that the Association will comply with the Regulatory Framework and Regulatory Guidance issued by The Scottish Housing Regulator from time to time.
- 18.8 Subject to the foregoing provisions the Committee can determine and change the conditions under which the Association borrows or lends money.
19. The Association shall not lend money to Members.

## **GENERAL MEETINGS**

### **Annual General Meeting**

20. Notwithstanding any other provisions of the Rules (which shall be subject to the terms of this Rule 20) a Member cannot insist on attending a general meeting of the Members, or voting at the meeting, by any particular means. Further, the following provisions shall apply to the conduct of general meetings when so determined by the Committee:-

20.1 A general meeting need not be held in any particular place and the meeting may be held without any number of those participating in the meeting being together at the same place;

20.2 A general meeting may be held by any means which permits the Members attending to hear and comment on the proceedings during the meeting. Members attending the meeting by such means shall be present at the meeting for the purposes of Rule 24.1; and

20.3 A Member is able to exercise the right to vote at a meeting (including if a poll is required) by such means as is determined by the Chairperson and which permits the Member's vote to be taken into account in determining whether or not a resolution is passed.

~~The Association will hold a general meeting known as the annual general meeting within six months of the end of each financial year of the Association. The functions of the annual general meeting are to:~~

21. The Association will hold a general meeting known as the annual general meeting within six months of the end of each financial year of the Association. The functions of the annual general meeting are to:

~~201.1~~ present the Chairperson's report on the Association's activities for the previous year;

~~201.2~~ present the accounts, balance sheet and auditor's report;

~~201.3~~ elect Committee Members.

~~201.4~~ appoint the auditor for the following year; and

~~201.5~~ consider any other general business included in the notice calling the meeting.

## Special General Meeting

~~242.1~~ All general meetings other than annual general meetings are known as special general meetings. The Secretary will call a special general meeting if:

~~242.1.1~~ the Committee requests one; or

~~242.1.2~~ At least four Members request one in writing. If there are more than 40 Members, at least one tenth of all the Members must ask for the meeting.

~~242.2~~ Whoever asks for the meeting must give the Secretary details of the business to be discussed at the meeting.

~~242.3~~ If a special general meeting is requested, the Secretary must within 10 days of having received the request give all Members notice calling the meeting. The meeting must take place within 28 days of the Secretary receiving the Members' request. The Secretary should decide on a time, date and place for the meeting in consultation with the Committee or the Chairperson, but if such consultation is not practicable the Secretary can on his/her own decide the time, date and place for the meeting.

- 242.4 If the Secretary fails to call the meeting within 10 days, the Committee or the Members who requested the meeting can arrange the meeting themselves.
- 242.5 A special general meeting must not discuss any business other than the business mentioned in the notice calling the meeting.

### Notice for Meetings

- 223.1 The Secretary will call all general meetings by written notice posted or sent by fax or email to every Member at the address, fax number or email address given in the Register of Members at least 14 days before the date of the meeting. This notice will give details of:
- 223.1.1 the time, date and place of the meeting;
  - 223.1.2 whether the meeting is an annual or special general meeting;
  - 223.1.3 the business for which the meeting is being called.
- 223.2 The Committee may ask the Secretary to include with the letter or send separately to Members any relevant papers or accounts. If a Member does not receive notice of a meeting or papers relating to the meeting, this will not stop the meeting going ahead as planned. Each communication sent to a Member by post, addressed to his or her registered address, shall be deemed to have arrived forty eight hours after being posted. Each communication sent to a Member by fax or email shall be deemed to have arrived on the day it is sent.
- 23.3 The proceedings of a meeting shall not be invalidated by the inadvertent failure of the Association to send a notice calling the meeting to any Member.

### Procedure at General Meetings

- 24.1 For a meeting to take place there must be at least seven Members either present at the ~~venue meeting~~ or represented ~~at the venue~~ by a representative approved in terms of Rule 27.1. If there are more than 70 Members, at least one-tenth must either be present or represented ~~at the venue~~ by a representative in terms of Rule 27.1.
- 24.2 If not enough Members are present in person or by representative within half an hour of the time the meeting was scheduled to start, the meeting shall be rescheduled to the same day the following week at the same time and at such place as may be fixed by the Chairperson of the meeting and announced at the meeting. There is no need to give notice to Members of the rescheduled meeting. If at that meeting there are not enough Members present in person or by representative at the scheduled starting time the meeting can still go ahead.
- 25 If a majority of Members present agree, the Chairperson of a meeting can adjourn the meeting. No business can be discussed at the adjourned meeting other than the business not reached or left unfinished at the original meeting. There is no need to give notice to Members of the adjourned meeting.

- 26.1 The Chairperson of the Committee will be Chairperson at all meetings of the Association. If there is no Chairperson or h/she is not present or willing to act, the Vice Chair will be the Chairperson of the meeting. If ~~there is no Vice Chair or he/she~~ the Vice Chair is not present or willing to act, the Members present must elect a Member of the Committee to be Chairperson of the meeting. If no Committee Members are present, the Members present must elect a Member to be Chairperson of the meeting.
- 26.2 If the Chairperson arrives later, after the meeting has commenced, s/he will take over as Chairperson of the meeting as soon as the current agenda item is concluded.

### **Proxies/Representatives/Postal Votes**

- 27.1 To appoint a representative to vote on your behalf by proxy, you must let the Association have a properly completed document in the form shown in Appendix 1. Your representative does not need to be a Member. The document must reach the Association at least five days before the meeting at which you want to be represented. The Chairperson shall not be entitled to act as a representative for any other Member.
- 27.2 If there is any doubt about whether your representative has authority to vote, the Chairperson will decide and his/her decision will be final.
- 27.3 The maximum number of proxy votes that may be cast by any one person is 10.
- 27.4 To reverse your appointment of a representative, you must let the Association have a properly completed document in the form shown in Appendix 2. The document must be presented to the Association before the meeting at which you no longer want to be represented convenes. Alternatively, if you declare yourself present before the meeting convenes, the appointment of a representative to vote on your behalf will automatically fall.
- 27.5 The Chairperson will report to the meeting the details of any documents seeking to appoint a representative received but which are not valid. If you represent an organisation, your authorisation or appointment as a representative requires to be in accordance with the terms of Rule 12.2.
- 27.6 If there is to be an election of Committee Members at an Annual General Meeting, you can vote by post. Not less than 14 days before a meeting is held at which one or more Committee Members will be elected, you will receive a ballot paper for the election. You can vote in the election by returning the ballot paper to the Secretary at least 5 days before the day of the meeting, or by bringing your ballot paper along to the meeting.

## **Voting**

- 28 If a decision of a meeting is put to the vote, the outcome will be determined by the majority of those Members voting. Voting will be by a show of hands except where a poll is requested or required. Votes cannot be taken on resolutions which conflict with any provisions of these Rules or the law.
- 29.1 Where a vote is by a show of hands every Member present in person has one vote. Where a vote is by a poll every Member present in person or who has appointed a representative has one vote. Where an appointed proxy is present, and he/she advises the Chairperson, the Chairperson shall direct that the vote is by a poll.
- 29.2 In relation to the election of Committee Members, the vote is by a poll using the ballot paper issued to the Members prior to the meeting; votes received by post in advance of the meeting will be counted in the total number of votes at the meeting.
- 30 If there is an equal number of votes for and against a resolution, or in relation to the election of Committee Members, the Chairperson will have a second and deciding vote. The Chairperson's announcement of the decision of a vote will be final and conclusive. The decision is then recorded in the minutes of the meeting. There is no need to record the number of votes for or against the decision.
- 31.1 A poll can be required before or immediately after a vote by a show of hands, if at least one-tenth of the Members present at the meeting (in person or by proxy through a representative appointed in accordance with Rule 27.1) request this.
- 31.2 A poll must take place as soon as the Chairperson has agreed to it, in line with the Chairperson's instructions. The result of the poll will stand as the decision of the meeting.

## **Proceedings at General Meetings**

- 32 All speakers must direct their words to the Chairperson. All Members must remain quiet and orderly while this is happening.
- 33 You will not be allowed to speak more than once on any individual matter unless it is to explain something or ask for an explanation until every other Member has had the chance to speak. You will then have the opportunity to speak a second time on a matter but only if the Chairperson agrees. Where the Chairperson raised the matter for discussion initially, she/he shall be permitted to make a final reply on the matter.
- 34 The Chairperson will decide how long each speaker is allowed to speak, allowing equal time to each speaker.
- 35 If any point arises which is not covered in these Rules, the Chairperson will give his/her ruling. If the Chairperson's ruling is challenged by more than one person, the Chairperson will step down and those present will decide the point raised on a majority vote. If the vote is tied, the Chairperson's original ruling is carried.
- 36 Meetings must not last longer than two hours unless at least two-thirds of the Members present agree after the end of that time to continue the meeting.

## THE COMMITTEE OF MANAGEMENT

### Composition of the Committee

- 37.1 The Association shall have a Committee of Management which shall have a minimum of 7 and a maximum (including co-optees) of 15 persons. The Association shall keep up to date a register of the names of the Committee Members which shall be made available to any person at no cost. The names of Committee Members will also be published by the Association on its website, and in its annual reports and other similar documentation.
- 37.2 The first Committee Members will be the Members who have signed the application to register the Association. The first Members and all subsequent Members who are eligible shall be Committee Members until there are more than seven Members. Once there are more than seven Members of the Association, at the end of the next annual general meeting, all of the Committee Members shall retire.
- 37.3 A person must be aged 18 or over and a Member to become a Committee Member (including any person appointed to fill a casual vacancy) other than a person appointed as a co-optee or appointed by The Scottish Housing Regulator who must be aged 18 or over but need not be a Member.
- 37.4 An employee of the Association, or a Close Relative of an employee, may not be a Committee Member.
- 37.5 No Committee Member may take office until they have agreed to and signed the Association's code of conduct for Committee Members.
- 37.6 The Committee shall assess annually the skills, knowledge, diversity and objectivity that it needs for its decision making and what is contributed by the Committee Members by way of annual performance reviews. The Committee must be assured that any Committee Member who has continuous service on the Committee of nine years or more and who is seeking re-election is able to demonstrate his/her continued effectiveness as a Committee Member before he/she may stand for re-election.
- 37.7 Each of the Committee Members shall, in exercising his/her role as a Committee Member, act in the best interests of the Association, its tenants and service users and will not place any personal or other interests ahead of his/her primary duty to the Association; and, in particular, must:-
- 37.7.1 seek, in good faith, to ensure that the Association acts in a manner which is in accordance with its objects.
  - 37.7.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person.
  - 37.7.3 in circumstances giving rise to the possibility of a conflict of interest between the Association and any other party:-
    - 37.7.3.1 put the interests of the Association before that of the other party, in taking decisions as a Committee Member;

- 37.7.3.2 where any other duty prevents him/her from doing so, disclose the conflicting interest to the Association and refrain from participating in any discussions or decisions involving the other Committee Members with regard to the matter in question
- 37.7.4 ensure that the Association complies with any direction, requirement, notice or duty imposed on it by the Charities and Trustee Investment (Scotland) Act 2005.
- 37.8 The Committee can require that a Committee Member who is being investigated for a potential breach of the Association's Code of Conduct for Committee Members take leave of absence and not attend any meeting in his or her capacity as Committee Member until the Committee has completed its consideration of the potential breach. When on such leave of absence, the Committee Member will not be entitled to receive minutes and/or documents in his or her capacity as a Committee Member relating to the business of the Association.

## Interests

- 38.1 The Committee shall set and periodically review its policy on payments and benefits. If a person is a Member, employee of the Association or serves on the Committee or any sub-committee he/she must not receive any payment or benefit unless it is permitted by the policy. In making any payment or conferring any benefit the Association shall act at all times with transparency, honesty and propriety.
- 38.2 If a person serves on the Committee or any sub-committee he/she must declare any personal or other external interests on an annual basis in accordance with the Association's Code of Conduct for Committee Members. If while serving on the Committee that person has any conflict of interest in any contract or other matter about to be discussed at a meeting, he/she must tell the Committee. He/she will be required to leave the meeting while the matter is discussed and will not be allowed to vote on the matter or to stay in the meeting while any vote on the matter is being held. If that person is inadvertently allowed to stay in the meeting and vote on the matter, his/her vote will not be counted.
- 38.3 If a person serves on the Committee or any sub-committee he/she must not receive any payment or benefit unless it is permitted by the Charities and Trustee Investment (Scotland) Act 2005 and as set out in the Association's policy referred to in Rule 38.1. He/she shall also comply with the requirements of the Charities and Trustee Investment (Scotland) Act 2005 in respect of any conflict of interest that might arise.
- 38.4 If the Association's policy on payments and benefits permits payment to non-executive Committee Members (or any of them) the Committee must take account of any independent guidance and good practice in fixing the amount of such payments and can demonstrate value for money. Any payments will be linked to specified duties to be undertaken by the relevant Committee Members and the Association will have in place a clear and robust process for assessing the performance of Committee Members in carrying out such duties. The Association must ensure that any such payments to Committee Members are disclosed in the audited accounts of the Association. Where the Association has one or more subsidiaries it must ensure that any payments and benefits to the subsidiary governing body members are included in the policy. The Association must comply with the Charities and Trustee Investment (Scotland) Act 2005 and any associated guidance from the Office of the Scottish Charity Regulator when considering payment or benefits to the charity trustees.

## ELECTING COMMITTEE MEMBERS

- 39.1 At the end of the first annual general meeting after the total membership of the Association has risen to seven or more, all Committee Members must retire. From then on, at the end of every annual general meeting, one-third of the Committee Members or the nearest whole number thereto, must retire. Anybody appointed as a co-optee under Rule 42.1 or to fill a casual vacancy under Rule 41 and who retires for that reason, shall not count towards the one third provision. The retiring Committee Members should be selected in accordance with Rule 39.2.
- 39.2 In the absence of Committee Members standing down voluntarily, the retiring Committee Members should be those who have served the longest on the Committee since the date of their last election. If two or more Committee Members have served equally long and cannot agree who should retire, they must draw lots.
- 39.3 Committee Members must also retire if they have been co-opted onto the Committee under Rule 42.1 or have filled casual vacancies under Rule 41.
- 39.4 If a Committee Member retires from the Committee in terms of Rule 39 on the date of the next annual general meeting, that Committee Member can stand for re-election without being nominated.
- 40.1 If, at the annual general meeting the number of Members standing for election is less than or equal to the number of vacant places, the Chairperson will declare them elected without a vote. If there are more Members standing for election than there are vacant places, those present at the general meeting or those exercising a postal vote in accordance with Rule 27.6 will elect Members onto the Committee, in accordance with Rule 29.2. Each Member present or who has appointed a representative will have one vote for each place to be filled on the Committee. A Member must not give more than one vote to any one candidate.
- 40.2 The Association will post or send by fax or email intimation of the intended date of the annual general meeting and information on the nomination procedure to each Member at the address, fax number or email address given in the Register of Members of the Association not less than 28 days before the date of the meeting. Nominations for election to the Committee can be made only by Members, must be in writing and in the form specified by the Association and must give the full name, address and occupation of the Member being nominated. A Member cannot nominate himself/herself for election to the Committee. Nominations must be signed by and include a signed statement from the Member being nominated to show that they are eligible to join the Committee in accordance with Rules 37.4 and 43, and that they are willing to be elected. Nomination forms can be obtained from the Association and must be completed fully and returned by hand or by post to the Association's registered office at least 21 days before the general meeting.
- 40.3 A nomination for election to the Committee can be rejected by a decision by not fewer than three quarters of the Committee Members on one or more of the following grounds:-
- 40.3.1 where election to the Committee would be contrary to the Association's Rules or policies; or



- 40.3.2 where a conflict of interest may exist which, even allowing for the disclosure of such an interest may adversely affect the work of the Association; or
- 40.3.3 where there is clear evidence of relevant circumstances from which it is concluded that election to the Committee would not be in the best interests of the Association.
- 40.4 The rejection of a nomination for election to the Committee shall be notified to the Member concerned in writing at any time prior to the date of the relevant annual general meeting.
- 41 If an elected Committee Member leaves the Committee between the annual general meetings, this creates a casual vacancy and the Committee can appoint a Member to take their place on the Committee until the next annual general meeting.

### **Co-optees**

- 42.1 The Committee can co-opt to the Committee or to a sub-committee anyone it considers is suitable to become a Committee Member or member of a sub-committee. Co-optees do not need to be Members, but they can only serve as co-optees on the Committee or sub-committee until the next annual general meeting or until removed by the Committee. A person co-opted to the Committee can also serve on any sub-committees.
- 42.2 A person appointed as a co-optee shall undertake the role of Committee Member or member of a sub-committee and accordingly will be subject to the duties and responsibilities of a Committee Member. Co-optees can take part in discussions at the Committee or any sub-committees and vote at Committee and sub-committee meetings on all matters except those which directly affect the Rules, the membership of the Association or the election of the Association's Office Bearers. Co-optees may not stand for election, nor be elected as one of the Office Bearers of the Committee.
- 42.3 Committee Members co-opted in this way must not make up more than one-third of the total number of the Committee or sub-committee members at any one time. The presence of co-optees at Committee Meetings will not be counted when establishing whether the minimum number of Committee Members are present to allow the meeting to take place as required by Rule 48 and the presence of co-optees will not count towards the quorum for sub-committee meetings.

### **Eligibility for the Committee**

- 43.1 A person will not be eligible to be a Committee Member and cannot be appointed or elected as such if:-
  - 43.1.1 he/she is an undischarged bankrupt, has granted a trust deed which has not been discharged or is in a current Debt Payment Plan under the Debt Arrangement Scheme; or
  - 43.1.2 he/she has been convicted of an offence involving dishonesty which is not spent by virtue of the Rehabilitation of Offenders Act 1974 or an offence under the Charities and Trustee Investment (Scotland) Act 2005; or
  - 43.1.3 he/she is a party to any legal proceedings in any Court of Law by or against the Association; or
  - 43.1.4 he/she is or will be unable to attend the Committee Meetings for a period of 12 months; or
  - 43.1.5 he/she has been removed from the Committee of another registered social landlord within the previous five years; or

- 43.1.6 he/she has resigned from the Committee in the previous five years in circumstances where the resignation was submitted after the date of his/her receipt of notice of a special committee meeting convened to consider a resolution for his/her removal from the Committee in terms of Rule 44.5; or
  - 43.1.7 he/she has been removed from the Committee in terms of Rules 44.4 or 44.5 within the previous five years; or
  - 43.1.8 he/she has been removed, disqualified or suspended from a position of management or control of a charity under the provisions of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 or the Charities and Trustee Investment (Scotland) Act 2005; or
  - 43.1.9 he/she has been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners for England and Wales or by Her Majesty's High Court of Justice in England on the grounds of any misconduct in the administration of the charity for which he/she were responsible or to which he/she were privy, or which his/her conduct contributed to or facilitated; or
  - 43.1.10 a disqualification order or disqualification undertaking has been made against that person under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002 (which relate to the power of a Court to prevent someone from being a director, liquidator or administrator of a company or a receiver or manager of company property or being involved in the promotion, formation or management of a company); or
  - 43.1.11 his/her nomination for election to the Committee has been rejected in accordance with Rule 40.3 during the period between the return of the completed nomination form and the commencement of the relevant Annual General Meeting.
- 43.2 A person cannot be re-elected as a Committee Member if the Committee is not satisfied under Rule 37.6 of the individual's continued effectiveness as a Committee Member. In these circumstances the Committee must not allow the individual to stand for re-election
- 44 A Committee Member will cease to be a Committee Member if:
- 44.1 he/she resigns his/her position as a Committee Member in writing; or
  - 44.2 he/she ceases to be a Member unless he/she is a co-optee in terms of Rule 42.1 or an appointee of The Scottish Housing Regulator; or
  - 44.3 he/she misses four Management Committee meetings in a row without special leave of absence previously being granted by the Committee either at his/her request or by exercise of the Committee's discretion; or
  - 44.4 the majority of Members voting at a general meeting decide this. (The Members at the meeting may then elect someone to take his/her place. If a replacement is not elected at the meeting, the Committee may appoint a Committee Member in terms of Rule 41); or.
  - 44.5 the majority of those remaining Committee Members present and voting at a special meeting of the Committee convened for the purpose decide to remove him/her as a Committee Member. The resolution to remove him/her as a Committee Member must relate to one of the following issues:
    - 44.5.1 failure to perform to the published standards laid down by the Scottish Federation of Housing Associations and/or The Scottish Housing Regulator adopted and operated by the Association;
    - 44.5.2 failure to sign or failure to comply with the Association's Code of Conduct for Committee Members; or
    - 44.5.3 a breach of the Association's Rules, standing orders or other policy requirements;
  - 44.6 he/she becomes ineligible as a Committee Member in terms of Rule 43; or

- 44.7 he/she is a co-optee or was appointed to fill a casual vacancy and whose period of office is ended in accordance with Rules 39.1 or 42.1; or
- 44.8 he/she is a Committee Member retiring in accordance with Rule 39.1.

**POWERS OF THE COMMITTEE OF MANAGEMENT**

- 45 The Committee is responsible for directing the affairs of the Association and its business and may do anything lawful which is necessary or expedient to achieve the objects of the Association. The Committee is not permitted to exercise any powers which are reserved to the Association in general meetings either by these Rules or by statute. The Committee is responsible for the leadership, strategic direction and control of the Association with the aim of achieving good outcomes for its tenants and other service users in accordance with Regulatory Standards and Guidance issued by The Scottish Housing Regulator from time to time. The Committee is responsible for ensuring that the Association can demonstrate its governance and financial arrangements are such as to allow The Scottish Housing Regulator to regulate effectively and exercise its full regulatory powers.
- 46 The Committee acts in the name of the Association in everything it does. A third party acting in good faith and without prior notice does not need to check if the powers of the Committee have been restricted, unless they are already aware that such a restriction may exist.
- 47 Amongst its most important powers, the Committee can:-
  - 47.1 buy, sell, build upon, lease or exchange any land and accept responsibility for any related contracts and expenses.
  - 47.2 agree the terms of engagement and remuneration of anyone employed in connection with the business of the Association and act as employer for anyone employed by the Association.
  - 47.3 Establish a subsidiary or subsidiaries of the Association within the meaning of the Companies Act 2006 or the Co-operative and Community Benefit Societies Act 2014.
  - 47.4 grant a guarantee in respect of the liabilities and obligations of any subsidiary of the Association within the meaning of the Companies Act 2006 or the Co-operative and Community Benefit Societies Act 2014. Where the Association is granting such a guarantee it must:
    - 47.4.1 limit its liability to a maximum of 70% of the Association's accumulated surplus;
    - 47.4.2 ensure the charitable status of the Association is not prejudiced; and
    - 47.4.3 comply with any legal requirement and regulatory guidance issued by The Scottish Housing Regulator and the Office of the Scottish Charity Regulator.
  - 47.5 grant heritable securities over land owned by the Association and floating charges over all or any part of property and assets both present and in future owned by the Association. This includes accepting responsibility for any related expenses.
  - 47.6 decide, monitor and vary the terms and conditions under which property owned by the Association is to be let, managed, used or disposed of.
  - 47.7 appoint and remove solicitors, surveyors, consultants, managing agents and employees, as required by the Association's business.
  - 47.8 refund any necessary expenses as are wholly necessary incurred by Committee Members and sub-committee members in connection with their duties.

- 47.9      compromise, settle, conduct, enforce or resist either in a Court of Law or by arbitration any suit, debt, liability or claim by or against the Association.
- 47.10     accept donations in support of the activities of the Association.

### **COMMITTEE PROCEDURE**

- 48        It is up to the Committee to decide when and where to hold its ordinary meetings, but it must meet at least six times a year. There must be at least four Committee Members present for the meeting to take place.
- 49        The Committee will continue to act while it has vacancies for Members. However, if at any time the number of Committee Members falls below seven, the Committee can continue to act only for another two months. If at the end of that period the Committee has not found new Members to bring the number of Committee Members up to seven, the only power it will have is to act to bring the number of Committee Members up to seven.
- 50        Committee Members must be sent written notice of Committee meetings posted, or delivered, by hand or sent by fax or email to the last such address for such communications given to the Secretary at least seven days before the date of the meeting. The accidental failure to give notice to a Committee Member or the failure of the Committee Member to receive such notice shall not invalidate the proceeding of the relevant meeting.
- 51.       Meetings of the Committee can take place in any manner which permits those attending to hear and comment on the proceedings.
- 52        All speakers must direct their words to the Chairperson. All Committee Members must remain quiet and maintain order while this is happening. The Chairperson will decide who can speak and for how long.
- 53        If any point arises which is not covered in these Rules, the Chairperson will give his/her ruling which will be final.
- 54        All acts done in good faith as a result of a Committee Meeting or sub-committee meeting will be valid even if it is discovered afterwards that a Committee Member was not entitled to be on the Committee.
- 55        A written resolution signed by not fewer than three quarters of the Committee Members or three quarters of the members of a sub-committee will be as valid as if it had been passed at a Committee Meeting or sub-committee meeting duly called and constituted.

### **Special Committee Meetings**

- 56.1     The Chairperson or two Committee Members can request a special meeting of the Committee by writing to the Secretary with details of the business to be discussed. The Secretary will send a copy of the request to all Committee Members within three working days of receiving it. The meeting will take place at a place mutually convenient for the majority of Committee Members, normally the usual place where Committee Meetings are held, between 10 and 14 days after the Secretary receives the request.
- 56.2     No other business may be discussed at the meeting other than the business for which the meeting has been called.

- 56.3 If the Secretary does not call the special meeting as set out above, the Chairperson or the Committee Members who request the meeting can call the meeting. In this case, they must write to all Committee Members at least seven days before the date of the meeting.
- 57 If a Committee Member does not receive notice of the meeting, this will not prevent the meeting going ahead.

### **Sub-committees**

- 58.1 The Committee can delegate its powers to sub-committees or to staff or to Office Bearers. The Committee will establish the terms of reference for such delegation, which will be set down in writing and communicated to the recipient of the delegated powers. Such delegation will be set out down in writing in standing orders, schemes of delegated authority or other appropriate documentation. In the case of a sub-committee such delegation shall include the purposes of the sub-committee, its composition and quorum for meetings. A minimum number of members for a sub-committee shall be three. There must be at least three of the members of a sub-committee present for the meeting to take place. The Committee shall be responsible for the on-going monitoring and evaluation of the use of delegated powers.
- 58.2 The meetings and procedures of sub-committees or otherwise must comply with the relevant terms of reference.
- 58.3 Any decision made by sub-committee must be reported to the next Committee Meeting.
- 58.4 The Committee can establish and delegate powers to sub committees, designated as Area Committees, to take decisions relating to the management and maintenance of properties within a particular geographical area. The Committee will determine the membership and delegated responsibility of an Area Committee in its terms of reference. An Area Committee shall exercise such delegated powers notwithstanding the provisions of Rules 42.1 and 42.3 which provisions shall not apply to Area Committees.

### **THE SECRETARY AND OFFICE BEARERS**

- 59.1 The Association must have a Secretary, a Chairperson, a Vice Chair and any other Office Bearers the Committee considers necessary. The Office Bearers, except for the Secretary, must be elected Committee Members or Committee Members appointed to fill casual vacancies in accordance with Rule 41 but cannot be co-optees. An employee may hold the office of Secretary although not be a Committee Member. The Committee will appoint these Office Bearers. If the Secretary cannot carry out his/her duties, the Committee, or in an emergency the Chairperson, can ask another Office Bearer or employee to carry out the Secretary's duties until the Secretary returns.
- 59.2 The Secretary and the other Office Bearers will be controlled, supervised and instructed by the Committee.
- 59.3 The Secretary's duties include the following (these duties can be delegated to an appropriate employee with the Secretary assuming responsibility for ensuring that they are carried out in an effective manner):
- 59.3.1 calling and going to all meetings of the Association and all the Committee Meetings;
  - 59.3.2 keeping the minutes for all meetings of the Association and Committee;

- 59.3.3 sending out letters, notices calling meetings and relevant documents to Members before a meeting;
  - 59.3.4 preparing and sending all the necessary reports to the Financial Conduct Authority and The Scottish Housing Regulator;
  - 59.3.5 ensuring compliance with these Rules;
  - 59.3.6 keeping the Register of Members and other registers required under these Rules; and
  - 59.3.7 supervision of the Association's seal.
- 59.4 The Secretary must produce or give up all the Association's books, registers, documents and property whenever requested by a resolution of the Committee, or of a general meeting.
- 59.5 At its first meeting after registration of the Association, the Committee will elect the Chairperson and Vice Chair of the Association, the Secretary and any other Office Bearers the Committee considers necessary. Thereafter a Chairperson and Vice Chair and other Office Bearers will be appointed on an annual basis at the next scheduled Committee Meeting held after each annual general meeting.

## **Role of the Chair**

- 59.6 The Chairperson is responsible for the leadership of the Committee and ensuring its effectiveness in all aspects of the Committee's role and to ensure that the Committee properly discharges its responsibilities as required by law, the Rules and the standing orders of the Association. The Chairperson will be delegated such powers as is required to allow the Chairperson to properly discharge the responsibilities of the office. Among the responsibilities of the Chairperson are that:-
- 59.6.1 the Committee works effectively with the senior staff;
  - 59.6.2 an overview of business of the Association is maintained;
  - 59.6.3 the Agenda for each meeting is set;
  - 59.6.4 meetings are conducted effectively;
  - 59.6.5 minutes are approved and decisions and actions arising from meetings are implemented;
  - 59.6.6 the standing orders, code of conduct for Committee Members and other relevant policies and procedures affecting the governance of the Association are complied with;
  - 59.6.7 where necessary, decisions are made under delegated authority for the effective operation of the Association between meetings;
  - 59.6.8 the Committee monitors the use of delegated powers;
  - 59.6.9 the Committee receives professional advice when it is needed;
  - 59.6.10 the Association is represented at external events appropriately;

- 59.6.11 appraisal of the performance of Committee Members is undertaken, and that the senior staff officer's appraisal is carried out in accordance with the agreed policies and procedures of the Association; and
- 59.6.12 the training requirements of Committee Members, and the recruitment and induction of new Committee Members is undertaken.
- 59.7 The Chairperson and the Vice Chair must be elected from the Committee Members (excluding co-optees) and must be prepared to act as Chairperson and Vice Chair until the end of the next annual general meeting (unless s/he resigns the post). The Chairperson and Vice Chair respectively can only be required to resign if a majority of the remaining Committee Members present at a special meeting agree to this.
- 59.8 If the Chairperson is not present at a Committee meeting or is not willing to act, the Vice Chair will be the Chairperson for the Committee Meeting. If the Vice Chair is not present or is not willing to act, the Committee Members present will elect another Committee Member to be Chairperson for the Committee Meeting. If the Chairperson arrives at the meeting late, s/he will take over as Chairperson of the Committee meeting as soon as the current agenda item is concluded.
- 59.9 If the votes of the Committee Members are divided equally for and against an issue, the Chairperson will have a second and deciding vote.
- 59.10 The Chairperson and Vice Chair can resign his/her office in writing to the Secretary and must resign if s/he leaves the Committee or is prevented from standing for, or being elected to the Committee under Rule 43. The Committee will then elect another Committee Member as Chairperson or Vice Chair depending on which vacancy arises.
- 59.11 The Chairperson and Vice Chair can be re-elected but must not hold office continuously for more than five years.

## **FINANCIAL GUARANTEES FOR OFFICERS**

- 60.1 The Committee shall take out fidelity guarantee insurance to cover all Office Bearers and employees who receive or are responsible for the Association's money, or, these office bearers and employees must be covered by a bond as set out in Schedule 1 of the Co-operative and Community Benefit Societies Act 2014, or a guarantee under which they promise to account for and repay money due to the Association accurately.
- 60.2 The Committee shall have the power to purchase and maintain indemnity insurance for, or for the benefit of, persons who are, or were at any time, Committee Members, officers or employees of the Association. A Committee Member may form part of a quorum and vote at a meeting where such insurance is under consideration notwithstanding the terms of Rules 38.1 and 38.2.
- 61 Office Bearers and employees will not be responsible for the Association's loss while they are carrying out their duties unless there has been gross negligence or dishonesty. If an Office Bearer or employee is dishonest, the Association will try to recover any loss that it has suffered and may alert the police or other relevant authority.

## THE COMMITTEE'S MINUTES, SEAL, REGISTERS AND BOOKS

### Minutes

- 62 Minutes of every general meeting, Committee Meeting and sub-committee meeting must be kept. Those minutes must be presented at the next appropriate meeting and if accepted as a true record, signed by the Chairperson of the meeting at which they are presented. All minutes signed by the Chairperson of the meeting shall be conclusive evidence that the minutes are a true record of the proceedings at the relevant meeting.

### Execution of Documents and Seal

- 63 The Association shall execute deeds and documents in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995 and record the execution in the register. The use of a common seal is not required. The Association may have a seal which the Secretary must keep in a secure place unless the Committee decides that someone else should look after it. The seal must only be used if the Committee decides this. When the seal is used, the deed or document must be signed by the Secretary or a Member of the Committee or another person duly authorised to subscribe the deed or document on the Association's behalf and recorded in the register.

### Registers

- 64 The Association must keep at its registered office a Register containing:
- 64.1 the names and addresses of the Members and where provided for the purposes of electronic communication, fax numbers and e-mail addresses;
  - 64.2 a statement of the share held by each Member and the amount each Member paid for it;
  - 64.3 the date each person was entered in the Register as a Member and the date at which any person ceased to be a Member of the Association;
  - 64.4 a statement of other property in the Association, whether in loans or loan stock held by each Member; and
  - 64.5 the names and addresses of the Office Bearers of the Association, their positions and the dates they took and left office.
- 65.1 The Association must also keep at its registered office:
- 65.1.1 a second copy of the Register showing the same details as above but not the statements of shares and property. This second register must be used to confirm the information recorded in the main Register.
  - 65.1.2 a register of loans and to whom they are made.
  - 65.1.3 a register showing details of all loans and charges on the Association's land.
- 65.2 The inclusion or omission of the name of any person from the original Register of Members shall, in the absence of evidence to the contrary, be conclusive that the person is or is not a Member of the Association.



## Registered Name

- 66 The registered name of the Association must be clearly shown on the outside of every office or place where the Association's business is carried out. The name must also be engraved clearly on the Association's seal and printed on all its business letters, notices, adverts, official publications, website and legal and financial documents.

## Documentation

- 67 The Association's books of account, registers, securities and other documents must be kept at the registered office or any other place the Committee decides is secure.
- 68 At the last Committee Meeting before the annual general meeting, the Secretary must confirm in writing to the Committee that Rules 62 to 67 have been followed or, if they have not been followed, the reasons for this. The Secretary's confirmation or report must be recorded in the minutes of the Committee Meeting.

## ACCOUNTS

- 69 The Association must keep proper books of accounts to cover its income, expenditure transactions and its assets, liabilities and reserves in line with Part 7 of the Co-operative and Community Benefit Societies Act 2014. It must also set up and maintain a suitable system for controlling its books of accounts, its cash and its receipts and invoices.
- 70 The Committee must send the Association's accounts and balance sheet to the Association's auditor. The auditor must then report to the Association on the accounts it has examined. In doing this, the auditor must follow the conditions set out in Part 7 of the Co-operative and Community Benefit Societies Act 2014 and Part 6 of the Housing (Scotland) Act 2010.
- 71 The Association must provide The Scottish Housing Regulator and the Financial Conduct Authority with a copy of its accounts and the auditor's report within six months of the end of the period to which they relate.

## THE AUDITOR

- 72.1 Each year the Association must appoint, at a general meeting of the Association, a qualified auditor to audit the Association's accounts and balance sheet. In this Rule "qualified auditor" means someone who is a qualified auditor under Section 91 of the Co-operative and Community Benefit Societies Act 2014.
- 72.2 None of the following can act as auditor to the Association:-
- 72.2.1 a Committee Member or employee of the Association;
  - 72.2.2 a person who is a partner of, or an employee or employer of a Committee Member or employee of the Association;
  - 72.2.3 an organisation which is a Member of the Association.

- 73 The Association must appoint an auditor within three months of being registered by the Financial Conduct Authority. The Committee will appoint the auditor unless there is a meeting of the Association within that time. The Committee may appoint an auditor to fill in a casual vacancy occurring between general meetings of the Association. The Committee shall take such steps as it considers necessary to ensure the continuing independence of the Association's auditor including the periodic review of the need for audit rotation. The Association must send a copy of its accounts and the auditor's report to The Scottish Housing Regulator within six months of the end of the period to which they relate.
- 74.1 An auditor appointed to act for the Association one year will be re-appointed for the following year unless:-
- 74.1.1 a decision has been made at a general meeting to appoint someone else or specifically not to appoint them again; or
  - 74.1.2 they have given the Association notice in writing that they do not want to be re-appointed; or
  - 74.1.3 they are not a qualified Auditor or are excluded under Rule 72.2; or
  - 74.1.4 they are no longer capable of acting as Auditor to the Association; or
  - 74.1.5 notice to appoint another Auditor has been given.
- 74.2 To prevent an auditor being re-appointed or to appoint another person as auditor, not less than 28 days' notice must be given to the Association that the matter requires to be discussed at the next meeting of the Association.
- 74.3 The Association shall give notice to the auditor who is to be asked to step down that the matter will be discussed at the next meeting of the Association. If possible the Association will also give proper notice of this matter to the Members but if this is not possible, the Association can give notice by advertising in the local newspaper at least 14 days before the meeting.
- 74.4 The retiring Auditor may make representations to the Association or give notice that he/she intends to make representations at the meeting and the Association must tell the Members of any representations made by the Auditor under Section 95 of the Co-operative and Community Benefit Societies Act 2014.

## **ANNUAL RETURNS AND BALANCE SHEET**

- 75.1 Every year, within the time allowed by the law, the Secretary shall send to the Financial Conduct Authority the annual return in the form required by the Financial Conduct Authority.
- 75.2 The Secretary must also send:
- 75.2.1 a copy of the auditor's report on the Association's accounts for the period covered by the return; and
  - 75.2.2 a copy of each balance sheet made during that period and of the auditor's report on that balance sheet.
- 76 If requested, the Association must provide a free copy of the latest annual return and auditor's reports to Members or people with a financial interest in the Association.

- 77 The Association must always keep a copy of the latest balance sheet and auditor's report publicly displayed at its registered office.
- 78 The Association must comply with the requests of The Scottish Housing Regulator for annual returns.

### **SURPLUSES AND DONATIONS**

- 79.1 The Association must not distribute its surpluses to Members.
- 79.2 The Committee shall set and review periodically its policy for the donation of funds to charities. Such donations must further the objects of the Association and the Committee shall report to the Members on such donations.

### **INVESTMENTS**

- 80 The Association's funds may be invested by the Committee in such manner as is permitted by its Investment Policy subject always to the requirement that the Association will comply with the Regulatory Framework and Regulatory Guidance issued by The Scottish Housing Regulator from time to time.

### **INSPECTING THE REGISTER**

- 81 Any Member or person having a financial interest in the Association can inspect their own account. They may also inspect the second copy of the Register of Members which shall be made available to them for inspection within 7 days of the request of a Member or eligible person. The books must be available for inspection at the place they are kept at all reasonable hours. The Committee may set conditions for inspecting the books.

### **DISPUTES**

- 82 Every dispute between the Association or the Committee and:-
- 82.1 a Member; or
- 82.2 a person aggrieved who has ceased to be a Member within the previous six months; or
- 82.3 a person claiming under the Rules of the Association shall be dealt with in accordance with these Rules and any procedures determined by the Committee from time to time but without prejudice to all rights which any person may have to raise an action on the matter in any court with competent jurisdiction, including without prejudice the Sheriff Court in the Sherriffdom in which the Association's registered office is located.

## STATUTORY APPLICATIONS TO THE FINANCIAL CONDUCT AUTHORITY

- 83 Any 10 Members of the Association who have been Members for at least the 12 previous months can apply to the Financial Conduct Authority to appoint an accountant or actuary to inspect and report on the Association's books on payment to the Financial Conduct Authority of the costs required.
- 84.1 One-tenth of Members can apply to the Financial Conduct Authority to:
- 84.1.1 appoint an inspector to examine and report on the affairs of the Association; or
  - 84.1.2 call a special general meeting of the Association.
- 84.2 If there are more than 1000 Members in the Association, only 100 Members need to apply to the Financial Conduct Authority in terms of Rule 84.1.

## COPIES OF RULES

- 85 The Secretary shall, on demand, provide a copy of the Rules of the Association free of charge to any Member who has not previously been given a copy and, upon payment of such fee as the Association may require, not exceeding the amount specified by law, to any other person.

## CLOSING DOWN THE ASSOCIATION

- 86.1 The Association may be closed down in either of the following ways:
- 86.1.1 by an order or resolution to wind up the Association as set out in the Insolvency Act 1986; or
  - 86.1.2 In accordance with Section 119 of the Co-operative and Community Benefit Societies Act 2014, by an instrument of dissolution to which not less than three-fourths of the Members have given their consent testified by their signatures to the instrument.
- 86.2 The prior approval of the Office of the Scottish Charity Regulator is required before the Association can be dissolved. The Association must submit its application for approval to the Office of the Scottish Charity Regulator not less than 42 days before the date on which the Association intends to dissolve.
- 87 If any property remains after the Association has paid its debts, this property will be transferred to such other charitable registered social landlord as determined by The Scottish Housing Regulator.

## CHANGING THE RULES

- 88.1 Any of these Rules can be changed or deleted and new Rules can be introduced if three-quarters of the votes at a special general meeting are in favour of the change(s).
- 88.2 Where an amendment of these Rules affects the purposes of the Association the prior approval of the Office of the Scottish Charity Regulator is required. The Association must submit its application for approval to the Office of the Scottish Charity Regulator not less than 42 days before the date on which the Association intends to amend its purposes. Any other amendment of these Rules requires to be notified to them within three months of the change having been made.
- 88.3 The Association must apply to the Financial Conduct Authority to register every rule change as set out in treasury regulations. Each Member must receive a copy of the change. No change is valid until it has been registered by the Financial Conduct Authority. The Association must notify The Scottish Housing Regulator within 28 days of the change or amendment being made.
- 88.4 The Association can change its name if:
- 88.4.1 three-quarters of the votes at a special general meeting are in favour of the change; and
  - 88.4.2 the Financial Conduct Authority approves the change in writing.
  - 88.4.3 the Office of the Scottish Charity Regulator has given its prior approval. The Association must submit its application for approval to the Office of the Scottish Charity Regulator not less than 42 days before the date on which the Association intends to change its name.
- 88.5 If the Association changes its name in terms of Rule 88.4 it must notify The Scottish Housing Regulator in writing within 28 days of the change being made.
- 88.6 The Association can change its registered or principal office but must:
- 88.6.1 notify The Scottish Housing Regulator of the change in registered office within 28 days of the change having been made; and the Financial Conduct Authority as soon as possible after the change in registered office has been made.
  - 88.6.2 notify the Office of the Scottish Charity Regulator within 3 months of the change having been made.

## INTERPRETING THESE RULES

- 89 In these Rules, the following words and phrases have the meanings given below:
- 89.1 "A person claiming through a Member":- includes an heir, executor, assignee or nominee. This heading would be used in connection with disputes about the transfer of a Member's share after his death. It would also cover executors of a former Member
  - 89.2 "Association" means the registered social landlord referred to in Rule 1 whose Rules these are.

- 89.3 “Chairperson” means the Chairperson (or such other term that is used by the Association to denote the holder of this office) of the Association referred to in Rule 59.1.
- 89.4 “Close Relative” means someone who is the spouse or civil partner of a person, or (being either of the same or different sex) who cohabits with that person, or is that person’s parent, grandparent, child, stepchild, grandchild, brother or sister.
- 89.5 “Committee” means the Committee of Management (or such other term that is used by the Association to denote the governing body of the Association) referred to in Rule 37.1.
- 89.6 “Committee Meeting” means a meeting of the Committee.
- 89.7 “Committee Member” means a member of the Committee.
- 89.8 “Financial Conduct Authority” means the registering authority for societies registered under the Co-operative and Community Benefit Societies Act 2014 and the Credit Unions Act 1979 set up in terms of the Financial Services Act 2012 or its successor body.
- 89.9 “Group” means the Association and any organisation which is its parent, its subsidiary or is a subsidiary of its parent.
- 89.10 “Meeting” means a general meeting of the Association, whether special, general or annual referred to in Rules 20-23.
- 89.11 “Member” means a member of the Association whose name is entered in the Register of Members.
- 89.12 “Office Bearer” means the Chairperson, Secretary, and such other Officer Bearer appointed under Rule 59.1.
- 89.13 “Office of the Scottish Charity Regulator” means the body set up under the Charities and Trustee Investment (Scotland) Act 2005 to regulate charities in Scotland.
- 89.14 “organisation” means a legal body which exists separately and distinctly from its members and includes companies, building societies, community benefit societies, local authorities and so on and also for the purposes of these Rules includes unincorporated organisations such as social clubs, branches of political parties or trade unions and other voluntary bodies.
- 89.15 “property” includes everything which can be passed on by inheritance (including loans, certificates, books and papers).
- 89.16 A reference to law or statute is a reference to that law or statute as re-enacted, amended or replaced.
- 89.17 “Register of Members” means the register of members referred to in Rule 64.
- 89.18 “Rules” means the registered Rules of the Association.
- 89.19 “Taxes Acts” means Part 11 of the Corporation Tax Act 2010 as read with Schedule 6 of the Finance Act 2010 and any statute or statutory provision which amends, extends, consolidates or replaces the same.
- 89.20 “The Scottish Housing Regulator” means The Scottish Housing Regulator as established pursuant to Section 1 of the Housing (Scotland) Act 2010.
- 89.21 “Secretary” means the Office Bearer appointed by the Committee to be the Secretary of the Association or anyone authorised by the Committee to stand in for the Secretary.
- 89.22 “Vice Chair” means the Vice Chair of the Association referred to in Rule 59.1
- 89.23 Words in the singular also include the plural. Words in the plural also include the singular.

## APPENDIX 1

### PROXY FORM

You must use the wording shown below to appoint a representative to vote at a meeting for you.  
Please see Rule 27.1 for more details.

I (insert name) am a member of (insert name) \_\_\_\_\_ Limited.

My address is: (please insert).

I hereby appoint (insert name) who lives at (insert address) to be my representative and vote for me at the Association's meeting on (insert date) and any other dates that meeting continues on.

Your name \_\_\_\_\_

Your signature \_\_\_\_\_

Date \_\_\_\_\_

## APPENDIX 2

### CANCELLATION OF PROXY

You must use the wording shown below to reverse your application to send a representative to vote at a meeting for you. Please see Rule 27.4 for more details.

I (insert name) am a member of (insert name) \_\_\_\_\_ Limited.

My address is: (please insert).

I hereby revoke the appointment of (insert name) as my representative to vote for me at the Association's meeting on (insert date) made by me on the (insert date).

I no longer authorise the person referred to above to represent me at the meeting referred to above.

Your name \_\_\_\_\_

Your signature \_\_\_\_\_



**SIGNATURE OF COMMITTEE MEMBERS**

Date \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_ Members

5. \_\_\_\_\_

6. \_\_\_\_\_

7. \_\_\_\_\_

\_\_\_\_\_ Secretary

## Timeline for Adopting Amended Rules

---

- **Stage 1 – Formal agreement to proposed new rules**

Before ELHA can seek consent from any regulatory body to any Rule amendment, its Management Committee must first formally agree to the proposals.

*To be approved by Management Committee on 20 August 2020.*

- **Stage 2 – SGM to Obtain Members Approval**

The Management Committee should make a request to the ELHA Secretary to call the Special General Meeting to be held in order to approve the changes to the Rules.

The ELHA secretary shall call the SGM by written notice posted or sent by fax or e-mail to every Member at least 14 days before the date of the meeting. The notice will specify the time, date and place for the meeting and the business to be transacted at the meeting.

*AGM to be held on 24 September 2020.*

- **Stage 3 – Register Rules with FCA**

Either use the the online Mutuals Society Portal to register the new Rules or complete the relevant FCA form.

The application (irrespective of the method of registration) must be signed off by the Secretary. A Notary Public must also sign and stamp the Statutory Declaration included in the forms.

The FCA will generally aim to respond within 15 working days. The amendments are not legally effective until the date on which the FCA confirms it has registered them.

- **Stage 4 – Notify The Scottish Housing Regulator**

The SHR should be notified within 28 days of the amendment. This can be done through the Social Landlord Portal.

- **Stage 5 – Notify OSCR**

Notify OSCR that ELHA has adopted a new set of rules and provide OSCR with a copy. OSCR will respond to acknowledge receipt of the new Rules.

# Meeting the Updated Scottish Housing Quality Standard (SHQS)

## Report by Duncan Mackay, Director of Asset Management – for Information

---

### 1.0 Introduction

The Scottish Government published updated guidance on the Scottish Housing Quality Standard (SHQS) in its letter to Registered Social Landlords of 5 May 2020. The amendments concerned the requirements to bring the guidance in line with changes to the Tolerable Standard in respect of fire and smoke alarms and carbon monoxide detectors, and to ensure guidance on electrical safety inspections is consistent with the requirements of BS 7671 Requirements for Electrical Installations.

In summary, the changes require ELHA to upgrade all its properties to the Tolerable Standard by ensuring they all have fire detection that meets the requirements of the LD2 standard as specified in BS 5839-6:2019, and that all properties have an Electrical Installation Condition Report (EICR) renewed every five years and that this be available to the tenant in the property in a similar way to a Gas Safety Certificate.

This was introduced as an amendment to Element 45, Safe Electrical Systems, within the SHQS.

### 2.0 The current position

The programme has now commenced with the upgrading of the smoke alarms as required to the LD2 standard. As previously reported, the original deadline for ensuring all the stock complied with the new standard was 1 February 2021. The deadline has now been extended to 1 May 2021 in recognition of the lockdown period precluding work activity until recently. Up to the week ending 31 July 2020, 90 properties have been upgraded by R3, and progress has been good, with most tenants accepting appointments to have the work undertaken.

All ELHA properties complied with the requirements for smoke, carbon monoxide and heat detectors that were in place prior to the changes to the standard, this being confirmed by the 100% stock condition survey, the last 20% tranche of which was completed in June 2019. To ensure that this high standard of compliance is maintained, all ELHA properties will receive a visit from a client officer or the contractor, R3, and any works that are required, either full or partial upgrades, will be carried out.

At the current level of resourcing, with the equivalent of 1.5 R3 electricians committed to this project full time, compliance with the new standard is expected to be achieved by the deadline. Progress and resource allocation will be kept under review to ensure this.

The requirement for all properties to have a 5-year EICR certificate was originally required by 31 March 2021. It has, however, been recognised that the requirement for access to every room in the property to carry this check out was not conducive to requirements with respect to working within tenant's homes in the current climate, so the deadline for ensuring all properties have a current EICR has been extended to 31 March 2022. It has therefore been decided to concentrate all efforts this year on the completion of the LD2 upgrade programme and to start the EICR programme next financial year, to be completed by 31 March 2022.

Staff have now completed an exercise of looking through all property records to identify which homes had a valid EICR certificate in place. This has identified 1,118 properties which will require a new EICR by the target date, and a programme of renewal every five years will be required to ensure future compliance.

## Association Membership Policy Review

### Report by Martin Pollhammer, Chief Executive – for approval

---

#### 1.0 Introduction

The Association Membership Policy requires its five yearly review.

#### 2.0 Proposed Changes

No material changes are proposed. All proposed changes are tracked in the **Policy Document** attached to this report.

#### **Recommendation**

The Management Committee is asked to approve the revised Association Membership Policy.

**ELHA POLICY**

<b>Date Issued</b>	27 October 2005
Last Reviewed:	August 2020
<b>Department</b>	Corporate
<b>Title</b>	<b>Association Membership Policy</b>
<b>Objective</b>	To describe the arrangements for becoming a Member of the Association.
<b>Responsible</b>	Chief Executive
<b>Next Review Date</b>	August 2025

## 1.0 Introduction

1.1 The Membership Policy aims to summarise our ~~R~~rules ~~with regard to~~around Membership, and to explain the procedure to be followed ~~with regard to~~ ~~applications~~ ~~make a~~for Membership application.

1.2 East Lothian Housing Association is an organisation which is accountable to its Members. We aim to attract people from the groups and communities we serve to become Members of the Association. We aim to establish a wide and active membership by recruiting individuals with an interest in the work of the organisation as Members and to make effective use of the skills, experience and views of our Members.

Association Members are those people who hold a share in the Association and whose names are entered into the Register of Members. It is a requirement of membership that Members are supportive of our aims and objectives. Members are also expected to attend our Annual General Meeting in order to ensure that a quorum is achieved, and we are able to carry out our legal business.

1.3 Further information can be found in The Rules of East Lothian Housing Association Limited.

## 2.0 Promotion of Membership

2.1 We will promote membership by circulating information on membership through contact with tenants and applicants, leaflets, newsletters, ~~F~~facebook and ~~the website~~elha.com.

We actively encourage tenant membership as we strongly believe in involving tenants in the running of our organisation. Membership of the Association is promoted with our tenants at the post allocation visit.

2.2 In accordance with the Scottish Federation of Housing Association's Code of Conduct for Governing Body Members, members of the Association's Management Committee will seek to encourage eligible people to join the Association.

### 3.0 Who Can Join

3.1 We aim to ensure broad representation in our membership of the groups and communities that we serve:

- Tenants of the Association and all other applicants can apply for membership of the Association from the age of 16
- No member can hold more than one share
- Membership is open to all sections of the community regardless of colour, race, nationality, ethnic or national origins, gender, disability, age or sexuality

3.2 We aim to recruit as members those with a particular interest in the running of the organisation. To this end, we welcome applications from those with experience or interest in:

- Housing management / welfare rights
- Building and maintenance
- Financial management
- Management
- Community care issues
- Working in the local community

3.3 We accept applications from organisations as well as individuals.

An organisation which is a member is free to appoint any person it considers suitable as a representative. That person will represent all of the organisation's rights and powers at our AGM, but must act with regard to the best interests of the Association. To confirm the identity of a representative the organisation must send a copy of the signed authorisation or appointment of the representative. An organisation can change their representative by withdrawing the authority of the original representative.

If a representative of an organisation is already a Member, they cannot continue to be a member in their own right. Individual membership will be suspended, until such times as the individual is no longer a representative of the organisation they represent.

- 3.4 Existing members of staff will not be eligible to become Members. If a Member takes up employment with us, they will be required to cancel their membership for their period of employment.

Members of staff will not be eligible to apply for membership of the Association until one year after the date they cease to be an Association employee.

#### 4.0 Applying for Membership

- 4.1 Those who want to apply for Mmembership should contact us for a Mmembership Form, or apply online at elha.com. The completed form should be returned to us with £1.00 addressed to our Secretary at our Registered Office.

- 4.2 Our Management Committee will consider applications at its next meeting or as soon as possible after that. An Application for Mmembership will not be considered by the Management Committee within the 14 day period occurring before the date of a General Meeting.

- 4.3 Once approved by Management Committee, new applicants will immediately become a Member, and their name will be included in our Register of Members within seven working days. New members will be issued with:

- A Share Certificate
- A copy of our Rules
- A copy of our most recent Annual Report
- Details of how Members can participate in the Association, including the Annual General Meeting (AGM) and how to stand for election to the Management Committee

#### 5.0 Refusal of Membership

- 5.1 While it is our intention to encourage open membership of the Association, our Management Committee reserves the right to refuse Mmembership if it feels applicants do not meet our Mmembership eCriteria, or if they feel Mmembership might compromise the interests or independence of the Association.

- 5.2 If an application is unsuccessful, the Management Committee will write within seven working days of the decision to explain why the application was rejected, and return the applicant's £1.00 membership fee.

#### 6.0 Appeal Against Membership Refusal

- 6.1 If an application is rejected applicants have a right to appeal. Appeals must be made within 14 working days of the notice of rejection.



Appeals should normally be made in writing, if this is not possible the Chief Executive may be contacted directly to receive the details of the appeal. The Management Committee will consider the appeal at the next appropriate Management Committee meeting. A final decision will be confirmed in writing to the applicant within seven working days of the meeting.

## 7.0 Member Participation

7.1 We aim to ensure our Members are informed and can actively participate in the organisation. To this end, we will:

- ~~P~~ublicise General Meetings at least 14 days before the day of the meeting
- ~~C~~irculate information to Members so they can make informed decisions at the General Meetings
- ~~D~~o our ~~best~~endeavour, where appropriate and reasonable, to provide information in the particular format or language required
- ~~M~~ake every effort to hold General Meetings at times and locations suitable to our membership and accessible to all
- ~~K~~keep members informed on all major developments affecting the Association
- ~~A~~actively promote the opportunities that exist, through election, for serving on the Management Committee

## 8.0 Termination of Membership

8.1 Membership will cease when a Member:

- ~~R~~esigns by giving written notice to the Secretary
- ~~B~~ecomes an employee of the Association
- ~~I~~s expelled in accordance with the Rule 11.1.4
- ~~C~~hanges address but does not notify us of their new address within three months, unless the new address is also one of our properties
- ~~F~~ails to attend or submit apologies for five consecutive Annual General Meetings
- ~~D~~ies

The £1.00 membership fee is not refundable on termination of ~~M~~embership.

## 9.0 Policy Review

9.1 The Chief Executive will ensure that this policy is reviewed at least every five years.

## Sponsorship and Donations Policy Review

### Report by Martin Pollhammer, Chief Executive – for recommendation to Members

---

#### 1.0 Introduction

The Sponsorship and Donations Policy requires its five yearly review. The Policy is approved by Members at the AGM, so the Management Committee is required to make a recommendation to the Members about any proposed changes to the Policy.

#### 2.0 Proposed Changes

No material changes are proposed. The revised **Policy Document** is attached to this report.

#### **Recommendation**

The Management Committee is asked to recommend to the Members at the AGM that no material changes are made to the Sponsorship and Donations Policy.

ELHA POLICY

<b>Date Issued</b>	June 1997
<b>Last Reviewed</b>	<b>September 2020</b>
<b>Department</b>	Corporate
<b>Title</b>	<b>Sponsorship and Donations</b>
<b>Objective</b>	To describe the Association's arrangements for awarding sponsorship and donations.
<b>Responsible</b>	Director of Finance
<b>Next Review Date</b>	September 2025 (Review at AGM)

---

### 1.0 Approved Activities

The Association may give small donations / monies for sponsorship to East Lothian Based Community Projects which are registered charities, and to National Housing Charities.

### 2.0 Amount

In any year, the Association may expend up to 0.5% of the preceding year's audited accumulated surplus, up to a maximum of £1,000.

### 3.0 Authorisation

The Management Committee is responsible for considering each request for donation / sponsorship and if it is considered appropriate will agree to the amount to be given from the total available for the year and authorise subsequent remittance. In the event that this would result in an undue delay to proceedings, the Chief Executive and / or Director of Finance may obtain written authorisation from the Chair and Vice-Chair and subsequently remit a report to the next Management Committee for homologation.

### 4.0 Policy Review

The Director of Finance will ensure that Association Members review this policy at the Annual General Meeting at least every five years.

## Pension Policy Review

### Report by Paula Oliver, Director of Finance – for approval

---

#### 1.0 Introduction

The review of the Pension Policy was deferred pending the introduction of a Defined Contribution pension option. As a Defined Contribution option has been agreed and will be introduced from 1 October 2020, the Pension Policy has been updated to reflect this.

The recommended changes are at sections 1.2, 3.1 and 3.2.

A new paragraph has been added at 5.2, highlighting the loss of the link to Final Salary if transferring from this option to either the Care 1/80<sup>ths</sup> option, or the Defined Contribution option.

#### **Recommendation**

The Management Committee is asked to approve the revised Pension Policy.

<b>Date Issued</b>	14 February 2002
<b>Last Review Date</b>	August 2020
<b>Department</b>	Finance
<b>Title</b>	<b>Pension Policy</b>
<b>Objective</b>	To describe our pension provisions for employees
<b>Responsible</b>	Director of Finance
<b>Next Review Date</b>	Year ending 31 March 2026

## 1.0 INTRODUCTION

1.1 We participate in the Scottish Housing Associations Pension Scheme (SHAPS) and adhere to the scheme's "Employer Code of Practice" (see **Appendix 1**). We follow the scheme's rules and pension legislation in managing our responsibilities to both the scheme and members.

1.2 We offer ~~threetwo~~ pension options from the SHAPS Pension Scheme to staff and these are:

- A final salary 60ths option (default option), ~~and~~
- A CARE (career average) 80ths option, and
- A defined contribution option

## 2.0 Eligibility for Membership (Prior to Auto-Enrolment)

2.1 Prior to the introduction of "Auto-Enrolment" we will encourage all eligible employees to join the Scheme. All our employees are eligible to join either pension option offered regardless of the hours they work or their job grade provided they meet the following requirements:

- Their employment contract with the Association is either permanent contract or for a minimum period of three calendar months
- Their age is between the lower and upper age limits for entry set by the scheme and
- They meet the scheme's medical requirements

2.2 Employees are responsible for applying to join one of the scheme options and we will process all such applications to join the scheme quickly.

### 3.0 Membership after Auto-Enrolment

- 3.1 Following the introduction of the legislation on Auto-Enrolment, we will **automatically** enrol **all** eligible employees into the **SHAPS Final Salary 60ths Option** when required to do so. Should an employee not wish to join the Scheme or wish to participate in the CARE 80ths option, or the Defined Contribution option it is **their** responsibility to instruct us to remove them from the Scheme or transfer them to the CARE 80ths option/Defined Contribution option.
- 3.2 Eligibility under auto-enrolment will be as defined by legislation.
- 3.3 Any employee who instructs us to remove them from the Scheme will be automatically re-enrolled into the SHAPS Final Salary 60ths Option on the third anniversary of their withdrawal from the Scheme. Should the employee still not wish to join the scheme at this time, or wish to participate in the CARE 80ths option or Defined Contribution option, it is again **their** responsibility to instruct us to remove them from the Scheme or transfer them to the CARE 80ths option/Defined Contribution option.

### 4.0 Employer's Contributions

- 4.1 We will contribute to the Scheme for each employee who is a member of the scheme at the rates we agreed for each option. We will regularly review whether we can afford our contributions and will consult with employees on any changes we may need to make.
- 4.2 We do not make contributions towards stakeholder or personal pensions for any employees.
- 4.3 Where automatic enrolment is not required and it is the employee's decision when to apply for membership to the pension scheme, we will only make contributions from the point of membership. We will not backdate contributions.
- 4.4 If an employee is on long-term sick-leave, which results in their salary payments being reduced, they have three pension payment options available to them:
- a) They can continue to pay their full contributions and we will continue to pay our contributions at the full rate.
  - b) They can put their pension contributions on hold until they return to their normal pay, when both the employee and the Association will make up the missed contributions.
  - c) They can stop their contributions completely and treat the period of sick leave as a break in service. We would also stop the Association's normal contributions during this period.

If an employee chooses either option (b) or (c), we are required to continue to make a small contribution to the pension scheme for death in service benefits.

- 4.5 Any period of maternity leave an employee has will count towards pensionable service. The benefits that build up during this time are based on the salary they were getting before they went on maternity leave. Whilst employees are on maternity leave, their contributions will be based on the amount of pay they actually receive. However, our contributions will continue on the basis as agreed by the administrators of the scheme.

## **5.0 Transfer Between Options**

5.1 Employees may change from one option to another on 1 April each year providing they submit an application to do so by 31 January of that year.

5.2 Any member who opts to move away from the existing Final Salary 60ths section (e.g. to CARE 80ths or Defined Contribution) would lose the link to Final Salary for their past benefits.

## **6.0 Stakeholder Pensions**

6.1 As all our employees are automatically enrolled onto/invited to join our occupational pension scheme (“SHAPS”) within three months of starting employment with the Association, we do not offer a stakeholder pension scheme.

## **7.0 Monitoring and Review**

7.1 The Director of Finance is responsible for ensuring that this policy and the procedures which support it are followed.

7.2 The Director of Finance will ensure that the Management Committee reviews the policy at least every five years.

# Amendments to Shared Ownership Policy

## Report by Karen Barry, Director of Housing – for Approval

---

### 1.0 Introduction

A recent complaint highlighted that there is no clear procedure set out for dealing with the death of a Sharing Owner in the Exclusive Occupancy Agreements predating the introduction of the Model Occupancy Agreement in 2002. The Association's current Shared Ownership Policy is also silent on how sales should be approached in the event of the Sharing Owner's death, though it does state that buy backs will not normally be considered.

The lack of clarity (and disruption cause by the current pandemic) led to an Executor requesting that the Association buy back a 25% share. The Senior Management Team agreed to establish if there was a business case for buying back this share, and perhaps others in the future. The outcome from this exercise was that although the financially best option for the Association was to sell this property out-right on the open market, it was recognised that, as the Association exists to provide social rented housing in an area of high demand, that buying back the property still generated a good NPV and helps to meet housing need in line with the Association's Charitable Objectives. In addition, it would provide initial refurbishment work and ongoing maintenance work for R3. At its meeting on 28 May 2020, the Management Committee approved the buy back and converting of this property to affordable rented stock.

It has been the Association's long standing view that retaining many of its Shared Ownership properties may not be in its best interests in the longer term, and with the development of the Strategic Asset Management Strategy underway (which includes a section identifying 'Cause for Concern' stock), a full review of the Shared Ownership stock will be carried out and consideration given to how future sales will be approached. In view of this, the buyback reported above, and to allow for more flexibility, proposed amendments to the Policy include removing reference to specific properties and that the Association will not normally buyback properties.

### 2.0 Policy Amendments

- Section 1 - has been amended to recognise that the Association is developing a Strategic Asset Management Strategy which will include a section on 'Cause for Concern' stock.
- Section 2 - clarifies that the Association has the option to buy back a share of a property and convert it to social rented accommodation, and that the Strategic Asset Management Strategy will consider how this will be approached, so specific reference to the properties has been removed.



- Section 5 – has been amended to remove reference to specific properties. It also clarifies that should the Association join in an open market sale, it is only a Notifiable Event if the sale is above a certain value. The Housing (Scotland) Act 2010, amended by the Housing (Amendment) Act 2018, requires RSL's to notify the Scottish Housing Regulator (SHR) regarding the sale of land and assets. The Act provides for the SHR to determine when they want to be notified and when to dispense with the requirement. In this scenario the SHR wants to be notified only if the value of the sale exceeds £120,000.
- Section 7 - has been added and replicates the process set out in the 2002 Model Shared Ownership Occupancy Agreement.
- Section 8.4 has been deleted and the procedure it refers to has been removed as an Appendix to the Policy Document, and instead saved separately as a procedure.

Proposed changes to the Policy are tracked in the attached **Policy Document**.

**Recommendation**

The Management Committee is asked to approve the amendments to the Shared Ownership Policy.

<b>Date Issued</b>	February 2015
<b>Department</b>	Housing
<b>Title</b>	Shared Ownership
<b>Objective</b>	<b>To set out our policy in relation to the management, allocation and sale of Shared Ownership properties</b>
<b>Responsible</b>	Director of Housing
<b>Next Review Date</b>	February 2025

## 1.0 Introduction

- 1.1 We have a small stock of Shared Ownership properties developed between 1990 and 1997 representing around 3% of our Housing stock. We have in the past sought to maintain this stock by facilitating the sale of shares between Sharing Owners wishing to move on and people on our list for whom Shared Ownership is an option.
- 1.2 The rapid increase in property values coupled with the tightening of lending criteria, the requirement for deposits of up to 20% and the availability of other Ownership options such as Shared Equity and Help to Buy has made Shared Ownership less attractive and we have found it increasingly difficult to facilitate onward sales.
- 1.3 In addition, although the management of Shared Ownership is governed by several legal agreements including an Occupancy Agreement between us and the Sharing Owners; an Agreement between the Sharing Owner and their lender (if applicable); a Co-operation Agreement between us and the lender and in many cases a Deed of Conditions for the development, management issues have emerged that have led us to conclude that in many cases retaining the Shared Ownership properties may not be in the best interests of the Association. We are currently developing our Strategic Asset Management Strategy which will include a section identifying 'Cause for Concern' stock.
- 1.4 Grant subsidy for Shared Ownership is available in only very limited circumstances and it is therefore highly unlikely that we will develop any new Shared Ownership homes. This policy does not therefore cover the allocation of Shared Ownership but only the criteria to be applied when shares change hand.
- 1.5 ~~We will not actively seek to dispose of Shared Ownership units but equally may not seek to retain them when a Sharing Owner chooses to move on.~~

## 2.0 Shared Ownership Sales

2.1 The Occupancy Agreement provides for ~~two~~three options when a Sharing Owner wishes to sell their share;

- We can buy back the share and convert the property to affordable rented
- We can buy back the share and sell it on
- We can join with the owner in a sale on the open market

Our Strategic Asset Management Strategy will consider our preferred option on an individual development, and in some cases, an individual property basis.

2.2 If a Sharing Owner wishes to sell their interest in the property, they must inform us in writing.

~~2.3 We will not normally buy back shares of the property.~~

~~2.4 Sharing Owners at Tyne Park, Pencaitland, Hardgate Court, Haddington, Quality Street, North Berwick; Woodbush Place, Dunbar, Miners Terrace, Wallyford and Crown Court, Tranent will be encouraged to sell their share to a qualifying buyer as outlined at paragraph 3 below.~~

~~2.5 Sharing Owners at Fowlers Court, Prestonpans; Creel Court, North Berwick; Market Street, Rosehall and Princess Mary Road, Haddington will be advised that we will join with them in a sale on the open market.~~

2.36 We will provide Sharing Owners with a Handbook summarising the content of this policy.

## 3.0 Qualifying Applicants

3.1 Our target groups for Shared Ownership properties are:

- First time buyers
- Owners in financial difficulties or who have had a relationship breakdown and been forced to sell
- Public sector tenants
- People with particular needs
- Older people
- Applicants leaving or having left the armed forces within the past year including widows, widowers and other partners of service personnel
- Applicants who have previously jointly owned a property and have been forced to sell due to relationship breakdown will be treated as first time buyers
- We will accept applications from those who have previously or currently own a property, but they will only be considered in the event that no first time buyers have applied and meet the eligibility criteria

- 3.2 We will not normally consider an application where the applicant's income is such that they can afford to purchase outright on the open market. We will carry out a 'mortgage ability' calculation to ensure that they can afford to meet mortgage costs as well as the occupancy charge and council tax (See **Appendix 2**).
- 3.3 To try to prevent applicants from over committing and running into financial difficulties, we will not normally agree to the sale to a purchaser for whom the estimated cost of shared ownership exceeds 30% of net income. In view of the need to sell properties quickly, this figure will be regarded as a target which it must be recognised will not always be met.

#### **4.0 Approval to Sell a Share**

- 4.1 The sharing owner is responsible for ensuring the property is marketed, that a Home Report is produced, and for all of their legal and marketing costs.
- 4.2 If the Sharing Owner is selling only their share in the property, they require our permission to complete the sale. Any interested applicants must complete our application form and meet our criteria as detailed at paragraph 3 above.
- 4.3 We will invite the Sharing Owner to market the property then refer prospective purchasers to us for assessment to ensure that, as far as possible, they meet our criteria for allocating Shared Ownership properties.
- 4.4 We will offer to advertise the property on Homehunt but will simply provide a Shared Ownership application form to any applicants and refer them direct to the Sharing Owner to arrange viewing. If the applicant wishes to proceed they will agree a price with the seller then apply to us to assess their eligibility before submitting a formal offer and incurring legal costs.
- 4.5 Applicants will be assessed on a first come first served basis replicating the realities of the market, i.e. if only one offer to purchase is submitted then we will assess that applicant and only if they do not qualify will any other applicants be considered.
- 4.6 We will not agree to the sale of a share to an applicant who does not qualify for shared ownership. The result of this may be that the Sharing Owner opts for joint open market sale.
- 4.7 We will maintain an audit trail to ensure that we can demonstrate that the process has been carried out fairly.
- 4.8 Staff will refer to regulatory guidance and best practice if the Sharing Owner proposes to sell to a member of staff, ex member of staff, Management Committee member, ex Management Committee member or their relatives.

## 5.0 Joint Open Market Sale

- 5.1 If an owner is unable to sell their share in the property, ~~or the property is at Fowlers Court, Prestonpans; Creel Court, North Berwick; Market Street, Rosehall and Princess Mary Road, Haddington~~ or it is our preferred option, we will join with them in a sale on the open market with the proceeds being split according to the ownership ratio.
- 5.2 Because joint open market sale is the default position if we ~~decide~~ do not buy back ~~and sell on~~ the share, the disposal of the property ~~is~~ may be a Notifiable Event, dependent upon the value and will be reported to the Scottish Housing Regulator. We do however, have to repay grant and the loan on the property (see **Appendix 12**) and are required to achieve the best possible price in any sale.
- 5.3 We will therefore require a copy of the Home Report and to be aware of the marketing strategy so that if the property is sold for less than the Home Report valuation we are able to justify the price. In order to ensure that this is available (and in the interests of fairness) we will pay a share of the Home Report and Marketing costs equal to our share in the property.
- 5.4 The Sharing Owner will meet their own legal costs and we will meet ours.

## 6.0 Staircasing Sales

- 6.1 Sharing Owners may increase their share of the property after one year of occupancy. Although it is now possible to purchase in increments of 10%, we will continue to offer tranches of 25% only. No more than one staircasing transaction ~~can~~ be carried out in each year.
- 6.2 We will write to Sharing Owners after the first year and then every 5 years reminding them that they have the option of increasing their stake in the property.
- 6.3 The Sharing owner will be required to meet the costs of valuing the property and their own legal costs.
- 6.4 We will amend the occupancy payments according to the new percentage owned.

## 7.0 Management of Shared Ownership Properties

The Occupancy Agreement and, if applicable, Deed of Conditions set out the rights and responsibilities of the Ssharing Owner and the Association. The following policy statements do not in any way alter the information contained within the Occupancy Agreement or Deed of Conditions and are for guidance only:

7.1 Occupancy Charges & Service Charges

- 7.1.1 We charge the occupancy & service charges on the first day of the month. These charges are subject to an annual review and we will give sharing owners four weeks' notice in advance of any changes to the charges.
- 7.1.2 If a Sharing Owner is unhappy with the level of Occupancy Payment, they have the right to appeal to a Chartered Surveyor nominated by the Chairman of the Royal Institution of Chartered Surveyors (RICS).
- 7.1.3 We will encourage Sharing Owners to pay their charges by direct debit and will insist that this is paid monthly in advance, in line with the Occupancy Agreement.
- 7.1.4 If a Sharing Owner falls behind with payments we will provide advice and be happy to enter into an arrangement to repay the debt. If more than two months arrears accrue we will inform the Sharing Owner's lender.
- 7.1.5 If we incur any costs in pursuing Occupancy Charge arrears (for example searches to determine the identity of the sharing owners' lender) we will seek to pass these on to the Sharing Owner.
- 7.1.6 We will not instruct legal action to recover any debt before offering debt counselling, including advice about benefits.
- 7.1.7 Repossession action will be taken as a last resort when all other action has failed. All such actions will be carried out jointly with the lender wherever possible.
- 7.1.8 The Audit & Assurance Committee will monitor occupancy and service charge arrears and any legal action taken through the submission of quarterly reports.

7.2 Anti Social Behaviour

- 7.2.1 Our ability to manage issues which affect more than one household such as neighbour disputes and antisocial behaviour is very limited. There is nothing in the Occupancy Agreement to allow us to consider court action or repossession action, nor would we wish to.
- 7.2.2 We will assist in trying to resolve issues that may arise in accordance with our Anti Social Behaviour Policy, such as referrals to mediation, liaison with the police or joint working through East Lothian Antisocial Behaviour Partnership.

7.3 Subletting

- 7.3.1 In terms of the Occupancy Agreement, the Sharing Owner agrees to use the property as their only or principle home. If a Sharing Owner wishes to sublet they should put their request in writing to us. We may agree to this for a

period of up to 12 months, but this period may be extended dependant upon the circumstances and provided the Sharing Owner:

- has written agreement from their lender
- has registered as a Private Landlord
- gives their sub-tenant a Private Residential Tenancy

7.3.2 If it is clear that the Sharing Owner is unlikely to return to the property we will encourage them to sell their share.

7.3.3 During the sublet period, the Sharing Owner remains responsible for ensuring that the occupancy charges are paid and that the sub tenant keeps to the conditions of the Occupancy Agreement.

#### 7.4 Lodgers

7.4.1 The Sharing Owner requires our permission to take in a lodger. Our main aim will be to ensure that overcrowding does not occur.

7.4.2 All requests must be made in writing and the Sharing Owner will have to provide written confirmation that their lender agrees.

7.4.3 If the request is approved and Housing Benefit or Universal Credit Housing Costs are in payment, then the Sharing Owner must inform East Lothian Council or the Department of Works and Pensions (whichever is applicable) of their change in circumstances.

#### 7.5 Transfer of Title

7.5.1 A Transfer of Title is a legal way of signing over all the interests in the Sharing Owners property, i.e. their ownership, rights and responsibilities, to someone else. A Sharing Owner cannot legally do this without our permission and that of their lender.

7.5.2 The most common reason for a Transfer of Title is relationship breakdown and in these circumstances we will normally consent on condition that the new or remaining Sharing Owner enters into an Occupancy Agreement.

7.5.3 If we receive a request to Transfer Title in other circumstances and there are people in that area who wish to become Sharing Owners, we will encourage the Sharing Owner to sell their share rather than consent to the Transfer of Title.

#### 7.6 Running a Business from Home

7.6.1 Requests to run a business from home should be made in writing. We will normally grant permission provided that:

- The running of the business will not cause nuisance, annoyance or danger to neighbours or damage to property

- There will be no breach of the Occupancy Agreement or Deed of Conditions
- The business does not require a change of use in respect of the building or lead to objections from statutory authorities

7.6.2 It is the Sharing Owner's responsibility to ensure that any necessary statutory consents, e.g. Planning Permission, are granted and that any conditions applying to such consents are fulfilled.

## 7.7 Death of a Sharing Owner

### 7.7.1 When a Sharing Owner dies, we can choose to either:

- Buy back the share and convert the property to affordable rented
- Require the executors to sell the Share on the open market to a qualifying applicant
- Join with the executors in a sale of the Property on the open market

7.7.2 We will advise the executors in writing of our decision within 42 days of the date of death, provided we receive notice of the death.

7.7.3 Though the Exclusive Occupancy Agreement terminates on the date of death, the executors of the Sharing Owner are liable to pay us a sum equivalent to the Occupancy Charge which was payable immediately prior to the date of death, until the sale of the Share or joint sale of the Property has been completed.

## **8.0 Expiry of Exclusive Occupancy Agreement**

8.1 Shared Ownership Exclusive Occupancy Agreements usually last for 20 Years from their commencement.

8.2 We will write out to Sharing Owners at the 1<sup>st</sup>, 5<sup>th</sup>, 10<sup>th</sup>, 15<sup>th</sup> and 20<sup>th</sup> year anniversary of the start of their Occupancy Agreement to remind them that they have the option to tranche up their share of the property. Further shares, in multiples of 25%, can be purchased at a cost based on the market value. Only one transaction per year is allowed.

8.3 At the end of the 20 year Occupancy Agreement, Sharing Owners must decide to either:

- Tranche up to full ownership
- Sell the property
- Extend the Exclusive Occupancy Agreement for a further period of time

We will write to Sharing Owners one year prior to their 20 year occupancy expiring.



**9.0 Information, Consultation and Participation**

- 9.1 We will inform Sharing Owners of any changes to our policy or the law that affects them.
- 9.2 We will provide information and advice on the Sharing Owner's rights and obligations under the Occupancy Agreement.
- 9.3 We will not provide legal advice or information on financial services. Applicants will have to obtain independent legal or financial advice themselves.

**10.0 Equal Opportunities**

- 10.1 We will not discriminate in the operation of this policy on the basis of age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex, or sexual orientation.
- 10.2 We aim to promote equal opportunities and comply with the requirements of the Equality Act 2010.

**11.0 Policy Review**

- 11.1 This policy complies with all relevant law, Government Guidance and good practice and will be reviewed if changes necessitate an early review.
- 11.2 The policy and supporting procedures have also been checked to ensure that opportunities for bribery or corruption in terms of the Bribery Act 2010 have been minimised.
- 11.3 The Director of Housing will ensure that this policy is reviewed at least every five years and that any amendments required are submitted to the Management Committee for approval.

**ASSESSING AFFORDABILITY**

1. To qualify for Shared Ownership an applicant will normally have a total household income such that they are not able to buy on the open market. Household income will be assessed for mortgage purposes as 3 times income for a single applicant or 2.5 times income for a couple.
2. In an attempt to prevent applicants over committing and running into financial difficulties, we will try not to approve applicants for whom the estimated cost of shared ownership exceeds 30% of net income. However, in view of the need to sell properties quickly, this figure will be regarded as a target which it must be recognised will not always be met.
3. To work out the percentage of net household costs, calculate the monthly shared ownership housing costs then divide by the monthly net income and multiply by 100 to get the percentage.

**Example**

Monthly housing costs, based on a 25% share of a property valued at £44,000 =

Occupancy Charge £140

Mortgage £ 70

Council Tax £ 90

Total monthly  
housing cost = £300

Monthly income = £1200

Percentage of net household cost =

$£300 \div £1200 \times 100 = 25\%$

**Property (Address)**

Valuation at (date) = £

ELHA % %

**ELHA Proceeds** £

**HAG Received**

For scheme £

For property £

**Loan Repayable to Lender**

For scheme at (date) £

For property (3) £

**Cost of sales allowance per SG** £

**Sales Costs**

Legal Fees £

Advertising £

Restricted per SG **£500**

**HAG Abatement**

Selling price £

Less loan £

Less CoS allowance £

Less allowable legal fees £

Net Proceeds to SG **£**

**HAG Abatement** £

**ELHA Costs**

Legal Fees £

Less allowed £500

**Net cost to ELHA** £

NPV of future cashflows £

**Total costs** £