

Model Code of Conduct for Governing Body Members and Accompanying Guidance

Updated 2021

Drafted by Linda Ewart on behalf of SFHA.

For further information or support from SFHA contact

Alan Stokes, Policy Lead, astokes@sfha.co.uk

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1. Introduction

In April 2021, the SFHA Model Code of Conduct for Governing Body Members was updated. SFHA commissioned Linda Ewart to draft the revisions on our behalf.

The update followed a comprehensive review process, which included:

- A survey of all SFHA members
- Consultation with a working group of SFHA members
- Further consultation with governing body member volunteers
- Input from the Scottish Housing Regulator

SFHA would like to acknowledge and thank all who contributed to this process.

2. How to use the Model Code of Conduct for Governing Body Members

The SFHA Model Code of Conduct for Governing Body Members is included as [Appendix A](#).

All Registered Social Landlord (RSLs) are required to adopt and comply with an appropriate Code of Conduct, and this Model has been approved by the Scottish Housing Regulator as fully complying with its regulatory requirements. The Code is divided into seven principles that governing body members must adhere and commit to.

Before taking up their role on the governing body, individual members must sign the Code and they must re-affirm their commitment annually. If someone who has been elected, co-opted or appointed to the governing body refuses to sign the Code, they cannot take up their position on the governing body.

Prior to issuing to your governing body members, the model should be customised to reflect your organisational details, and at several points square brackets are included as a prompt to insert details pertinent to your RSL, e.g. **[BOARD/COMMITTEE]**.

3. How to use further Guidance for Governing Body Members

Further guidance on the Code for Governing Body Members is included at [Appendix B](#).

This guidance provides a bit more background on each of the seven principles and can be issued to governing body members alongside the Code if organisations wish to provide more detail. It is important to note that it is only the Code of Conduct that individuals are signing up to – and this accompanying guidance is provided only as further explanation. If organisations do not wish to issue this guidance as well, it can be used as an aid when explaining the Code of Conduct to governing body members.

Similarly to the Model Code, prompts are included throughout for organisations to adjust and insert details pertinent to your RSL – and these should be updated prior to issuing to governing body members (if you choose to do so).

4. How to use Protocol on Dealing with an Alleged Breach of the Code

The remainder of the appendices provide guidance on how to deal with an alleged breach of the Code. This includes:

- A Model Protocol for dealing with an alleged breach at [Appendix C](#). This is not intended to be prescriptive and should be customised to suit your organisation's individual circumstances – with prompts included in square brackets to customise with your organisational details.

In previous versions of the Code a protocol had been provided as an appendix to the Code itself, but has now been separated to make it clear that the principles within the Code are what the governing body member is signing up to.

The protocol describes two possible routes for dealing with a breach – Route A which is a more informal approach for minor breaches, and Route B which describes a full investigation for more serious breaches. The Model Protocol has been approved by the Scottish Housing Regulator as meeting its regulatory expectations.

- A flow chart summarising the Protocol process for both Route A and B is provided at [Appendix D](#).
- Further organisational guidance on implementing the Model Protocol is included at [Appendix E](#).
- A template letter to inform governing body members of an investigation – an important part of the Model Protocol process - is included at [Appendix F](#).
- A template brief for the conduct of an independent investigation – an important element of Route B within the Model Protocol – is included at [Appendix G](#).

Model code of conduct for governing body members

Appendix A

Model Code of Conduct for Governing Body Members

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Paisley Housing Association

Code of Conduct for Board Members

Contents

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1. Introduction

- 1.1. All members of the **Board** must sign this Code of Conduct when they are elected, co-opted or appointed, and on an annual basis thereafter. References throughout this Code of Conduct (the Code) to 'we', 'us' and 'our' mean Paisley Housing Association. The Code reflects our Values which are

PHA STRATEGIC OBJECTIVES

1. **PLACE** – Providing quality, safe, affordable, attractive, warm homes.
2. **CUSTOMER SERVICE** – Provide excellent customer service which represents best value for money and embraces current technology and communications.
3. **GOVERNANCE** – Ensure a robust governance structure through the strengths of the governing body.
4. **ASSET MANAGEMENT** – Ensure the Association invests wisely making best use of assets.
5. **VIABILITY & VALUE FOR MONEY** – Ensure financial viability and value for money in all operations and services.
6. **HUMAN RESOURCES** – Recruit, develop and retain professional staff.
7. **REGENERATION** – Focus any wider role projects on enhancing core services, improving quality of life for our residents and improving life chances.
8. **PARTERSHIPS** – Explore partnerships which assist the Association to meet our vision and strategic objectives.
9. **PARTICIPATION** – Give customers opportunities to participate in a variety of ways that meets their priorities.

1.2 We attach the greatest importance to ensuring that high standards of governance and ethical behaviour are demonstrated by all of our people and in all of our activities.

1.3 Our Code of Conduct sets out the requirements and expectations which are attached to your role as a member of our **[BOARD]**. You have a personal responsibility to uphold the requirements of our Code. You cannot be a member of the **[BOARD]**¹ if you do not agree to adopt our Code of

¹ Our Rules state that the **[BOARD/COMMITTEE]** can remove a member who fails to sign the Code of Conduct (Rule 44.5.2); it is a regulatory requirement that our Rules enable the **[BOARD/COMMITTEE]** to take such action (SHR Regulatory Framework (2019) Constitutional Standard 19

Conduct. To confirm that you understand its requirements and accept its terms, you must review and sign this Code annually.

- 1.4 As a Registered Social Landlord (RSL), we are required to adopt and comply with an appropriate Code of Conduct². Our Code is based on the Model Code of Conduct produced by the Scottish Federation of Housing Associations, which the Scottish Housing Regulator (SHR) has confirmed fully complies with its Regulatory Standards.
- 1.5 Our Code of Conduct is an important part of our governance arrangements; it is supported by the Role description which describes your responsibilities as a **[BOARD]** member. You are responsible for ensuring that you are familiar with the terms of this Code and that you always act in accordance with its requirements and expectations. **[BOARD]** Members must always ensure their actions accord with the legal duties of the RSL and with regulatory guidance. You must also ensure you are familiar with any policies which are linked to this code.
- 1.6 If there is a concern that a member of the **[BOARD]** may have breached any part of this Code, the matter will be investigated in accordance with the Protocol that we have adopted. A serious breach of our Code may result in action being taken by the **[BOARD]** to remove the **[BOARD]** member(s) involved.
- 1.7 This Code of Conduct was adopted by our **[BOARD]** on [30TH August 2021].

2. Who Our Code Applies To

- 2.1 Our Code of Conduct applies to all elected, appointed and co-opted members of our **[BOARD]** and its sub-committees **[and to the governing bodies of all subsidiaries and members of the Paisley Housing Association Group]**.

3. How Our Code Is Structured

- 3.1 Our Code of Conduct is based on the seven principles which are recognised as providing a framework for good governance. They demonstrate honesty, integrity and probity.³

² Scottish Housing Regulator (2019) Regulatory Framework, [Regulatory Standard 5.2](#)

³ Committee for Standards in Public Life (May 1995), [Nolan Principles](#)

- 3.2 Each principle is described, as it applies to the activities of **[PHA]** and its **[BOARD]** members, and supporting guidance is offered for each to provide more explanation of our Code's requirements. The guidance is not exhaustive and it should be remembered that **[PHA]** and our **[BOARD]** members are responsible for ensuring that their conduct at all times meets the high standards that the RSL sector is recognised for upholding.
- 3.2 The seven principles that you must adhere and commit to by signing this Code are:

- A. [Selflessness](#)
- B. [Openness](#)
- C. [Honesty](#)
- D. [Objectivity](#)
- E. [Integrity](#)
- F. [Accountability](#)
- G. [Leadership](#)

A Selflessness

You must act in the best interests of **[PHA]** at all times and must take decisions that support and promote our strategic plan, aims and objectives. Members of the **[BOARD]** should not promote the interests of a particular group or body of opinion to the exclusion of others.

- A.1** I will always uphold and promote PHA's aims, objectives and values and act to ensure their successful achievement
- A.2** I will exercise the authority that comes with my role as a **[BOARD]** member responsibly
- A.3** I will accept responsibility for all decisions properly reached by the **[BOARD]** (or a sub-committee or working group with appropriately delegated responsibility) and support them at all times, even if I did not agree with the decision when it was made.
- A.4** I will consider and respect the views of others.

- A.5** I will not seek to use my position inappropriately to influence decisions that are the responsibility of staff.
- A.6** I will not seek to use my influence inappropriately or for personal gain or advantage or for the benefit of someone to whom I am closely connected⁴ or their business interests.

⁴ See Appendix 1, p13-15 for definition of “closely connected”

B. Openness

You must be transparent in all of your actions; you must declare and record all relevant personal and business interests and must be able to explain your actions.

- B.1** I will use my best endeavours and exercise reasonable skill and care in the conduct of my duties.
- B.2** I will avoid any situation that could give rise to suspicion or suggest improper conduct.
- B.3** I will declare any personal interest(s) and manage openly and appropriately any conflicts of interest; I will observe the requirements of our policy on the matter. I will keep my entry in the Register of Interests complete, accurate and up to date. I will make an annual statement to confirm my declarations are accurate.
- B.4** I will not accept any offers of gifts or hospitality from individuals or organisations which might reasonably create – or be capable of creating – an impression of impropriety or influence or place me under an obligation to these individuals or organisations. I will comply with **[PHA's]** policy on [Entitlements, Payments and Benefits Policy or equivalent].
- B.5** I will ensure that, in carrying out my role as a **[BOARD]** member, I am informed about and take account of the views, needs and demands of tenants and service users
- B.6** I will ensure that **[PHA]** is open about the way in which it conducts its affairs and positive about how it responds to requests for information.
- B.7** I will not prevent people or bodies from being provided with information that they are entitled to receive.

C. Honesty

You must ensure that you always act in the best interests of the organisation and that all activities are transparent and accountable.

- C.1** I will always act honestly and in good faith when undertaking my responsibilities as a **[BOARD]** member.
- C.2** I will use my experience, skills, knowledge and judgement effectively to support our activities.
- C.3** I will ensure that decisions are always taken and recorded in accordance with our Rules and procedures.
- C.4** I will ensure that **[PHA]** has an effective whistleblowing policy and procedures to enable, encourage and support any staff or **[BOARD]** member to report any concerns they have about possible fraud, corruption or other wrongdoing.⁵
- C.5** I will report any concerns or suspicions about possible fraud, corruption or other wrongdoing to the appropriate senior person within the organisation in accordance with our whistleblowing policy.
- C.6** I will comply with our policies and procedures regarding the use of our funds and resources⁶ and I will not misuse, contribute to or condone the misuse of these resources.
- C.7** We forbid all forms of bribery, meaning a financial or other advantage or inducement intended to persuade someone to perform improperly any function or activity. I will neither accept from nor give bribes or any other inducement to anyone. I will comply with our policy on bribery **Anti Bribery Policy** and will report any instances of suspected bribery or corruption within the organisation or any of its business partners.
- C.8** I will ensure that neither I nor someone closely connected to me receives or is seen to receive preferential treatment relating to any services provided by the organisation or its contractors/suppliers. I will declare all interests openly and ensure they are effectively managed to demonstrate this.

⁵ These concerns might include, but are not confined to, suspected fraud, dishonesty, breach of the law, poor practice, non-compliance with regulatory requirements, misconduct, breach of this code.

⁶ Resources include people, equipment, buildings, ICT, funds, knowledge, stationery, transport

D. Objectivity

You must consider all matters on their merits; you must base your decisions on the information and advice available and reach your decision independently.

- D.1** I will ensure that the decisions that I take are consistent with our aims and objectives and with the relevant legal and regulatory requirements (including those of the Scottish Housing Regulator, the Office of the Scottish Charity Regulator, the Financial Conduct Authority and the Care Inspectorate).
- D.2** I will prepare effectively for meetings and ensure I have access to all necessary information to enable me to make well-informed decisions.
- D.3** I will monitor performance carefully to ensure that the organisation's purpose and objectives are achieved, and take timely and effective action to identify and address any weaknesses or failures.
- D.4** I will use my skills, knowledge and experience to review information critically and always take decisions in the best interests of the organisation, our tenants and our service users.
- D.5** I will ensure that the **[BOARD]** seeks and takes account of additional information and external/independent and/or specialist advice where necessary and/or appropriate.
- D.6** I will ensure that effective policies and procedures are implemented so that all decisions are based on an adequate assessment of risk, deliver value for money, and ensure the financial well-being of the organisation.
- D.7** I will contribute to the identification of training needs, keep my knowledge up to date, and participate in ongoing training that is organised or supported by us.

E. Integrity

You must actively support and promote our values; you must not be influenced by personal interest in exercising your role and responsibilities.

- E.1** I will always treat my **[BOARD]** colleagues our staff, our customers and partners with respect and courtesy
- E.2** I will always conduct myself in a courteous and professional manner; I will not, by my actions or behaviour, cause distress, alarm or offence.
- E.3** I will publicly support and promote our decisions, actions and activities; I will not, by my actions or behaviour, compromise or contradict the organisation, its activities, values, aims or objectives. I will notify the Chair quickly if I become aware of any situation or event that I am associated with which could affect **[PHA]** and/or its reputation
- E.4** I will fulfil my responsibilities as they are set out in the relevant role description(s); I will maintain relationships that are professional, constructive and that do not conflict with my role as a **[BOARD]** member.
- E.5** I will comply with, support and promote our policies relating to equalities, diversity and human rights as well as uphold our whistleblowing and acceptable use⁷ policies.
- E.6** I will respect confidentiality and ensure that I do not disclose information to anyone who is not entitled to receive it, both whilst I am a member of the **[BOARD]** and after I have left.
- E.7** I will observe and uphold the legal requirements and our policies in respect of the storage and handling of information, including personal and financial information.

⁷ This relates to the use of ICT, social media and networking, facilities etc., and is specific to each individual RSL.

F. Accountability

You must take responsibility for and be able to explain your actions, and demonstrate that your contribution to our governance is effective.

- F.1** I will observe and uphold the principles and requirements of the SHR's Regulatory Framework, and gain assurance that relevant statutory and regulatory guidance and **[PHA's]** legal obligations are fulfilled.
- F.2** I will ensure that we have effective systems in place to monitor and report our performance and that corrective action is taken as soon as the need is identified.
- F.3** I will contribute positively to our activities by regularly attending and participating constructively in meetings of the **[BOARD]**, its committees and working groups.
- F.4** I will participate in and contribute to an annual review of the contribution I have made to our governance.
- F.5** I will ensure that there is an appropriate system in place for the support and appraisal of our Senior Officer and that it is implemented effectively.
- F.6** I will not speak or comment in public on our behalf without specific authority to do so.
- F.7** I will co-operate with any investigations or inquiries instructed in connection with this Code whilst I am a **[BOARD]** member and after I have left.
- F.8** I recognise that the Governing Body as a whole is accountable to its tenants and service users, and I will demonstrate this in exercising my judgement and in my decision-making

G. Leadership

You must uphold our principles and commitment to delivering good outcomes for tenants and other service users, and lead the organisation by example.

- G.1** I will ensure that our strategic aims, objectives and activities deliver good outcomes for tenants and service users. I will make an effective contribution to our strategic leadership.
- G.2** I will ensure that our aims and objectives reflect and are informed by the views of tenants and service users.
- G.3** I will always be a positive ambassador for the organisation.
- G.4** I will participate in and contribute to the annual review of the Governing Body's effectiveness and help to identify and attain the range of skills that we need to meet our strategic objectives.
- G.5** I will not criticise or undermine the organisation or our actions in public.
- G.6** I will not criticise staff in public; I will discuss any staffing related concerns privately with the Chair and/or Senior Officer.
- G.7** I will not harass, bully or attempt to intimidate anyone.
- G.8** I will not use social media to criticise or make inappropriate comments about the organisation, its actions or any member of the **[BOARD]**, staff or other partners.
- G.9** I will not act in a way that could jeopardise our reputation or bring us into disrepute.⁸

⁸ This includes activities on social media, blogs and networking sites.

4. Breach of this Code

- 4.1 I recognise that each member of the **[BOARD]** has a personal and individual responsibility to promote and uphold the requirements of this Code. If I believe that I may have breached the Code, or I have witnessed or become aware of a potential breach by another member, I will immediately bring the matter to the attention of the Chair.

5. Acceptance and Signature

I _____ have read and understood the terms of this Code of Conduct and I agree to uphold its requirements in all my activities as a member of our **[BOARD]**. I am aware that I must declare and manage any personal interests. I agree to review all relevant Registers regularly to ensure that all entries relating to me are accurate. I understand that, if I am found to have breached this Code of Conduct, action will be taken by the **[BOARD]** which could result in my removal.

Signed _____

Date _____

Appendix B

Further Guidance for Governing Body Members

Supporting Guidance to the Code of Conduct for [BOARD] Members

This Guidance has been prepared for members of the [BOARD] to support the adoption of our Code of Conduct. All members of the [BOARD] must sign the Code of Conduct when they are elected, co-opted or appointed, and then on an annual basis thereafter. References throughout this Code of Conduct (the Code) to 'we', 'us' and 'our' mean [PHA].

We attach the greatest importance to ensuring that high standards of governance and ethical behaviour are demonstrated by all of our people and in all of our activities. Our Code of Conduct sets out the requirements and expectations which are attached to your role as a member of our [BOARD]. You have a personal responsibility to uphold both the spirit and the requirements of our Code.

Our Code of Conduct is an important part of our governance arrangements. It is supported by the Role description which describes your responsibilities as a [BOARD] member and you are responsible for ensuring that you are familiar with the terms of the Code and that you always act in accordance with its requirements and expectations. [BOARD] members must always ensure their actions accord with the legal duties of the RSL and with regulatory guidance. You must also ensure you are familiar with any policies which are linked to this code.

As a Registered Social Landlord (RSL), we are required to adopt and comply with an appropriate Code of Conduct⁹. Our Code is based on the Model Code of Conduct produced by the Scottish Federation of Housing Associations (2021), which the Scottish Housing Regulator (SHR) has confirmed fully complies with its regulatory requirements.

You cannot be a member of the [BOARD] if you do not agree to adopt our Code of Conduct. To confirm that you understand its requirements and accept its terms, you must review and sign this Code annually. Our rules state that the [BOARD] can remove a member who fails to sign the Code of Conduct (Rule 44.5.2). It is a regulatory requirement that our rules enable the [BOARD] to take such action.¹⁰

Each year, following the AGM, [BOARD] members will be asked to sign and date our Code of Conduct to confirm your commitment to the principles, requirements and expectations that it describes and to meet the requirements of our rules. A copy of our Code, showing your signature throughout your membership of the [BOARD], will be retained by us, in accordance with our Data Protection/Privacy policy.

Our Code of Conduct applies to all elected, appointed and co-opted members of our [BOARD/COMMITTEE] and its sub-committees **[and to the governing bodies of all subsidiaries and members of the (Name of Organisation) Group]**.

⁹ Scottish Housing Regulator (2019) Regulatory Framework, [Regulatory Standard 5.2](#)

¹⁰ SHR Regulatory Framework (2019) Constitutional Standard 19

Breach of the Code

If a complaint is made or concern is raised that a member of the **[BOARD]** may have breached any part of our Code, the matter will be investigated in accordance with the Protocol which has been approved by the **[BOARD]**. The protocol forms part of our governance policies and is accessible **via the Board Portal**.

A potential breach will normally be formally investigated. It is the responsibility of the Chair to decide, in consultation with other office bearers, if an internal or an independent investigation should be conducted. A **[BOARD]** member who is the subject of a complaint or concern about a potential breach of our Code is expected to take leave of absence whilst an investigation is carried out: (our Rules allow the **[BOARD]** to require that this happens)¹¹. Whilst on leave of absence for this reason, a **[BOARD]** member is not entitled to receive any papers or correspondence (other than in relation to the investigation) or to take part in any meetings in their role as a **[BOARD]** member. The requirements of our Code of Conduct continue to apply throughout the term of the leave of absence.

A serious breach of our Code may result in action being taken by the **[BOARD]** to remove the member(s) involved. This is a serious course of action which is provided for in our rules¹². It requires a majority of **[BOARD]** members who attend a special meeting of the **[BOARD]** to support a resolution to remove the member because of their failure to comply with the requirements of the Code or our rules, policies or standing orders. If a **[BOARD]** member is removed as a result of such a resolution, or resigns, having been notified of the **[BOARD's]** intention to consider such a resolution, they cannot be re-elected or appointed or co-opted to the **[BOARD]** during the subsequent five year. A **[BOARD]** member who has been removed cannot be elected, appointed or co-opted to the governing body of another RSL during the same period¹³.

How the Code is structured

The Code is based on the seven principles which are recognised as providing a framework for good governance. They demonstrate honesty, integrity and probity.¹⁴

In the Code, each principle is described, as it applies to the activities of an RSL and its **[BOARD]** Members. This guidance is offered to support the application of the Code of Conduct by providing some illustrations of the practical application of the Code's requirements. **It is emphasised that the guidance is not exhaustive.**

It must be remembered that **[BOARD]** members and RSLs are always responsible for ensuring that their conduct at all times meets the high standards that the RSL sector is recognised for upholding.

¹¹ Rule 37.8

¹² Rule 44.5

¹³ Rule 43.1.5 / 43.1.5 /43.1.7

¹⁴ Committee for Standards in Public Life (May 1995), [Nolan Principles](#)

The Principles of the Code

The seven principles of the Code are:

- A. [Selflessness](#)
- B. [Openness](#)
- C. [Honesty](#)
- D. [Objectivity](#)
- E. [Integrity](#)
- F. [Accountability](#)
- G. [Leadership](#)

The remainder of this guidance offers some illustrations of how each of the principles may be applied to your role as a **[BOARD]** member. There are references throughout to the need for **[BOARD]** members to 'be familiar' with the terms of policies and other documents. This does not mean that you need to know the detailed content of all the documents but rather you should be aware of their key principles and have ready access to them in the event that the detail is necessary.

A. Selflessness

This principle emphasises the importance of **[BOARD]** members acting in our best interests at all times and taking decisions that will support delivery of our objectives. Although individual **[BOARD]** members bring knowledge and experience to their role, you are not a representative for a specific interest or group: your experience and knowledge should inform your contribution to discussion but your decision-making should be influenced by our aims and objectives and not individual or specific interests. In practice, this means that you must always make a conscious effort to see the bigger picture and not concentrate just on the issues that are important to you.

A1 refers to upholding our values, which are included at 1.1 in the introduction of our Code.

The principle contains a commitment to always support and uphold the **[BOARD]** decisions and our actions (A3): if a **[BOARD]** member were to actively undermine or publicly contradict or disagree with decisions and/or actions, this may constitute a breach. E3 of the Code contains a parallel commitment: if a decision is taken by the **[BOARD]** that a member fundamentally disagrees with and cannot support, it may be that resignation should be considered.

This principle is not intended to prevent a **[BOARD]** member from disagreeing with a proposal during a meeting or from recording their dissent from a decision; rather it is intended to ensure that no member of the **[BOARD]** actively and/ or publicly undermines the organisation. In practice, this means, for example, that you should

not question in public why a decision was taken or criticise the organisation. It is only if a **[BOARD]** member actively undermines or disagrees with a decision or action that a breach of the Code may arise. A similar provision is contained in the Code of Conduct for staff.

A4 specifies that **[BOARD]** members will always be respectful to others: this means, among other things, that you must uphold and be familiar with our policies relating to Equalities and Human Rights and Dignity at Work. This requirement relates to all of your engagements with **[BOARD]** colleagues and staff, tenants and customers, partners and agents. In practice, this means listening to and considering other views and respecting opinions even if they are very different from your own. It also applies to wider conduct: E1, E2 and E3 are specific about the responsibilities of **[BOARD]** members to ensure that they do not bring the organisation into disrepute.

The Code stresses that **[BOARD]** members should not stray into operational matters or seek to use their influence (A6) inappropriately or for personal gain. This means that **[BOARD]** members should always refer individual matters relating to themselves or someone they know or in which they have an interest to the relevant member of staff or to the **CEO** for onward delegation.

B. Openness

This principle sets the framework for ensuring that, in all of our activities and in all your actions, transparency and openness are evident. In practice, this means that you must identify and declare all personal interests which are relevant to our work and to your role with us. You must be familiar with the process for declaring interests and you must make sure that the Register of Interests is accurate and up to date at all times. You must ensure that you are well informed about our policy on declaring interests, which forms part of our EPB (Entitlements, Payments and Benefits) Policy (B3).

You must always be careful and cautious about how your actions may be viewed by others and take care to avoid anything which could compromise or embarrass you or us (B2). In practice, this means that you cannot accept gifts or hospitality that are not permitted by our Entitlements Payments and Benefits policy.

B5 reflects the requirements of SHR's regulatory standard 2 by emphasising the importance of **[BOARD]** members being well-informed about the needs and priorities of tenants. In practice, this may include considering information from Tenant Scrutiny groups, monitoring tenant satisfaction and landlord performance data, offering/considering insight provided from individual **[BOARD]** members' experiences of their landlord. **[BOARD]** members should use this information to inform their consideration of the business that is brought to the **[BOARD]**.

We are covered by the requirements of the Freedom of Information (Scotland) Act and the SHR's Regulatory Framework requires us to be open and accountable for

what we do¹⁵. As a member of our **[BOARD]**, you are responsible for ensuring that we comply with these legal and regulatory requirements: in practice, this means monitoring our compliance and ensuring that we communicate openly and respond effectively to tenants, customers, regulators, funders and partners.

The **[BOARD]** should oversee a culture of openness throughout the organisation – in our communications, access to our website, engagement with tenants and customers and willingness to provide information and answer questions. In practice, this means working on the basis that information will be made available unless there is a good reason for it being withheld. At the same time, you must also ensure that confidentiality is respected (B6 and B7 require that information is made available but E6 also requires that confidentiality must be ensured). This means that it is important for **[BOARD]** members to be involved in agreeing the policy framework that supports how we categorise information.

C. Honesty

This principle emphasises the importance of always acting honestly and in good faith in undertaking your role as a **[BOARD]** member; it also supplements the principle of Openness. To uphold this principle, you should ensure that you are familiar with our rules, standing orders and scheme of delegation, as well as our governance policies and procedures (C3).

C4 requires you to be aware of the terms of our Whistleblowing Policy: in practice, this means that the **[BOARD]**, collectively, must be assured that the policy is fit for purpose (SHR has issued Statutory Guidance on Whistleblowing) and that there is regular training provided for **[BOARD]** members and staff on its terms. **[BOARD]** members must also ensure that there are effective procedures in place for whistleblowing allegations to be made and investigated, with adequate safeguards in place to protect complainants. **[BOARD]** members have an individual duty to report any concerns that you may have about possible fraud, corruption or wrongdoing (C5 and C7). You must, therefore, be familiar with the terms of our **Anti-Bribery** policy. You are expressly forbidden to accept any gifts or other inducements which might create, or be capable of creating, a sense of obligation to another party.

C6 stresses your commitment to ensure that our funds and resources are used properly and for legitimate purposes. This means that decisions about what we do and how we act must fit with, amongst other things, our permitted purpose, and objectives, our business plan and the terms of our loans and grant-making authorities.

C8 further emphasises¹⁶ your responsibility to ensure that neither you nor someone closely connected to you is seen to benefit inappropriately from your role with us and to be very open in declaring all relevant personal interests. In practice, this means

¹⁵ Regulatory Standard 2 (SHR Regulatory Framework 2019)

¹⁶ A6 and B3 are also relevant

ensuring that you are not involved in any decisions which personally impact or affect you or someone you are close to.

D. Objectivity

This principle is about the need to ensure that you make decisions based on an objective consideration of the information that is presented to you in reports. In practice, this means that you must be satisfied that you have access to all of the information you need to fulfil your responsibilities, whilst – at the same time – being mindful of and respecting the distinct roles of **[BOARD]** members (strategic) and senior staff (operational).

D1 reflects the provisions of Regulatory Standard 1 by committing **[BOARD]** members to ensuring that decisions are consistent with all legal, constitutional and regulatory requirements. This means that **[BOARD]** members must be familiar with these provisions. Reports should refer and draw attention to the relevant legal, regulatory and financial constraints/conditions, with Minutes recording that these have been adequately considered.

D2 is explicit about the importance of preparing adequately for meetings – our role description contains an indication of the time that is likely to be involved in meeting preparation. Preparation includes reading all of the reports and also accessing any additional information that may be available (e.g. supplementary reports) and which you feel is necessary. This might also involve the **[BOARD]** requesting that specialist or independent advice is obtained (D5 and Regulatory Standard 4.1) – and individual members being aware of when it is appropriate and/or necessary to do so (D5).

D6 describes the responsibility of **[BOARD]** members to ensure that the organisation has an effective and robust framework for assessing and managing risk: this includes being satisfied about the delegation of authority, operation and reporting of e.g. the Audit and Risk sub-committee. It also relates to the operation of financial regulations and the effectiveness of financial planning, budget preparation, forecasting and reporting. Regulatory Standard 3 is relevant to this principle.

In order to be objective, **[BOARD]** members must be well-informed about the organisation's business and operating environments as well as the sector and economic policy and strategy contexts. D7 commits **[BOARD]** members to participate in regular training to keep their knowledge up to date. Of course, no one is expected to be an expert in everything but there is an expectation that each **[BOARD]** member will help to identify their own ongoing training needs and the priorities for the **[BOARD/COMMITTEE]** collectively – this will be an element of the annual review of the **[BOARD]**'s effectiveness (as required by Regulatory Standard 6.5).

E. Integrity

This principle focuses on the importance of always acting in our best interests and actively promoting our values, aims and objectives and reflects many of the other principles in the Code.

E1 and E2 echo A4: **[BOARD]** members must be respectful and courteous in all that you do: in practice, this means being prepared to ‘agree to disagree’ when strong opinions are held and being tolerant of views and perspectives which might be very different from your own. It also means recognising and acknowledging that what’s acceptable in terms of language and conduct change and being mindful that differences in cultures, faiths and beliefs can be very significant and sensitive.

E3 complements A3 in terms of publicly promoting and supporting us and our activities but it also includes a commitment to notify the Chair as soon as you become aware of anything that might compromise us or our interests. In practice, this might include being associated with, for example, a community council’s opposition to a planning application that we have made or being involved in something that may become public and which could embarrass us.

E4 refers to the role descriptions that we have adopted: all **[BOARD]** members must be familiar with the terms of their role description and, for office bearers, there will be more than one. In practice, this principle seeks to ensure that relationships are professional: amicable and constructive with respect for the boundaries between the strategic role of the **[BOARD]** member and the operational responsibilities of senior staff.

E5 complements A4 and is a specific commitment to uphold our Equality and Diversity and Whistleblowing policies: this reflects the regulatory requirement for us to have a whistleblowing policy and the Regulatory Standard that requires ‘clear procedures for employees and governing body members to raise concerns or whistleblow if they believe that there has been fraud, corruption or other wrongdoing within the RSL’¹⁷

E6 and E7 relate to confidentiality and the importance of maintaining it. This applies to the content of reports, discussions at **[BOARD]** and committee meetings and all other business that you have access to in your role as a **[BOARD]** member. Upholding this principle requires you not to discuss anything that is identified as being confidential with anyone who is not entitled to the information; it also means making sure that any papers are stored securely (e.g. by means of passwords on laptops or other devices, in a locked drawer) and that on-line discussions can’t be overheard (e.g. if attending a virtual meeting). In applying this principle, you must also be mindful of our duties in respect of safeguarding personal information i.e. anything from which an individual can be identified.

F. Accountability

This principle is about the importance of taking personal responsibility for your contribution to our governance. In practice, this means being active in your role as a **[BOARD]** member – asking questions, critically reviewing information and monitoring performance and participating in strategy and planning events (F3).

F1 is a specific commitment to upholding legal and regulatory requirements: in practice, this means that you should feel assured and satisfied, as far as you

¹⁷ Regulatory Standard 5.6

reasonably can, that we are compliant with our legal and regulatory obligations as well as our own internally set standards. Your assurance will come from your participation in our governance – the reports, discussions, external advice and audits that you are asked to consider and which form the evidence for the **[BOARD]** annual Assurance Statement (F2).

As a **[BOARD]** member, you are expected to participate in an annual review of the effectiveness of your own contribution (F4) and of our overall governance (G4). As well as being a principle of the Code, this is also a regulatory requirement (Regulatory Standard 6.3, 6.3).

F6 places a responsibility on each **[BOARD]** member to be assured that there is an effective process in place to appraise the **CEO's** performance: in practice, this also means ensuring that the **[CEO/Director]** is adequately supported as well as being held to account for the achievement of both corporate and individual objectives. **[BOARD]** members must also be satisfied that the **[CEO/Director's]** annual appraisal is carried out effectively and that its outcome is reported to the **[BOARD]**.

Our Scheme of Delegation identifies who is authorised to make public comments on our behalf; it is not normally appropriate for an individual **[BOARD]** member to speak in public without prior agreement from the Chair. This includes, for example, accepting an invitation to contribute to a conference or event because of your role with us. The Code's principles also extend to social media activities (F7, G7).

F8 is a specific commitment to participate in and co-operate with any investigations that may be instructed relating to the Code, involving you either directly or as a witness. This obligation extends beyond your term of membership of the **[BOARD]** which means that your co-operation may be requested when you are no longer a member of the **[BOARD]**. It is unlikely that you would be asked to contribute to any such investigation more than two years after you have left.

As a RSL, we are accountable to our tenants and service users for our actions: F9 requires **[BOARD]** members to ensure that the best interests of tenants and service users guide planning and decision-making. In practice, this means being informed and taking account of the views of tenants and service users in all aspects of your role and ensuring that reports contain sufficient information to give you assurance that proposals are similarly informed before you make a decision.

G. Leadership

The role of the **[BOARD]** is to lead and direct the organisation to deliver good outcomes for our tenants and service users¹⁸. This section of the Code sets out some specific expectations about that part of your role. It also stresses the importance of **[BOARD]** members leading by example and making a positive and active contribution to our governance (G1, G2).

¹⁸ Regulatory Standard 1

G3 echoes A3 and E3 by specifying your responsibility to be positive in your support for us and our work. In practice, this means representing us positively both when acting on our behalf and in your wider activities.

G4 complements the individual focus of F4 by being explicit that the governing body should review the overall effectiveness of its governance arrangements: this forms part of our annual review process, which also includes a review of the range of skills, knowledge and experience that the **[BOARD]** collectively needs to fulfil its responsibilities. **[BOARD]** members have a responsibility to contribute to the process of identifying any gaps and the best means of filling them (D7)¹⁹.

G5 supports G3 (and A3 and E3) by being explicit that you should not criticise us, our people or our actions in public. This does not mean that you cannot be critical or raise concerns – that is a key part of your responsibility as a **[BOARD]** member – but you should always be constructive and objective in your challenge and criticism, which should be expressed at meetings and in discussions and with the relevant people, in accordance with our structures and procedures.

G6 is a specific commitment not to criticise or undermine (or appear to undermine) members of staff (individually or collectively) in public (including to e.g. tenants or partners). Any concerns which you have should be raised directly and privately with the Chair of **CEO**.

G7 echoes provisions in the Staff Code regarding bullying and harassment.

G8 supplements the principle at F7 by making specific reference to social media activity: all of the provisions of the Code apply to your presence on all social media platforms.

As someone who is responsible for leading our organisation, it is essential that **[BOARD]** members are not associated with anything that could compromise us or bring us into disrepute. G9 echoes the provisions that are set out at E3 and E4. In all that you do, you must be mindful of any potential negative impact on us and, if you become aware of anything that could affect us, you must bring it to the attention of the Chair quickly (E3).

¹⁹ Regulatory Standard 6.5

Appendix C

Model Protocol for Dealing with a Breach of the Code of Conduct

Paisley HA Protocol for Managing an Alleged/Suspected Breach of Code of Conduct

1. Introduction

- 1.1 This protocol will be used by **[PHA]** to deal with any alleged breaches of our Code of Conduct for Governing Body Members. It is based on the Model Protocol provided by SFHA.

2. Who is Responsible?

- 2.1 The Chair has delegated authority to deal with all potential breaches of the Code, unless the allegation relates to him/her. In that event, the Vice Chair should take on the responsibilities that the protocol allocates to the Chair. It may be necessary to ask other members of the **[BOARD]** to take on responsibilities should the allegation relate to both the Chair and Vice Chair.
- 2.2 The Chair should consult with other office-bearers (or members of the **[BOARD]**) to instruct, progress and conclude internal and external investigations carried out in accordance with this protocol.
- 2.3 The Scheme of Delegation identifies who has primary responsibility for overseeing the management of alleged breaches of the Code of Conduct e.g.

Delegated Authority to Oversee Potential Breaches	Any two from the following (must include at least one [BOARD] member
BOARD	Chair, Vice-Chair, [other office bearers; nominated members]
Senior Staff	CEO, SMT members

- 2.4 No one who is directly involved in a matter that gives rise to a concern that there may have been a breach of the Code of Conduct should be involved in reviewing or managing/conducting an investigation of the matter. Consequently, it may be necessary to ask other members of the **[BOARD]** to take on the responsibilities that the Protocol allocates to the Chair and other office bearers.
- 2.5 The Chair may seek advice from our solicitors in exercising all of the responsibilities associated with this protocol.

3. What Constitutes a Breach?

- 3.1 A breach of the Code of Conduct is a serious matter. This Protocol is a process that will apply to managing and/or responding to alleged breaches of the Code of Conduct. Breaches can include:
- Conduct by a **[BOARD]** member during a meeting (which might involve a member being obstructive, offensive or disregarding the authority of the Chair or failing to observe Standing Orders)
 - Complaints that the conduct of a **[BOARD]** Member has failed to meet the requirements of the Code of Conduct; is contrary to **PHA's]** Values, Rules or policies; threatens the reputation of **PHA]**; risks bringing the organisation into disrepute or undermines **[PHA]** and/or its people
 - Inappropriate behaviour towards colleagues, staff, customers or partners
- 3.2 Some complaints and/or concerns may relate to relatively minor matters, whilst other may involve more significant issues. Consequently, different approaches are likely to be appropriate, depending on the details of individual circumstances, recognising that it may not always be appropriate to undertake a formal investigation in response to an isolated and/or relatively minor issue.

4. Initial Review to Determine if Further Investigation Required

- 4.1 When a complaint is received or a concern is raised, consideration should be given as to which is the most appropriate course of action. This may (but may not) require some initial review of the complaint or allegations before concluding on a specific approach. The review should be carried out by those members of the **[BOARD]** appointed in accordance with 2.2 of this Protocol, with support from the **[CEO]** if required.
- 4.2 It may be that such a review concludes that there is no substance to the concern or allegation. Depending on the circumstances, it may be appropriate to report the outcome of such a review to the **[BOARD]**. This might be the case, for example, if an anonymous complaint is received which cannot be investigated because of a lack of information.
- 4.3 Anonymous complaints or allegations can be difficult to resolve but, in the event that anonymous information is received or made known, an initial review should be undertaken to establish whether there is the potential for any substance to the concern. If so, an investigation should be undertaken, although it is recognised that it may not be possible to conclude any such investigation satisfactorily.
- 4.4 Minor issues, actions or conduct at an internal meeting or event are unlikely to

constitute a breach of the Code of Conduct that warrant investigation. The Chair (and other office bearers) should exercise their judgement in determining which of the courses of action set out in this Protocol is more appropriate.

- 4.5 Two routes are described in this Protocol: Route A and Route B.
- 4.6 SHR requires that alleged breaches of the Code which are to be investigated under either Route A or Route B must be regarded as Notifiable Events, in accordance with the terms of the SHR's Statutory Guidance. The Chair is responsible for ensuring that the necessary notifications are made to the Scottish Housing Regulator, and that the SHR's requirements (as set out in the relevant guidance²⁰) in terms of reporting the outcome of the investigation are met.

5. Route A

- 5.1 Route A is an internal and informal process to address potential minor breaches. This is intended to be a relatively informal process, used to address e.g. one-off discourtesy at an internal meeting, isolated or uncharacteristic failure to follow policy.
- 5.2 Alleged breaches that occur during the course of a meeting or other internal event (and which have not happened before) will, unless the Chair believes it to be serious, be dealt with by the Chair of the meeting, either during the meeting/event and/or within 24 hours of the meeting. In these circumstances, the Chair may ask the member to leave the meeting or a vote may be taken to exclude the member from the rest of the meeting.
- 5.3 After the meeting, the Chair or sub-committee Convenor will discuss such behaviour with the member and may require the member to apologise or take such other action as may be appropriate (Route A). Where the Chair regards such behaviour as being serious, it should be investigated in accordance with Route B as will repeated incidents of a similar nature.
- 5.4 It may be appropriate for the Chair to record the terms of the discussion in a letter to the **BOARD** member e.g. to confirm the provision of training or support or to record a commitment to uphold a specific policy or to record an apology.
- 5.5 It is possible that a concern that it is initially agreed can be addressed via route A ends up being the subject of a formal investigation, if more significant issues emerge, or actions are repeated.

6. Route B

²⁰ Scottish Housing Regulator (2019) [Notifiable Events guidance](#)

- 6.1 Route B will involve formal investigation of repeated breaches or an alleged significant/major breach. Investigations may be conducted internally or independently, according to the circumstances and people involved.
- 6.2 An investigation under Route B will usually be overseen by the Chair and another office-bearer or **BOARD** member.
- 6.3 The Chair or office-bearer, in consultation with the other office-bearers, will decide whether to instruct an independent investigation or carry out an internal investigation.
- 6.4 In the event that the Chair or other office-bearer is the subject of a complaint, an independent investigation should be conducted, overseen by the Vice-Chair and another **[BOARD]** member.
- 6.5 If the Chair is likely to be involved in an investigation (e.g. as a witness), it will be necessary for the office bearers to consider who should be involved in overseeing the investigation.
- 6.6 The **[DIRECTOR/CEO]** can support the implementation of the Protocol (unless involved in the issue, in which case the role should be assigned to another senior member of staff).
- 6.7 Our scheme of delegation identifies who has primary responsibility for overseeing the management of alleged breaches of the Code of Conduct (see section 2.3)
- 6.8 Allegations of a potential breach should normally be made to the Chair or, where the complaint relates to the Chair, to another office-bearer. Where a complaint is made to the **[CEO/Director]**, the matter should immediately be notified to the Chair.
- 6.9 Alleged breaches may be the subject of written complaints or allegations; they may also be witnessed by someone. However the alleged breach is identified, the Chair and Secretary should ensure that there is always a written statement of the complaint or allegation that is used as the basis for the investigation. If no written complaint is made, the statement of the matter should be prepared by someone unconnected to the event/situation (e.g. a verbal complaint made by a **[BOARD]** member should be recorded by someone who was not present when the issue arose – this could be a member of staff).
- 6.10 The **[BOARD]** member who is the subject of the complaint/allegation that is to be investigated will be notified in writing of the alleged breach within seven working days, either of occurring or of receipt of the complaint. A **[BOARD]** member who is subject to an investigation should take leave of absence until the matter is resolved. Rule 37.8 of the 2020 Model Rules contain the

provisions to secure this. The letter will inform the **[BOARD]** member of the nature of the potential breach, the arrangements for the investigation and will advise that leave of absence will be in place for the duration of the investigation. **[BOARD]** members are expected to co-operate with such investigations²¹.

- 6.11 An alleged breach of the Code of Conduct which is being dealt with via Route B will be notified to the **[BOARD]**, normally by the Chair or Secretary, within seven working days, either of occurring or of receipt of the complaint. The notice (which should be confidential) will not describe the detail of the complaint and will set out the proposed arrangements for investigation, including who will conduct the investigation and which members of the **[BOARD/COMMITTEE]** are responsible for its oversight.
- 6.12 The appointment of an external Investigator (when it is decided to be the appropriate response) should be approved by the **[BOARD]** members responsible for overseeing the investigation.
- 6.13 An internal investigation (when it is decided to be the appropriate response) will be carried out by at least two and not more than three Members of the **[BOARD]**, who are not responsible for overseeing the investigation. In selecting the **[BOARD]** members, we will seek to ensure that the investigators represent the profile of the **[BOARD]**.

7. Investigation Under Route B

- 7.1 The conduct of an investigation should remain confidential, as far as possible, in order to protect those involved (witnesses, complainant(s)) and the **[BOARD]** member(s) who are the subject of the complaint.
- 7.2 All investigations will be objective and impartial. Investigations will normally be investigated by an independent person, unless it is decided that an internal investigation is appropriate.
- 7.3 Investigations should not usually take more than six weeks to conclude.
- 7.4 The investigator(s) will be supported by the **[CEO/Director]** (or other senior member of staff if the **[CEO/Director]** is involved in the complaint). The Chair and other office-bearer, with any support they feel necessary, will brief the agreed advisor/investigator and then consider their recommendations at the end of the investigation, before reporting to the Governing Body.
- 7.5 All investigations will be the subject of a written brief which sets out the **[BOARD'S]** requirements and which includes the statement of the alleged breach (scope,

²¹ Code of Conduct F7

timescale, reporting requirements, access to information etc.). The brief may refer to any action previously taken that is relevant.

- 7.6 All investigations will include at least one interview with the **[BOARD]** member who is the subject of the allegation, who will be invited to provide any relevant information. The interview(s) may be conducted face to face or remotely (by telephone or video call). **[BOARD]** members may be accompanied during an interview by a friend (at their request), as a companion to provide support and not to represent. It is not appropriate for another **[BOARD]** member to fulfil this role nor is it appropriate for the RSL to meet any costs (other than reasonable expenses as provided for in the relevant policy) in respect of a companion's attendance.

8. Considering the Outcome of the Investigation

- 8.1 The advisor/investigator will normally present their report to the **[BOARD]**. Before doing so, the report will be reviewed by those overseeing the investigation to ensure that the Brief has been met and that the report is adequate to support the **[BOARD's]** consideration and decision making.
- 8.2 The **[BOARD]** member whose conduct is being investigated will not be party to any of the discussions relating to the investigation.
- 8.3 The report will be considered at a meeting of the **[BOARD]**, which may be called specifically for this purpose. It is the responsibility of the **[BOARD]** to consider the report and findings from the investigation and to determine:
- Whether there has been a breach
 - How serious a breach is
 - What action should be taken
- 8.4 The **[BOARD]** will report the findings of the investigation and the proposed action to the member concerned within seven days of the meeting at which the report of the investigation was considered.

9. Action to Deal with a Breach

- 9.1 If, following investigation, a breach of the Code is confirmed, action will be taken in response. This action will reflect the seriousness of the circumstances. It may take the form of some or all of the following:
- A discussion with the member concerned (which may be confirmed in a subsequent letter)
 - advice and assistance on how their conduct can be improved
 - the offer of training or other form of support
 - a formal censure (e.g. in the form of a letter setting out the

conclusions, expressing concern and specifying that there must be improvement / no repetition etc)

- a vote to remove the Member from the **[BOARD]**

9.2 Where, it is concluded that a serious breach has occurred, the **[BOARD]** may require the member to stand down from their position in accordance with the Rules.

9.3 If the **[BOARD]** proposes to remove a member, following investigation, the member will have the right to address the full **[BOARD]** before their decision is taken at a special meeting called for that purpose. Any such decision must be approved by a majority of the remaining members of the **[BOARD]**, in accordance with Rule²² (44.5)

9.4 A record of the outcome of an investigation will be retained in the **[BOARD]** member's file for [insert period – at least 12 months]

9.5 The outcome of any investigation will be notified to the Scottish Housing Regulator, in accordance with the requirements of the Notifiable Events Statutory Guidance.

10. Definitions

10.1 **[PHA]** will regard the following actions as a “serious breach” of the Code of Conduct (this list is not exhaustive):

- Failure to act in our best interests and/or acting in a way that undermines or conflicts with the purposes for which we operate.
- Support for, or participation in, any initiative, activity or campaign which directly or indirectly undermines or prejudices our interests or those of our service users, or our contractual obligations.
- Accepting a bribe or inducement from a third party designed to influence the decisions we make.
- Consistent or serious failure to observe the terms of the Code of Conduct.
- Serious inappropriate behaviour towards a colleague, member of staff, tenant, customer, partner or stakeholder

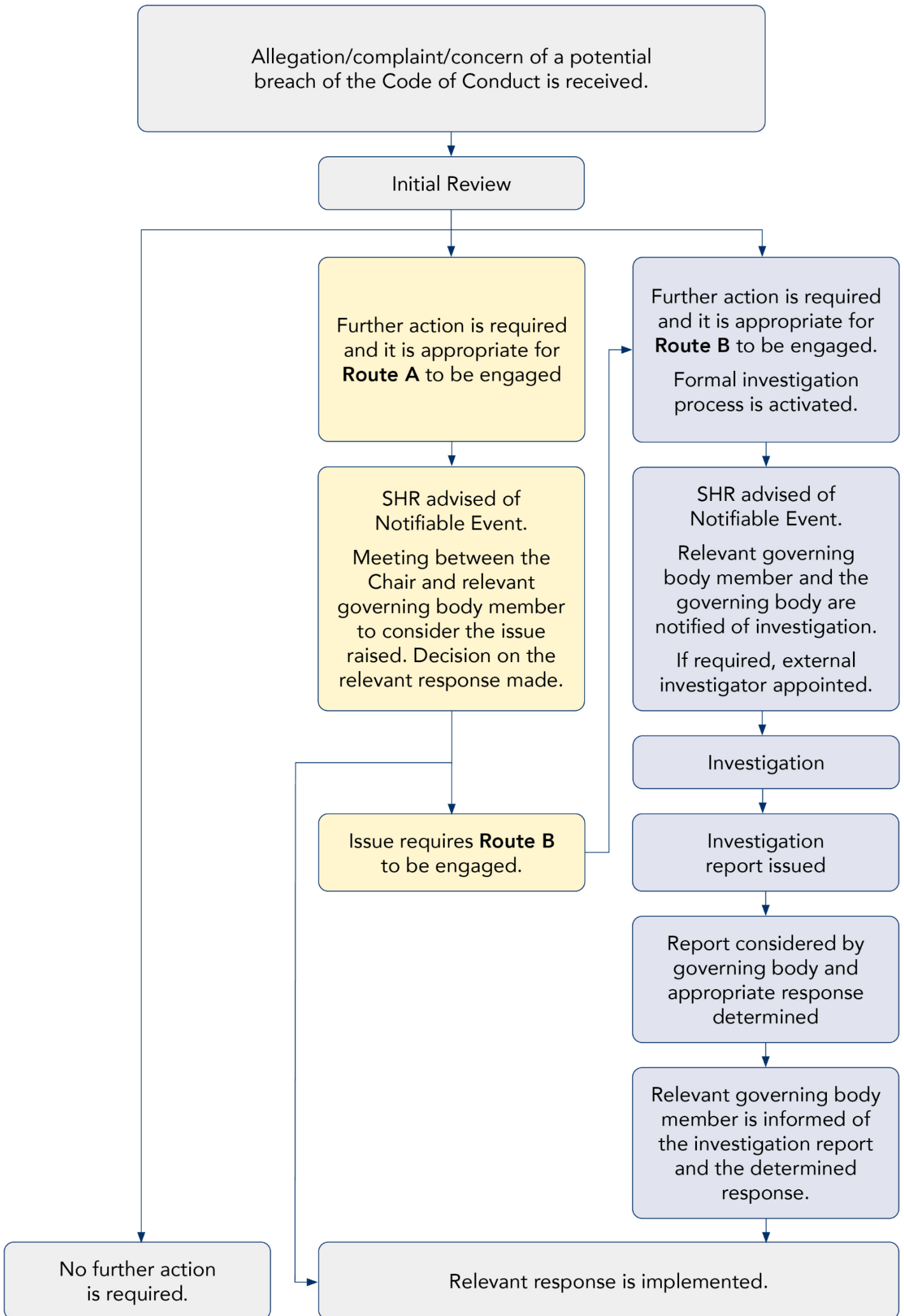
11. Approval and Review

11.1 This protocol was approved by the **[BOARD]** of **[Paisley HA]** on **30TH August 2021**

²² SFHA Model Rules (2020)

Appendix D

Flowchart Summarising Protocol Process



Allegation/complaint/concern of a potential breach of the Code of Conduct is received.

Initial Review

Further action is required and it is appropriate for **Route A** to be engaged

SHR advised of Notifiable Event.
Meeting between the Chair and relevant governing body member to consider the issue raised. Decision on the relevant response made.

Issue requires **Route B** to be engaged.

No further action is required.

Relevant response is implemented.

Further action is required and it is appropriate for **Route B** to be engaged.
Formal investigation process is activated.

SHR advised of Notifiable Event.
Relevant governing body member and the governing body are notified of investigation.
If required, external investigator appointed.

Investigation

Investigation report issued

Report considered by governing body and appropriate response determined

Relevant governing body member is informed of the investigation report and the determined response.

Appendix E

Guidance on Implementing the Model Protocol

Guidance on Implementing Model Protocol

This Appendix has been produced to support the implementation of the Model Protocol at [Appendix C](#) which can be used when a potential breach of the Code of Conduct has been identified. The references to the protocol are consistent with Appendix C, but please note that your organisation may have amended or customised the Protocol – in which case, references in this guidance may not be consistent. References to rules are to the [SFHA Charitable Model Rules 2020](#).

The Model Protocol sets out a process to deal with and respond to concerns and complaints about alleged failures to comply with and/or potential breaches of the Code of Conduct. It can be customised to fit your organisation's processes, and at several points square brackets are included as a prompt to insert details pertinent to your organisation, e.g. **[BOARD]**. The protocol is offered as a model or template that individual organisations may adapt to meet their own requirements. It is not intended to be prescriptive.

Who Implements the Protocol? (section 2 of the Protocol)

Concerns about a governing body member's conduct should be communicated to the Chair who is then responsible for deciding how to proceed and leading the agreed process. On becoming aware of a concern, the Chair should, in consultation with other office bearers decide on the appropriate way forward.

If the Chair is the subject of the complaint or allegation, the Vice-Chair should lead the process, unless they are also involved. In that event, the other office bearers should take the lead; and if that isn't possible, two other members of the governing body should do so (e.g. members of the Audit Committee). This guidance refers to the Chair throughout but, when implementing the Model Protocol, should be understood to refer to the governing body member who is leading the process.

No one who is directly involved in a matter that gives rise to a concern that there may have been a breach of the Code of Conduct should be involved in reviewing or managing/conducting an investigation of the matter. Consequently, it may be necessary to ask other members of the governing body to take on the responsibilities that the Protocol allocates to the Chair and other office bearers. Delegated authorities should be sufficiently flexible/comprehensive to support this.

The senior officer will normally provide support to the Chair in implementing the protocol, although this role may be undertaken by another senior member of staff or by an officer with specific governance responsibility.

The Scheme of Delegation should make provision for the implementation of the protocol so that there is an agreed list of authorised people to implement the process.

Describing or Defining the Complaint (section 3 of Protocol)

It is important that there is clarity about what the concern is or the nature of the complaint. Although the complaint or concern may not, initially, be in writing, the

issue should always be recorded to ensure there is clarity and agreement about the issue. This may be achieved e.g. by the Chair producing a note of what has been reported to them or by the senior officer preparing the note.

Some examples might be:

- During a conversation, a concern is raised with the Chair by a governing body member about the conduct of another governing body member at an external event. The Chair subsequently produces a short note describing the conversation/concern which forms the basis of discussion with the office bearers about how to proceed;
- The senior officer has concerns about the conduct of a governing body member towards staff which they communicate to the Chair in an e-mail; this becomes the basis for discussion between the Chair and the office-bearers about how to proceed;
- A written complaint is received about the conduct of a governing body member

When to Use the Protocol (section 4 of the Protocol)

If a concern is raised, the first step is to establish whether there is sufficient information to proceed and, if there is, to determine which route is most appropriate. The Model Protocol provides for an initial review (see Section 4) and it is important to stress that this is not a 'mini-investigation'. This should simply be a swift overview of the concern/complaint to establish which is the most appropriate course of action. This could be undertaken by the officer supporting the Chair and is likely to be especially relevant in the event that an anonymous complaint or allegation is made. The purpose of such a review is to

- (a) clarify the complaint/concern/allegation;
- (b) determine whether there is sufficient information to take the matter forward;
- (c) if there is, agree which of the two 'routes' described in the protocol is the most appropriate. This element of the review should always involve the Chair.

If this review concludes that there is nothing to support the matter being pursued (e.g. because the concerns are vague and/or because the anonymity of the allegation(s) make further investigation impossible or because the complaint is obviously malicious), no further action should be taken.

If there is agreement that sufficient information is (or is likely to be) available, a decision should be taken by the Chair as to the appropriate process to respond to the concern.

Routes of Investigation

It is the responsibility of the Chair to determine the most appropriate course of action. The Model Protocol is clear that not every concern justifies formal action. It describes two 'routes' – A and B.

Route A is essentially an informal response to a relatively minor issue e.g. minor discourtesy; inadvertent omission which does not have serious implications; lack of

awareness of the impact of a comment; insensitivity towards another person; lack of knowledge in a significant area of the governing body's business. Such matters can appropriately be addressed in a conversation between the Chair and the governing body member concerned and may result in an apology being made and/or training provided. This is described at Section 5 of the Protocol.

For all other concerns, a more formal approach should be adopted as described in **Route B** of the Model Protocol and an investigation carried out. This is described at Section 6 of the Protocol.

[Appendix D](#) provides a flow chart summarising the process under Route A and Route B.

Who Should Be Informed that the Protocol is Being Implemented?

If either Route A or Route B of the Protocol is implemented, the governing body member whose conduct is being questioned should be informed about the nature of the concern/allegation and the process by which it is to be dealt with. The governing body member should be informed if leave of absence is to be taken and of the likely timescale for the conduct of the process. If there is any change to this timescale, they should be informed. A template letter for this purpose is included at [Appendix E](#).

The person making the complaint should be informed that the matter is being investigated and should also be informed of the outcome.

If **Route B** of the Protocol is being implemented, the governing body member should be informed that a complaint has been received, that the Protocol is being implemented and that the governing body member involved should take a leave of absence. Rule 37.8 of the SFHA Model Rules 2020 provides that the governing body can require a governing body member who is the subject of an investigation to take leave of absence until the investigation is complete and the matter has been concluded. If the Chair believes that this is NOT necessary, the governing body should be advised of the reason(s).

A Notifiable Event (NE) should be submitted to the **SHR** providing details of the allegation/complaint and the process by which it is to be investigated.

Investigation Under Route B (section 7 of Protocol)

Under Route B, the investigation may be either internal or independent, but complaints involving the Chair or any other office-bearer should always be investigated independently.

For either, a brief should be prepared, and a template for this purpose is included at [Appendix F](#).

- **Internal Investigation**

Internal investigations will only be appropriate in very limited circumstances.

Exceptionally, if an RSL is considering carrying out an internal investigation, it must satisfy itself that all of the following apply:

- the investigation cannot give rise to any conflict of interest (present or future) given the working relationship that exists between governing body members;
- there is no potential for future working relationships to be compromised by an internal investigation being undertaken;
- the concern or complaint relates to a straightforward matter;
- the investigation is unlikely to be extensive;
- all of the required specialist skills are available in-house.

If undertaking an internal investigation, an investigating officer(s) should be appointed. This must be someone who has no knowledge of the matter to be investigated and who does not normally work closely with the governing body member(s) concerned. Please note that the investigating officer should not be a staff member because they would in effect be investigating their employer, which would represent a conflict of interests. For these reasons, in most cases an independent investigation is more appropriate under Route B.

- **Independent Investigation**

An independent investigator should be appointed. The brief should be issued and responses invited. Your solicitors, internal auditors, other external advisers and other RSLs may be able to suggest suitable people to approach.

An alternative might be to consider whether it would be appropriate to ask someone from another RSL to undertake the investigation. The same considerations listed above in respect of an internal investigation would, of course, apply. There are likely to be additional considerations around reputational impact when considering this possibility.

The Brief should be issued to those selected as being suitable and responses invited. It is not always necessary to seek proposals from more than one source. Often, it will be appropriate to check availability with potential investigators and to issue the brief to those who have indicated their ability to respond within the proposed timescale.

Keeping Everyone Informed

It is important to remember that the conduct of an investigation is likely to be unsettling and potentially stressful for those involved. Care should be taken to ensure that those who are the subject of an investigation are kept informed about its

progress. Responsibility for doing this should be identified at the outset of the process. Any delay or change to the process should be communicated swiftly to everyone affected.

Considering the Investigation Report (section 8 of Protocol)

The draft report should be considered by the governing body members responsible for overseeing the investigation. Once they are satisfied that the report meets the terms of the Brief and contains all of the information necessary for the issue to be considered, a governing body meeting should be called. Care should be taken to identify and manage any potential conflicts of interest on the part of other members of the governing body.

The Chair should decide whether or not the report should be issued in advance to the governing body and whether the governing body member concerned should be given access to the report. Individual circumstances will determine the most appropriate approach.

The Investigator will normally be invited to present the report at the meeting and to answer questions but should then leave to enable the governing body to consider the findings, their decision and the proposed response.

Determining Appropriate Response (section 9 of the Protocol)

Although the investigation is intended to establish whether there is sufficient evidence to conclude whether or not a breach of the Code of Conduct has occurred, it is the governing body's responsibility to determine if a breach has actually been committed. It is also the governing body's responsibility to determine how serious a confirmed breach is and what is an appropriate response.

In reaching a decision about the seriousness of a breach, the governing body should take account of its consequences (actual and potential; internal and external). The governing body must exercise good governance and must act in the best interests of the organisation. The response must always be proportionate: not unduly severe but, equally, not capable of being interpreted as overlooking or brushing aside unacceptable conduct. Whilst it is right that mitigating factors should be considered, care should be taken to ensure that decision-making is not unduly influenced by loyalty.

The response will depend on the specifics of the issue but the options can include:

- Request to make an apology: in this case, the governing body should be provided with confirmation that an apology, in appropriate terms, has been given / made
- Requirement to undertake training: the governing body should be informed of the completion of the required training
- Formal censure: the letter stating the outcome of the investigation should include the censure (e.g. "The Board is very disappointed that **XXX** and expects you to ensure that this does not occur again. In the event of any

further breaches occurring during the remainder of your term on the Board, we may ask you to resign”)

- Request to resign from an office-bearing or representative role
- Request to resign from the governing body
- Removal from the governing body

The decision of the governing body should be communicated to the governing body member as soon after the meeting as possible. It may be appropriate for the Chair to contact the governing body member to provide an initial indication before the formal written decision is issued.

It is possible for an interim meeting to be held, which the governing body member who has breached the Code is invited to attend to respond to the conclusion, before the governing body determines its final response. This is likely to be particularly appropriate if the governing body is minded to seek to remove the governing body member.

If the governing body intends to seek to remove one of its members because of a breach of the Code of Conduct, a special meeting must be called for that specific and sole purpose (Rule 44.5). The process for calling a special meeting is set out at Rule 55.

Appendix F

Template Letter to Inform Governing Body Member of an Investigation

Template Letter to Inform Governing Body Member of an Investigation

This template should be customised to reflect the particular circumstances. Ideally, the governing body member should first be made aware of the issue by the Chair (e.g. by telephone) and the letter is to confirm and formalise the process. It would be appropriate to make reference to the terms of any such phone call e.g. be referring to agreement to take leave of absence and not to discuss the matter.

Dear

Allegation of a Breach of the Code of Conduct

I write to inform you of the **[BOARD's]** intention to commission an independent investigation into an alleged breach of the Code of Conduct.

The **[BOARD]** has been made aware that it has been alleged that you [insert details].

This allegation must be independently investigated. The **[BOARD]** is aiming to conclude the matter by [insert target completion date]. Until the outcome of the investigation is confirmed, it is expected that you will take leave of absence from the **[BOARD]** and you should not discuss the matter with anyone other than the Investigator.

Your e-mail address [or other contact details] will be provided to the Investigator so that they can contact you. I will confirm the appointment of the Investigator as soon as possible. I know that you will co-operate fully with the investigation.

The **[BOARD]** is being informed today of the allegation and your leave of absence, as is the SHR.

Your sincerely

Chair

Appendix G

Brief for the Conduct of an Independent Investigation

Allegation of a Breach of the Code of Conduct Brief for the Conduct of an [Independent] Investigation

Background: [insert details of the concern / allegation or complaint – the written description referred to in the MP]

The **[BOARD]** member has been informed of the allegation and has taken leave of absence. The SHR has been notified.

Purpose and Scope of the Investigation: To investigate an allegation that [specific allegation e.g. breach of confidentiality; unacceptable behaviour] and to report to the **[BOARD]** on the findings and conclusions. The investigation should establish the facts of the allegation, determine whether or not the allegation is substantiated and determine whether or not a breach of the Code of Conduct may have occurred. The investigation should report on whatever facts and circumstances are relevant to the allegation and should identify the conclusions reached.

Conduct of the Investigation: The investigation should be conducted by means of [e.g. a desk-top review of relevant documents and interviews with relevant people (who should be defined)]. All interviews will be conducted by [e.g. in-person meetings, phone or video-conferencing] and the report will be presented to the Management Committee [e.g, date of the meeting or virtually]. Liaison with XHA and its representatives will be via [insert details e.g, telephone, other virtual means, meetings].

Two members of PHA's **[BOARD]** (including the Chair) will oversee the conduct of the Investigation; they will be supported by the CE, who will be the primary point of contact for the Investigator.

The Investigator will have full access to all relevant documents and PHA will assist with administrative arrangements relating to the conduct of the investigation.

Timescale: [Specify, including dates by which any drafts are required and taking account of MP's 'normal' expectation that investigations should be concluded within six weeks]

For Independent Investigations Only

A suitably experienced person is required to undertake an investigation in accordance with this Brief. Proposals should be submitted which outline your experience of similar assignments, your availability and capacity to meet the required timescale and your anticipated fee. Details of potential referees should also be provided (PHA will inform you before approaching any referee)

Please submit your proposal to [insert details] by [specify]