

Thistle Housing Association Ltd

Regulatory Status: Statutory Action

Thistle Housing Association Ltd (Thistle) does not meet the Standards of Governance & Financial Management and regulatory requirements, and we are using statutory powers to address the non-compliance.

Why we are engaging with Thistle

We are engaging with Thistle about its **governance, financial health, performance** and its **plans for organisational change**.

In August 2018 we used our powers under sections 57, 58 and 65 of the Housing (Scotland) Act 2010 to appoint a manager and five members to Thistle's governing body. We did this because Thistle was unable to assure us that it had the governance and leadership capacity necessary to address serious and widespread failures to comply with the Regulatory Standards of Governance and Financial Management (the Standards) and to meet outcome two of the Scottish Social Housing Charter (the Charter).

On 5 November 2018 Thistle appealed against our decision to use our statutory intervention powers. The Appeal Panel upheld the decision on 3 December 2018, allowing us then to move forward with support to Thistle.

Following our intervention, we identified further serious instances of Thistle's failure to comply with Regulatory Standards and regulatory requirements and, in particular, Thistle's failure to effectively manage a major investment contract and to meet health and safety and compliance requirements. The mismanagement of this major contract has resulted in substantial additional costs being incurred to those reported to the Management Committee when approving the contract. These relate to professional fees and additional expenditure during and after the contract. Significant remedial works are still likely to be required to ensure that the contract finally delivers what was originally intended.

In addition to the support from the statutory manager and appointees, and reflecting the lack of internal leadership and capability, Thistle also had to engage external expertise to investigate and report on the widespread failings on this contract, how to resolve these and also to address immediate and serious health and safety and compliance matters.

All of this has brought avoidable expenditure to Thistle as a direct result of its own failings. This was exacerbated by its reluctance to accept what went wrong and to take action sooner to put things right.

The poor management of both the contract and the aftermath by Thistle has been damaging to local relationships with affected tenants and residents and has attracted negative media attention. All of this has further damaged the reputation of Thistle.

In summary, long-standing governance and management weaknesses have caused serious and complex failures in the following areas:

- Governance and leadership;
- Tenant, resident and staff health and safety;
- Financial health; and
- Failure to provide accurate information to the regulator.

In August 2019, we appointed an additional four members to Thistle's governing body increasing the total to nine to ensure that Thistle had the strong governance and leadership necessary to deal with the range of issues it faced.

In October 2019, Thistle completed an independent strategic review of the best future for its tenants and service users. The review considered views from Thistle's tenants and residents and key stakeholders. Thistle's Management Committee reflected on the scale of the change needed at Thistle and deficiencies in its business plan that did not reflect investment need in its homes, including the likely costs to remedy the failings in the major works contract. The governing body decided that the best way for Thistle to deliver its tenants' and residents' priorities in future would be by transferring its homes to another RSL.

Thistle sought expressions of interest in January 2020 and received three proposals. A key criterion in the selection process was the immediate provision of the skills and expertise Thistle lacked in the above areas.

Thistle considered the proposals in February 2020 and decided to progress plans for a transfer of engagements to Sanctuary Scotland, part of the Sanctuary Group (Sanctuary). Since then, Thistle and Sanctuary have been working to develop the transfer business case reflecting the priorities of Thistle's tenants and residents.

Thistle also entered into a Service Level Agreement (SLA) with Sanctuary Scotland in March 2020. This was for the provision of immediate interim management and asset support to Thistle to ensure that the failures identified above could be addressed alongside the development of the transfer proposals.

We set out below the key issues and what we require Thistle to do now with the support of our statutory manager, appointees and other engaged expertise.

Governance and leadership

We have been engaging with Thistle since 2016 about its failure to manage the major investment contract and to remedy failings from the contract. In March 2017, an independent investigation into governance failures in respect of Thistle's approach to notifiable events about the contract identified weaknesses in Thistle's governance procedures. A further comprehensive, independent review of

governance arrangements in March 2018 identified widespread compliance failures across all six Regulatory Standards.

Thistle initially accepted the findings from its own review and commissioned consultants to help develop and implement an extensive Governance Improvement Plan to address the review recommendations and bring about transformational change. However, delivering the significant change needed at Thistle required strong governance, leadership, and expertise. In our previous engagement, Thistle had not always delivered, or been very slow to deliver, agreed actions.

In August 2018, we used our statutory powers to appoint a manager and five members to Thistle's governing body. We did this because Thistle was unable to assure us that it had the governance and leadership capacity necessary to achieve sustainable compliance with the Standards.

Thistle's governing body did not accept our concerns about its governance and leadership capacity. On 5 November 2018, Thistle appealed against our decision to use our statutory intervention powers. The Appeal Panel upheld the decision on 3 December 2018.

The governing body is responsible for ensuring compliance with Regulatory Standards. Regulatory Standard 6 requires the governing body of an RSL to have the skills and knowledge they need to be effective. Regulatory Standard 3 requires that risks to the RSL are identified and managed effectively. In June 2019, an independent assessment of the governing body showed that, in the absence of the statutory appointees, the governing body would lack the skills and knowledge that it needed to be effective.

In August 2019, Thistle appointed an Interim Director. Thistle's Director left the organisation in September 2019. Since then Thistle has been reliant on a range of external support to ensure that it has access to all of the skills and expertise it needs to operate. The scale and complexity of the problems facing Thistle has required expertise across a range of disciplines. This includes the provision of Interim Director, strategic asset, compliance, business planning and financial management support. Thistle's front line staff team has been supported by Sanctuary Scotland to enable it to continue to function and provide critical services to tenants and residents during the Covid-19 crisis.

Two remaining long standing Management Committee members along with two newer members recently resigned. Thistle's governing body now comprises eight members who are all statutory appointees Thistle is therefore entirely reliant on the continued support of the statutory appointees to function and to meet Regulatory Standard 6.

Tenant, Resident and Staff Health and Safety

Major investment contract

Since Thistle accepted the major works contract as complete in 2018, there have been ongoing issues in relation to quality and safety, particularly in relation to roof renewals with reported health and safety incidents in relation to materials falling off roofs. As a result of the seriousness of these issues, we required Thistle as an immediate priority to establish whether work carried out to roofs under the contract had been completed to an acceptable standard. Since then, Thistle, supported by the statutory manager, has had to commission wide-ranging investigations across this contract. These have been used to ensure immediate action was taken on health and safety matters, as well reviewing the overall governance and management of the contract.

Thistle, with the support of Sanctuary Scotland, is now developing a plan of action to establish the remedial works that will be required on this contract and how this will be taken forward to ensure full resolution of all issues. Thistle has told us that there are likely to be significant additional costs to resolve all of these matters, which had not been accounted for in Thistle's business plan.

The external investigation findings on governance and management of the contract were reported in May 2020. This found that there had been significant weaknesses in the governance, decision-making and management approach and practices used by Thistle in connection with the contract. Thistle, with the support of the statutory manager, continues to progress the outcome of the investigations.

Thistle has advised us it is advancing activity with the support of the asset expertise engaged from Sanctuary Scotland to establish, procure and resolve the required remedial works in relations to the major works contract. Progress has been impacted by the Covid-19 restrictions and also to allow Thistle to engage with the contractors involved in the contract. Thistle has advised us that delivering the required solutions to bring these matters to a final conclusion is a central commitment in the transfer plans with Sanctuary Scotland.

Landlord Health and Safety Compliance

In August 2019, we identified that Thistle had provided incorrect information to ourselves and to tenants about asbestos management. With the support of the statutory manager, Thistle commissioned an urgent independent review into its approach to asbestos management. This was extended to cover legionella management. Our assessment of the review was that there were significant and potentially serious weaknesses and failures in Thistle's management of both asbestos and legionella and that this had the potential to place tenants and residents at risk of harm.

Immediately and with the support of the statutory manager, Thistle took steps to commission a comprehensive, independent review of its compliance arrangements in relation to asbestos, electrical, fire, gas, lift and water safety.

On 22 August 2019, the Health and Safety Executive (HSE) served a statutory Improvement Notice on Thistle for contravening statutory provisions: The Control of Asbestos Regulations 2012, regulations 4(3) to 4(10) inclusive. Thistle provided its asbestos management improvement plan to us and the HSE. The statutory manager instructed surveys and air tests of the properties affected and reported the results of these to us and to tenants and residents.

In September 2019, the compliance review identified substantial systemic weaknesses in Thistle's approach across all areas examined. It concluded that Thistle lacked the capacity and expertise to create a clear lead responsibility for landlord compliance and oversight of its range of activities. Thistle approved a comprehensive compliance strategy and action plan in October 2019 and appointed an interim Compliance Manager to ensure that Thistle had the expertise required to oversee implementation of the strategy and plan. This included the validation of information about gas and asbestos management. Thistle confirmed it was compliant with the HSE Improvement Notice on 7 November 2019.

Thistle reviewed its approach to gas safety and identified a number of weaknesses in its gas safety processes, including 22 properties where the annual gas service was carried out out-with the required 12-month period. Thistle has confirmed that all properties are now compliant.

Sanctuary Scotland is now providing expert compliance support to Thistle to ensure that the weaknesses identified in the compliance review are fully addressed.

Employer Health and Safety Compliance

Thistle also commissioned an independent audit of its employer responsibilities for compliance with Health and Safety after the statutory manager identified that this had not been assessed for six years. The independent audit identified serious weaknesses in Thistle's approach, including fire and legionella risk assessments not being available and the general risk assessment and the Health and Safety control manual being out of date. Thistle has confirmed that all of the required improvements have now been implemented.

Financial Health

Thistle had previously provided incorrect information to tenants, residents and us that there would be no additional cost as a result of remedial work on the major works investment contract. In July 2019, Thistle told us the remedial work required to the roof installations completed under the contract will incur significant costs additional to its planned investment. The independent review of the contract confirmed that there were as yet unquantified liabilities within the stock included in the contract in relation the range of likely contract remedial work. These additional costs, and the costs of the work to ensure tenant, resident and staff health and safety compliance had not been reflected in Thistle's business plan.

With the support of the statutory manager, Thistle commissioned an independent strategic review on its future which was completed in October 2019. This concluded

that Thistle's business plan was not viable or sustainable and offered no contingency against risk.

As part of the development of the transfer proposals to Sanctuary Scotland, Thistle and Sanctuary Scotland have been identifying all of the potential liabilities and investment requirements which will ensure that the compliance, health and safety and stock condition issues faced by Thistle are fully addressed through the transfer plans.

Failure to Provide Accurate Information to the Regulator

We have identified multiple instances where Thistle provided inaccurate, incomplete, or misleading information to tenants, residents, members, the governing body and ourselves.

We identified areas where we required additional information from Thistle about its most recent stock condition survey (October 2018) and the accuracy of its reported compliance with the Scottish Housing Quality Standard (SHQS). Sanctuary Scotland is now supporting Thistle to establish an accurate SHQS position and comprehensive asset management plan for Thistle's stock as part of Thistle's transfer plans.

An independent validation of Thistle's Annual Return on the Charter (ARC) identified systemic weaknesses and failures relating to the evidence, reporting and calculation of data across all areas of Thistle's ARC; only three out of thirty indicators were validated. A follow-up validation exercise in January 2020 confirmed that progress has been made. Thistle has assured us that with support from Sanctuary Scotland, they expect to provide an accurate ARC for 2019/20.

Thistle's failure to provide accurate information to us and its tenants and residents had, over a lengthy period, prevented us from discovering the true extent of Thistle's failure to comply with regulatory standards.

Other Information

An independent survey of tenants and service users carried out in March 2019 showed a significant deterioration in satisfaction with the repairs and maintenance service, the quality of homes, whether rent represents value for money, the management of the neighbourhood and the factoring service.

Transfer proposal

Thistle appointed an expert Transfer Lead Officer in March 2020 who has been progressing plans for the transfer to Sanctuary Scotland in consultation with tenants and residents. Thistle appointed an Independent Tenant Adviser in April 2020 and has sought feedback on tenant and resident transfer priorities via newsletters, calls and focus groups. Feedback from the focus groups indicates that there is support for major change.

Some residents remain understandably concerned about the remaining issues from the major works contract. Sanctuary is supporting Thistle to ensure that these outstanding concerns can be accurately assessed as soon as it is safe to do so, in terms of the easing of restrictions associated with Covid-19. Thistle has advised us that fully resolving the remaining issues from the major works contract is central to the transfer offer from Sanctuary Scotland.

Thistle has kept us apprised of progress and despite the Covid-19 restrictions a draft joint transfer business case has been developed. This includes the negotiated package of benefits to tenants and residents if they support the transfer. Thistle has advised us that the draft business case will be considered by the Thistle and Sanctuary governing bodies in August 2020. If approved by both, Thistle then plans to carry out formal consultation with its tenants in autumn 2020. Thistle will also share consultation information with residents and its members and will seek feedback as it develops the proposals.

Conclusion

Thistle is critically dependent on support from the statutory manager and statutory appointees to maintain effective governance. Thistle is also heavily dependent on the support of external advisers and Sanctuary Scotland to maintain effective governance and ensure it can continue to function and deliver services to tenants and residents.

The statutory manager and eight appointees to the governing body will support Thistle to:

- address the weaknesses and failings in its management of health and safety issues and ensure it is complying with its legal obligations;
- identify and quantify the total cost to remedy the failings from the major works contract and develop a plan on how and when these will be addressed within Thistle's business plan and/or through the transfer to Sanctuary Scotland;
- develop and agree a joint business case to tenants to transfer its homes to Sanctuary Scotland; and
- ensure that Thistle's stakeholders including its tenants, service users and funders are kept up to date on the transfer plans to Sanctuary Scotland and its management of tenant and resident safety issues, in particular its management of asbestos.

The statutory manager and appointees will report to us on progress in addressing their remits.

What Thistle must do

We require Thistle to:

- provide us with its joint business case for the transfer of engagements to Sanctuary Scotland and its plans to discuss this with tenants and residents;
- update us on the work to identify all of the potential liabilities and investment requirements which are not incorporated in its current business plan;
- continue to provide us with updates on the implementation of the compliance strategy and action plan, including the actions it is taking to address the weaknesses in its approach to tenant, resident and staff health and safety and its plans to address the concerns of residents about the condition of their homes; and
- continue to provide us with updates on addressing the findings of the investigations into its management of the major works contract, including progress with, and outcomes from, the quality assurance survey.

What we will do

We will:

- consider the reports on progress from the statutory manager and appointees;
- review the transfer business case and engage with Thistle as required on progress with the delivery of the transfer proposals with Sanctuary Scotland;
- regularly monitor Thistle's progress with completing the actions we require it to take, including progress with the implementation of its improvement plans and its proposals to address the concerns of residents about the condition of their homes and we will meet with Thistle as required to discuss this;
- consider our future regulatory strategy as the transfer proposals develop and review our statutory intervention by 31 October 2020; and
- update our published engagement plan in light of any material change to our planned engagement with Thistle.

Regulatory returns

Thistle must provide us with the following annual regulatory returns and alert us to notifiable events as appropriate:

- Annual Assurance Statement;
- audited financial statements and external auditor's management letter;
- loan portfolio return;
- five year financial projections; and
- Annual Return on the Charter.



[Read more about Thistle>](#)



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