



WGHC

Our tenants are paramount in everything we do

LEGAL DUTIES & RESPONSIBILITIES OF WGHC COMMITTEE OF MANAGEMENT (BOARD OF DIRECTORS)

This policy was approved by the Committee of Management on Wednesday 15th May 2024. It should be reviewed again no later than 30th April 2027.

The policy has been assessed through the organisational impact assessment process.

We can, if requested, produce this document in different formats such as larger print or audio-format. We can also translate the document into various languages, as appropriate.

SCOTTISH HOUSING REGULATOR STANDARDS

STANDARD 1

The governing body leads and directs the RSL to achieve good outcomes for its tenants and other service users.

STANDARD 2

The RSL is open about and accountable for what it does. It understands and takes account of the needs and priorities of its tenants, service users and stakeholders. Its primary focus is the sustainable achievement of these priorities.

STANDARD 3

The RSL manages its resources to ensure its financial well-being, while maintaining rents at a level that tenants can afford to pay.

STANDARD 4

The Governing body bases its decisions on good quality information and advice and identified and mitigates risks to the organisations purpose

STANDARD 5

The RSL conducts its affairs with honesty and integrity.

STANDARD 6

The Governing body and senior officers have the skills and knowledge they need to be effective.

WEST GRANTON HOUSING CO-OPERATIVE LIMITED
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West Granton Housing Co-operative Limited is a fully mutual housing co-operative registered as a social landlord with the Scottish Housing Regulator (HAC 225); and is a registered society under the Co-operative and Community Benefit Societies Act 2014 (2357 RS).



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1.0 INTRODUCTION

A co-operative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly owned and democratically controlled enterprise (*International Co-operative Alliance*).

West Granton Housing Co-operative (WGHC) is a not-for-profit organisation. Any surpluses are used for the objectives of the co-operative. No surpluses are distributed to members. Members cannot buy their homes. We are not a member of a group nor a subsidiary of another company. WGHC itself has no subsidiaries.

1.1 Legal Status

West Granton Housing Co-operative Limited is a fully mutual co-operative housing association and a Registered Social Landlord (RSL) registered with The Scottish Housing Regulator. The registration number is HAC225.

Document Name:	COM / Director Legal Duties & Responsibilities 2024	Version:	2.0
Created:	Larke Adger / WGHC	Version Date:	15.05.24
Owner:	Larke Adger / WGHC	Review Due:	30.04.27
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WGHC is also a registered as a Society under the Co-operative and Community Benefit Societies Act 2014. As such we must make an annual return to the Financial Conduct Authority.

Our registration number is 2357 RS.

The registered office is 26 Granton Mill Crescent, Edinburgh EH4 4UT.

West Granton Housing Co-op has been designated as a Scottish Public Authority by an order made under section 5 of the Act, known as the Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2013.

1.2 Definition and Eligibility

Section 250 of the Companies Act 2006 states that a Director includes any person occupying the position of Director, by whatever name called. WGHC's Committee of Management are its Board of Non-Executive Elected Directors.

The age of eligibility to become a Director is 18 years of age.

The maximum number of Directors allowed is 15; the minimum is 7.

On appointment, a new Director will be asked to provide certain personal information:

- full name;
- address;
- date of birth;
- nationality;
- country of residence;
- former names;
- and business occupation

Directors details are recorded annually on the Mutuels Register, with the Financial Conduct Authority.

1.3 Purpose

The Directors (Committee of Management) are responsible for the management of the organisation, and they may exercise all their powers in accordance with the Registered Rules and the Standing Orders.

The Directors must act collectively as a board to bind the organisation. However, the Rules entitle the board to delegate powers to individual Staff Members (usually the Senior Officers) as considered appropriate. In practice, the Senior Officers will carry out most of the organisation's activities.

In addition to the adherence of the Scottish Housing Regulator's Regulatory Framework, all Directors need to be aware that they are personally subject to statutory duties in their capacity as Directors.

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1.4 Training

Training on these roles and responsibilities is routinely delivered. Co-ops UK delivered a 7 hour training course to the WGHC Committee of Management on their roles and responsibilities as Company Directors on 13th April 2024. The next refresher course will be in 2025-26.

2.0 RELEVANT LEGISLATION AND REGULATION

- Companies Act 2006
- Co-operative and Community Benefit Societies Act 2014
- Housing Act (Scotland) 2001 (as amended)
- Data Protection Act 2018
- Health & Safety at Work Act 1974
- National Minimum Wage Act 1998
- Corporate Manslaughter and Corporate Homicide Act 2007
- Insolvency Act 1986
- The Scottish Housing Regulator Regulatory Framework (revised April 2024)

2.1 In addition to:

- WGHC Registered Rules (as approved by the Financial Conduct Authority)
- WGHC Code of Conduct for Governing Body members
- WGHC Committee of Management Protocol
- The Standards of Governance and Financial Management for Registered Social Landlords (Section 3 of the SHR Regulatory Framework)
- Reporting Notifiable Events – SHR Regulatory Framework
- Code of Governance for Community Led Housing (Confederation of Co-operative Housing)
- Financial Reporting Council Regulatory Standards

3.0 COMPANIES ACT 2006

The Companies Act 2006 codified certain common law and equitable duties of Directors.

3.1 Fiduciary Duties for Co-operative societies:

The act sets out the general duties of Directors, which are:

- to act within powers in accordance with the co-operative's constitution and to use those powers only for the purposes for which they were conferred
- to promote the success of the organisation for the benefit of its members
- to exercise independent judgement
- to exercise reasonable care, skill and diligence
- to avoid conflicts of interest
- not to accept benefits from third parties
- to declare an interest in a proposed transaction or arrangement
- act in the best interest of the society as a whole and all its members
- Not place the interests of any members, employees or stakeholders, or any group of them, above the interests of the whole society.

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3.2 Duty to Exercise Independent Judgement

Section 173 of the Companies Act 2006 states that:

- A Director (Committee Member) must exercise a judgement
- They must exercise the judgement independently

3.3 Duty to Exercise Reasonable Care, Skill and Diligence

Subjective & Objective Test:

- Both the general knowledge, skill and experience reasonably expected carrying out the function of a Director (Committee Member); and
- The general knowledge, skills and experience the Director (Committee Member) actually has

4.0 INSOLVENCY ACT 1986

4.1 Wrongful Trading:

If an organisation has gone into insolvent liquidation and before that liquidation took place a Director knew, or ought to have known, that there was no reasonable prospect that the organisation could avoid the liquidation, then the court may declare that the Director make a personal contribution to the organisation's assets.

However, the Director will not be made personally liable in circumstances where the Director can show that every step was taken prior to the liquidation to minimise the potential loss to the organisation's creditors.

4.2 Fraudulent Trading:

Under this heading the court may also require a Director to make a contribution to the organisation's assets if, in the course of the winding up of a organisation, a Director was knowingly a party to the carrying on of the organisation's business with the intent to defraud the creditors.

5.0 HEALTH & SAFETY AT WORK ACT 1974

Health and safety law places duties on organisations and employers, and Directors can be personally liable when these duties are breached: members of the board have both collective and individual responsibility for health and safety.

If a health and safety offence is committed with the consent or connivance of or is attributable to any neglect on the part of, any Director, manager, secretary or other similar officer of the organisation, then that person (as well as the organisation) can be prosecuted under section 37 of the Health and Safety at Work etc Act 1974.

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Those found guilty are liable for fines and, in some cases, imprisonment. In addition, the Organisation Directors Disqualification Act 1986, section 2(1), empowers the court to disqualify an individual convicted of an offence in connection with the management of a organisation.

This includes health and safety offences. This power is exercised at the discretion of the court; it requires no additional investigation or evidence.

Individual Directors are also potentially liable for other related offences, such as the common law offence of gross negligence manslaughter. Under the common law, gross negligence manslaughter is proved when individual officers of an organisation (Directors or business owners) by their own grossly negligent behaviour cause death. This offence is punishable by a maximum of life imprisonment.

6.0 CORPORATE MANSLAUGHTER & CORPORATE HOMICIDE ACT 2007

Under this Act, an offence will be committed where failings by an organisation's senior management are a substantial element in any gross breach of the duty of care owed to the organisation's employees or members of the public, which results in death. The maximum penalty is an unlimited fine and the court can additionally make a publicity order requiring the organisation to publish details of its conviction and fine.

7.0 PROFESSIONAL INDEMNITY INSURANCE

At all times, WGHC has in place a Stand Alone Insurance Policy for Professional Indemnity Insurance. For the financial year 2024-25, this policy has a cover of £1.9 million and is underwritten by Zurich. This policy protects Directors (Committee members) against claims for loss or damage made by clients or third parties as a result of the impact of negligent services Directors have provided or advice offered.

8.0 ANNUAL DECLARATION

As Directors, all Committee Members are required to sign an annual declaration of interest form following every AGM, in addition to the SFHA Code of Conduct for Governing Body Members.

In accordance with our Registered Rules, a Committee Member will not be allowed to sit on the Committee of Management or attend any meeting, unless they have signed and submitted both declarations to the Co-operative Company Secretary (CEO) in advance.

All declarations of interests will be entered into the WGHC Register of Interests. In addition, all declarations of interests will be openly declared at each Committee Meeting and accordingly minuted thereafter for publication on our website.

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