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Policy:	Policy on Contractor Insolvency
Legal Requirements:	There are no legal requirements applicable to this policy.
Regulatory Standards:	<p>The Scottish Housing Regulator has set out Regulatory Standards for all Registered Social Landlords (RSLs) to ensure that RSLs deliver good outcomes and services for its tenants and service users through good governance and financial management.</p> <p>This policy evidences that the following Regulatory Standards are being met:</p> <p>Standard 1. The governing body leads and directs the RSL to achieve good outcomes for its tenants and other service users.</p> <p>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. And its primary focus is the sustainable achievement of these priorities.</p> <p>Standard 4. The governing body bases its decisions on good quality information and advice and identifies and mitigates risks to the organisation's purpose.</p> <p>Standard 5. The RSL conducts its affairs with honesty and integrity.</p>
Notifiable Events Guidance	In compiling this policy, consideration has been given to the Notifiable Events Guidance issued by the Scottish Housing Regulator and the impact of that guidance on the policy.
Equality and Diversity:	<p>The Association is committed to Equal Opportunities and will endeavour to ensure that all services are carried out in an undiscriminating manner in line with the Association's Equality and Diversity Policy.</p> <p>In particular, the Association will not discriminate on the grounds of age, disability, marriage and civil partnership, pregnancy and maternity, race, religion or belief, gender, gender reassignment or sexual orientation.</p>
Human Rights	<p>In compiling this policy, consideration has been given to "The Right to Adequate Housing" (Fact Sheet No. 21/Rev.1) published by the Office of the United Nations High Commissioner for Human Rights and the impact of that guidance on the policy.</p> <p>In particular, the Association is satisfied that this policy promotes the key aspects of the right to adequate housing – that it contains freedoms; entitlements; provides more than four walls and a roof; and protects against forced evictions.</p>
Complaints:	Although the Association is committed to providing high levels of service, we accept that there may be occasions where customers may not be satisfied with the service they have received. The Association values all complaints and uses this information to improve the services that it provides. The Association's Complaints Policy describes our complaints handling procedure and how to make a complaint.
General Data Protection Regulation (GDPR):	The Association will treat all customers' personal data in line with its obligations under the current data protection regulations and our Privacy Policy. Information regarding how data will be used and the basis for processing data is provided in the Association's Fair Processing Notice.
Policy Author:	Lesley Bryce



Policy Review:	In order to ensure that any change in circumstances is accommodated this policy will be subject to review every two years in the month of January.
Policy Approval:	This policy was last reviewed / approved by the Management Committee of Yoker Housing Association Limited at its meeting held on Thursday the 27th of January 2022.



Statement of Policy Aims and Principles

5 This policy is only intended for use on the basis that an SBCC (Scottish Building Contract Committee) form of building contract governs the relationship between the Association and the insolvent Contractor. If any other form of contract is used, advice should be taken as to the applicability of this policy.

10 During development work there is always the possibility of an appointed Contractor becoming insolvent. If the Contractor becomes insolvent, there will inevitably be delays and costs to the Association. To minimise potential delays and costs, procedures require to be in place to be followed by the Association.

15 Financial checks should be undertaken prior to inclusion of a Contractor on the Association's approved lists and during any subsequent review of these lists. During the formation of a competitive tender list on a development contract, financial checks should again be carried out to ascertain the then financial status and stability of the Contractor to ensure, insofar as possible, that he can carry out the contract without any significant risk to the Association.

20 A policy with detailed procedures is therefore required for use on all development projects to be followed in the event of contractor liquidation.

The aim of this policy is to minimise the risks to the Association in the event of contractor insolvency.

Policy Details

Pre-Appointment

25 Steps should be followed to minimise the risk of insolvency.

30 There are several contractual documents that should be in place, whether as a form of appointment, formal contract document or an informal exchange of letters. This will depend on the nature and extent of the contract involved. Prior to entering the contract, these documents should be vetted by the Association's staff and, where appropriate, by specialists from out with the Association. In some cases, this will involve consultation with the Association's legal representatives but in others it may be necessary to look to more specialised type of advice.

Actions In Relation to Formal Notification of Insolvency

35 No prescribed action that forms part of this policy will be implemented without the insolvency of the Contractor being independently confirmed.

40 Specialists in building contract law could be required in many instances, depending on the nature of the insolvency.

Notification of Insolvency

45 In the event of insolvency, the Development Officer must immediately advise the Association's Finance and Housing Management sections as well as Glasgow City Council Neighbourhoods, Regeneration and Sustainability Services.



POLICY STATEMENT

Payments

Once formal notification of insolvency has been received, no payments of any kind shall be made to any party without the specific instructions of the Finance Officer.

The Association should stop any interim payment that is in the process of being paid by notifying its Bank.

No agreements for payment in respect of complete or incomplete works with any Receiver or Liquidator or other such party can be made without reference to the Director who shall refer any such decisions to the Management Committee.

The Finance Officer shall refer to the Development Officer or others who have commissioned the specific work contracted to check the status of this work and any contractual guarantees, bonds or other obligations associated with this work. Only once these factors have been identified and assessed can any payment be made.

Securing the Works

Dependent on the nature of the contract, the Association should make proper arrangements for securing the site. This should include closing all site fencing, changing any of the Contractor's locks and providing 24-hour security. The site should be adequately boarded up, excavations filled in, materials and scaffolding removed or otherwise secured to remove any danger to the public. All costs involved in securing the site should be recorded for recovery from any money owed to the Contractor.

On no account should any of the Contractor's personnel be allowed on site without the prior approval of the Association's Development Officer.

Insurances

The Association should ensure that new insurances are put in place to replace the Contractor's insurances under the contract, which will now be void. The Development Officer should telephone the Association's insurers immediately and confirm in writing.

Appointment of Receiver or Liquidator

Once a Receiver or Liquidator has been appointed, the Development Officer must advise them of the extent of the Association's interests by giving details of the contract(s) affected and their current status.

Assessing the Financial Status of the Contract

The Quantity Surveyor should immediately assess the financial status of the contract. This should include checking valuation details to assess whether there are any signs of overpayment. Re-measurement of work and accurate inventories should be made of all materials, plant and other moveable or temporary goods on site.

The Receiver or Liquidator should be requested to organise the removal of the Contractor's temporary buildings, plant, tools, equipment, goods and materials from site to avoid the Association being held liable for any losses.

If the temporary buildings, plant, tools, equipment, goods and materials are not removed by the Receiver or Liquidator then the terms of the contract may permit them to be sold and the proceeds held on account for the Contractor or to be used by replacement Contractors.

Association staff involved with the contract should keep a record of any matters arising as a result of the insolvency. This will allow the possibility of any costs to be reclaimed from the Receiver or Liquidator. Agreement to incur costs should be obtained from the Receiver or Liquidator where possible.

The Development Officer must assemble an overall financial picture of the contract(s) to assess whether there is sufficient money in retention or unreleased payments to complete the works without recourse to Glasgow City Council for additional funding. If additional funding is required, then Glasgow City Council should be given an indication of this as early as possible.



Completing the works

To arrange the completion of the works, there are several options open:

5 Appointment of Replacement Contractors

Once the insolvency of the Contractor has been ascertained, provisional steps may be taken to appoint others to complete any work left incomplete at the insolvency.

10 A replacement Contractor requires to be of acceptable financial and technical standing to the Association. In this case, the Quantity Surveyor must check on the extent to which liabilities under the original contract are being qualified and evaluate their consequences.

15 The Architect and Quantity Surveyor will draw up a schedule of outstanding works on which – dependent on value – tenders or quotations can be invited. Approval to tender / quote and to enter any contract with a new Contractor must be sought from Glasgow City Council. The usual contract signing procedures should apply. The Finance Section should be kept informed at each stage of these re-negotiations.

20 The replacement Contractor is not responsible for defects in work carried out by the original Contractor. The replacement Contractor may be asked to deal with them but any costs will be held against the Receiver or Liquidator.

Reinstatement

25 The employment of the Contractor under the contract may be reinstated, provided that a written assurance is received from the Receiver or Liquidator that he will not subsequently disclaim.

Novation

30 The Receiver or Liquidator may arrange the completion of the works by novating the contract with the agreement of the Association. This is provided that the standing of the substitute Contractor is satisfactory to the Association.

Under this method, the right to complete the works is bought from the Receiver or Liquidator by the highest bidder. Glasgow City Council's approval is again required. It would also be essential to employ a solicitor experienced in this area to ensure that the Association's interests are protected and that only contractors on the Association's Approved List are allowed to bid for this work.

35 It is the responsibility of the Development Officer to resolve these issues.

40 The major benefit to the Association of novation is that, with an appropriately worded novation agreement, the new Contractor takes over all liabilities of the original Contractor in return for the benefit of receiving the outstanding monies. The Association enjoys continuity similar to an uninterrupted contract.

Completing the Works – Choice of Preferred Method

The choice of method employed will depend on several factors such as:

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- ease of determining the final cost at the tender stage
 - nature and extent of the work remaining to be executed
 - time available to prepare documents and obtain tenders
 - any additional post contract work that may be required

50 This list is not exhaustive and will vary from contract to contract.



Completion of Defects

5 A Contractor may go into liquidation after Practical Completion but prior to the expiry of the Defects Liability Period. In this instance the best approach will be to allow the defects period to run its course and then let an Attention to Defects Contract. The Architect should still arrange for defect lists to be forwarded to the Receiver or Liquidator. Once the Defects Liability Period has expired an estimate of the full costs of rectifying the defects would be sought from the Quantity Surveyor.

This information would be used to either:

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- seek Glasgow City Council's approval to invite tenders, quotations or negotiate the work required, or
 - inform the Receiver or Liquidator of the Contract's current status

15 Whichever route is followed, details must be sent to Glasgow City Council for approval. Contract signing and Final Account procedures can follow once this approval has been obtained.

Attention to Defects during the Defects Liability Period & Emergency Repairs

20 Prior to letting an Attention to Defects Contract, defects will arise and will be notified to the Association by tenants. The Association will deal with emergency defects using our approved Contractors and a record will be kept of the cost involved. The Receiver or Liquidator will be advised by the Development Officer of the contract's status, of the Contractor's inability to deal with defects and of the Association's proposals to deal with the defects using the Association's approved Contractors and deduct such costs from balances outstanding to the Contractor.

25 Some defects that arise will, after assessment, be found to be additional to the original Contract and for which the Contractor cannot be held liable. The Association's maintenance staff should check:

- all repairs arising during the Defects Liability Period, and
- define with the project Architect whether the work in question is a defect or indeed additional work

30 Completion of the Works by the Receiver or Liquidator

35 In this instance the Receiver or Liquidator will attempt to complete the Works by keeping the Company running and acts as the Management. In this event, the Development Officer should seek Glasgow City Council's and legal advice, as this is not normally in the Association's best interests.