

An tÚdarás Rialála Comhlachtaí Tithíochta Ceadaithe

Approved Housing Bodies
Regulatory Authority



Approved Housing Bodies Regulatory Authority
Investigations Policy

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AHBRA Investigation Policy

1. Context

The Housing (Regulation of Approved Housing Bodies) Act 2019 (the Act) provides for the regulation of Approved Housing Bodies (AHBs) for the purposes of protecting housing assets provided or managed by such bodies.

It seeks to support stronger governance, financial management and reporting, property and asset management and tenancy management by AHBs, with focus on safeguarding the significant public investment being made in the delivery of social housing by AHBs.

2. AHBRA's Legal Remit

Section 9 of the Act sets out AHBRA's general functions including carrying out investigations under Part 5 of the Act. Sections 44-52 of the Act sets out AHBRA's powers relating to investigations including, the appointment of inspectors and conducting an investigation into the affairs of AHB, where it is necessary for the purpose of any of AHBRA's functions.

3. Purpose of Policy

The purpose of this policy document is to set out AHBRA's approach to the appointment of inspectors, conduct of investigations and the powers that it has in relation to carrying out an investigation.

An investigation is an information and evidence-gathering process undertaken for the purpose of establishing facts relevant to the affairs of an AHB, including whether there has been any breach of the Act, the Standards or any other applicable requirement, and identifying any related risks to tenants, assets or public funds. An investigation may inform subsequent regulatory or enforcement action, but it is not itself a remedial process.

This policy is intended to explain how AHBRA approaches investigations. It is not, nor is it intended to be, a definitive statement of the law in this area.

AHBRA will normally apply this policy but may depart from it where it considers that the circumstances of a particular case justify a different approach or where another regulatory response would better meet its regulatory or enforcement objectives.

4. Scope

This policy is applicable to all AHBRA employees, board members, consultants, and any other third-party representatives acting on AHBRA's behalf when undertaking statutory investigations under Part 5 of the Act.

5. General Principles

AHBRA recognises the diversity within the social housing sector and the different operational, delivery, funding, risk, size and scale of AHBs. This Policy forms part of the wider regulatory framework and is supported by AHBRA's principles of proportionality, accountability and transparency. AHBRA considers the individual circumstances of each matter on a case-by-case basis.

In determining whether to escalate a matter to statutory investigation under Part 5 of the Act, AHBRA will consider whether such an investigation is necessary for the performance of its statutory functions. In making that assessment, AHBRA may have regard to a range of risk indicators and other relevant circumstances. While no single factor is determinative, the presence of one or more of the following will be considered:

- **Governance Failure:** Indicators of material weaknesses in governance arrangements, including ineffective oversight, mismanagement, or the acceptance or tolerance of known conflicts of interest.
- **Systemic and Financial Risk:** Concerns arising from the scale or risk profile of an AHB, including indicators that call into question the AHB's ability to continue as a going concern or relate to potential financial misconduct or mismanagement.
- **Multi-standard Breaches:** Issues indicating simultaneous or related failures across multiple regulatory AHB Standards for example, governance and financial management failures occurring together.
- **Non-Cooperation:** Persistent failure or refusal to engage constructively with AHBRA, including failure to provide information, documentation or assurances necessary to address regulatory concerns.

- **Rapid Expansion:** A high volume or rate of property acquisition or development activity that appears to outpace the AHB's governance, financial management, or operational capacity.
- **Regulatory History:** A pattern of repeated or unresolved non-compliance, or failure to implement previously agreed remedial actions.
- **Risk to Tenants or State Funding:** Concerns that issues may adversely impact tenants or the provision of safe and secure housing.

These indicators are not exhaustive and will be applied in a proportionate and context-specific manner, having regard to the overall risk profile of the AHB and the potential impact on tenants, assets and public funding.

Any decision to initiate an investigation will be made in accordance with the general principles set out below, having regard to the specific facts and circumstances of each case and with particular regard to the potential impact on tenants, housing assets and the protection of public funding.

- **Risk-based approach:** While AHBRA carefully consider all notifiable events and concerns, it does not undertake a formal investigation of every matter that is brought to its attention. AHBRA applies an evidential and risk-based approach to ensure that its resources are targeted to where the risks of harm, unsafe practices, weak governance, or misconduct are greatest and where AHBRA believes its intervention will have the greatest impact.
- **Proportionate:** AHBRA takes a proportionate approach to considering investigations. It will have regard to the risk, size and type of AHB and the past conduct of an AHB when determining its regulatory response. This means there may be some cases where AHBRA decides that it is not proportionate or necessary to take a matter forward as an investigation, for example, where the matter is of very low risk and/or a once-off occurrence.
- **Early Resolution:** AHBRA encourages compliance through education and engagement with AHBs and aims to resolve issues at the earliest possible opportunity. This means that in some cases, AHBRA may be able to resolve an issue without the need for formal action. For example, at the early stages of engaging with an AHB, AHBRA may be satisfied that the AHB has taken, or has offered assurances that it will take, appropriate steps to address any concerns

identified such that there is no need for further action. AHBRA will apply escalating actions, as appropriate to the level of risk.

- **Objectivity and impartiality:** AHBRA aims to conduct all investigations with the highest levels of integrity. Decisions and investigative findings will be based on facts and related analysis, which may include reasonable inferences. Procedures will be put in place to monitor any actual or potential conflicts of interest by Inspectors or AHBRA staff, disclosures of same and action taken to remedy any conflicts.
- **Fairness:** AHBRA will be guided by the principles of natural justice and procedural fairness when dealing with investigations. Whilst the terms of appointment may indicate concerns to be investigated, any conclusions reached by the Inspector(s) will be evidence-based and all participants will be treated with fairness throughout the process.
- **Data Protection:** Personal data gathered during the course of an investigation will be collected, stored and managed in accordance with AHBRA's legal obligations under relevant Data Protection legislation and its Data Protection Policy.

6. Notification of Investigation

AHBRA shall, ordinarily, notify an AHB when it decides an investigation into its affairs is required. The notification will include the general purpose or scope of the investigation and the name(s) of the Inspector(s) appointed. In circumstances where AHBRA reasonably believes that notification may be prejudicial to the investigation process, or if immediate action is required to prevent ongoing harm, the notification may be delayed.

AHBRA reserves the right to publish notification of appointment of inspectors and/or the commencement of a statutory investigation. It will note that the opening of a statutory investigation is not in itself a finding of any wrongdoing.

7. Appointment of Inspectors

Following a decision to commence a statutory investigation, AHBRA will appoint an inspector(s) to conduct the investigation, in accordance with Section 46 of the Act.

8. Powers of Inspectors

In accordance with Section 48 of the Act, where an inspector has been appointed, they have powers to require:

- The production of documents and the provision of evidence from AHBs (including their officers¹ and their agents²)
- The production of documents and the provision of evidence from other persons whom the inspector believes may have information relating to the AHB;
- The production of information relating to bank accounts³ (where there are reasonable grounds for believing that money has been paid constituting misconduct in respect of an AHB); and/or
- A person to answer questions under oath or affirmation and require a person to provide an explanation of a decision, course of action, system or practice.

In addition, an inspector has a broad range of investigatory powers at their disposal under Section 49 of the Act, which enables them to gather relevant information, documents and materials. These include powers of entry, search and inspection of premises, powers to inspect, examine and make copies of or take extracts from documents and records, powers of the removal and retention of documents and records, and requiring information and assistance to be provided to them in relation to access to documents and records and equipment. It is at the discretion of the inspector to utilise these powers, as necessary, in the context of an investigation.

9. Offences Relating to Investigations

Non-compliance with an investigation under the Act may constitute a criminal offence.

Withholding, Destroying, Concealing or Refusing to Provide Information or Records (Section 51(a))

Subject to section 52 of the Act, a person commits an offence where they withhold, destroy, conceal or refuse to provide any information or records required for the purposes of an investigation under Part 5 of the Act.

¹ "officer" includes, in relation to an AHB, a person who was, but is no longer an officer of the AHB;

² agent", including a banker, solicitor or auditor to the AHB, and any person who was but is no longer an agent to an AHB;

³ Of a director, member or trustee of an AHB

Failure or Refusal to Comply with an Inspector's Requirement (Section 51(b))

Subject to section 52 of the Act, a person commits an offence where they fail or refuse to comply with any requirement of an inspector under Part 5 of the Act.

Obstruction or Hindrance of an Inspector (Section 51(c))

Subject to section 52 of the Act, a person commits an offence where they obstruct or hinder an inspector in the performance of functions conferred by the Act.

Protections and Privileges

Section 52 of the Act preserves legal professional privilege and provides certain immunities and protections, including that compelled statements or admissions are generally inadmissible in criminal proceedings other than proceedings for an offence under section 51.

Penalties

A person guilty of an offence under section 51 is liable:

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both; or
- (b) on conviction on indictment, to a fine not exceeding €100,000 or imprisonment for a term not exceeding 5 years, or both.

10. Investigation Report

Section 44 of the Act defines an investigation report as a report prepared by an inspector following the completion of an investigation. Under Section 47 of the Act, AHBRA may direct the inspector to make interim report(s) to it in relation to the investigation and in any event shall receive an investigation report from the inspector(s).

Paragraph 10 of this Policy relates to investigation reports (or interim report(s) where relevant) after same have been received by the Regulator from an inspector, in accordance with the Act.

10.1. Consideration of Investigation Report

AHBRA will carefully consider the contents of an investigation report (or interim report(s) where relevant) once received from the inspector(s).

AHBRA may, if it considers it appropriate, provide a copy, or extracts, of an investigation report to the relevant AHB.

AHBRA may give the AHB an opportunity to respond to the report and indicate what actions it is going to take to address any matters of concern, where applicable. AHBRA will take into account any response received as part of this process.

AHBRA will consider any next steps required on foot of the investigation report and what, if any, regulatory action is appropriate under the Act.

AHBRA will consider the investigation report (or interim report(s), where relevant) and make a decision in relation to the next steps, as appropriate. This may include other regulatory intervention, publication of the report(s) and/or circulation of the report to one or more of the persons referred to in section 47(3).

AHBRA will at all times adhere to any applicable statutory or legal requirements, including fair procedures.

10.2. Publication of Reports

AHBRA may, at its discretion, publish an interim report or an investigation report in accordance with Section 47(3)(c) of the Act. The decision to publish a report shall be made after due consideration of relevant factors including, but not limited to, the public interest, the severity of the findings, and the potential impact on stakeholders.

AHBRA may redact or omit certain information from published reports. AHBRA may do so where it considers it appropriate, including to protect personal, confidential or sensitive information.

Where AHBRA is minded to publish an investigation report (or interim report(s) where relevant), AHBRA will ordinarily provide the AHB and any other affected persons with notice of its intention to publish and an opportunity to make representations within 5 working days from the date of notice, or such other period as AHBRA considers appropriate in the circumstances.

As part of this process AHBRA may share the investigation report (or interim report(s) where relevant) or extracts of it with the AHB and any other affected persons.

Where parties are invited to make representations, AHBRA will take any representations made received within the specified period into account prior to finalising its decision.

Where AHBRA decides to publish a report, it will ordinarily provide the AHB and any other affected persons with at least 3 working days' notice prior to publication unless AHBRA considers that a different period is necessary or appropriate having regard to the circumstances of the case.

10.3. Circulation of report

AHBRA may, on request and if it considers it appropriate, furnish a copy of an investigation report (or interim report(s) where relevant) to any of the parties listed under Section 47(3)(b) of the Act.

11. Policy Approval and Review

This policy will be reviewed after 3 years from the effective date (or sooner if required) and every year thereafter. It is the responsibility of the Policy Author to ensure that this document is reviewed and updated, or more frequently where changes to policies or procedures have a material effect on this document.