

POLICY

**CONTRACTOR IN
LIQUIDATION**

Development

REVIEWED POLICY – May 2023

Wellhouse - The Place To Be

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Vision and values

Wellhouse – the Place to Be.

This simple statement is our vision of Wellhouse as an attractive place where people feel happy and safe, benefit from having a good home and an attractive environment and feel proud to be part of a vibrant community.

We believe that our values of **Trust, Honesty and Integrity, Excellence, Accountability and Sustainability** supported by a comprehensive policy framework will help make our vision a reality.

2. Governance

Wellhouse HA is a community controlled registered social landlord and is managed by a group of local people who are elected onto the Management Committee. Their role is to make sure that the Association is well run, meets the needs of the local area and is responsive to what is important to local people.

The Management Committee appoints senior staff, agrees all the Association's policies and takes all the key decisions. The Director and the senior team support the Committee in these responsibilities.

3. Policy Aims

Wellhouse housing association must consider the possibility of a contractor (main or sub): going into liquidation and ensure that we have appropriate provisions to protect our assets, land, resources and reputation and we must consider the following.

- insurance and security arrangements for the site and materials. In particular the obligation on the contractor to maintain the Contractor's All Risk policy will fall away on termination of his employment;
- the terms of any performance bond and/or parent company guarantee and provide initial notification to the relevant parties that you intend to take action to enforce the security;
- whether and to what extent it has received executed consultant/sub-contractor collateral warranties and identify which consultants and/or sub-contractors it needs to negotiate with in order to conclude the project;
- that it has all relevant documents/drawings in connection with the project and if not seek copies from the contractor and/or the professional team;
- what funding or other agreements with stakeholders are in place and the impact upon those arrangements; and
- issuing the notice to terminate the building contract,

This policy covers the broad response and is supported with related policies.

4. Equal Opportunities Statement

We aim to ensure that all services, including the delivery of this policy, provide equality of opportunity.

We will respond to the different needs and service requirements of individuals. We will not discriminate against any individual for any reason, including age, disability, gender re-

Trust Honesty Integrity Excellence Accountability Sustainability

assignment, marriage, civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation, or other status.

5. Introduction

LIQUIDATION OF CONTRACTORS

Wellhouse Housing Association will take all possible steps to ensure that only contractors who have a sound financial footing shall be considered for any tender list or design and build contract. In the unfortunate circumstances of a contractor going into receivership while working on one of its projects the Association shall take all steps to minimise the financial and disruptive impact on the organisation.

Financial and Competency Checks

The Association will carry out a credit check on all prospective Development contractors unless these are procured through a frame work. If the Association is in any way concerned about the results of this check then the contractor will not be selected for the final tender list or, in the case of a negotiated contract, the Association will proceed no further in its negotiations with that contractor. It is presumed that a competent contractor is less likely to fail than a poor contractor, therefore, the Association will also check that a contractor is competent by taking up references if the contractor has not been used before or recently. These references will always be in writing. The existence and adequacy of the contractor's health and safety policies and equal opportunities policies will also be checked.

Where appropriate the Association will also take advice from the development project team and quantity surveyor if they consider the stability or competence of any prospective contractor to be in question.

It should be noted that credit checks are only a time specific view of a company's performance and the financial position of any contractor can change very quickly during the term of a contract. All of the above checks cannot guarantee that a selected contractor will not fail and regular reviews will be undertaken of the financial status of each successful contractor.

It is recognised that problems with cash flow are one of the main contributors to a company's financial failure, therefore, where possible, Certificates will be paid within the 14 day payment period. Contractors and consultants will also be made aware of any relevant funding requirements from lenders so that valuations may be co-ordinated to suit, where appropriate. If, for any reason, the Association feels that certificates or invoices should not or cannot be honoured, then the contractor will be notified immediately in writing of the detailed reasons for this. If a contractor informs the Association that he is experiencing a financial problem due to cash flow then the Association may consider modifying the time period between valuations to help ease this problem in the short term. Consultants are requested to inform the Association if they suspect any potential financial problems with contractors.

If a Contractor does go into liquidation during a contract the following steps must be taken immediately:

- Notify the Housing Investment Division of the Scottish Government via our contacts at NRS in Glasgow City Council and, if appropriate, private lenders.
- Notify all members of the project team.
- Inform the Association's solicitors.
- Take appropriate action to safeguard site security.
- Instruct the project team to quantify work completed since the last valuation and

- prepare a report and Certificate for the liquidators (the question of additional fee liability will also have to be considered).
- Request a meeting with the contractor, receiver or other agent to confirm the termination of contract.

The following steps will be taken as soon as possible:

- Instruct the project team to prepare documentation for tender issue for the remaining works.
- Report to the Housing Investment Division of the Scottish Government, via NRS at Glasgow City Council and lenders on the action taken and the proposed route to complete outstanding works.
- If the Association is operating a framework agreement of contractors any framework contractor that goes into liquidation will be removed from the framework agreement.

The Association will take advice from the project team on any further action to be taken in accordance with the building contract and will consider the appointment of an additional consultant if specialist advice is required.

Action By

1. SECTION INVOLVED:

Development Agent	(DA)
Finance Section	(FS)
Housing Management Section	(HMS)
Maintenance Section	(MS)
Clerk of Works	(COW)
Quantity Surveyor	(QS)
Architect	(ARCH)

2. POST LIQUIDATION

2.1 News of liquidation is usually communicated by the Receiver or Liquidator appointed to deal with the matter. However, we learn of liquidation, it must be verified, and then the following steps adhered to:

2.2 The Development Agent or Director must immediately inform FS, HMS and MS of the liquidation. FS must be instructed to withhold any impending payments. Other financial information will be sought from FS as required. Funders must be informed and the HSE under CDM Regulations- see Procurement of Contractors Policy.

DA

2.3 All staff must keep diary entries of time spent dealing with matters that have arisen as a result of liquidation. This will enable our costs to be claimed from the Liquidator.

DA/FS/HMS/MS

2.4 If properties are still on site the Clerk of Works and Development Agent responsible should liaise and together immediately visit them and assess security arrangements. Properties must in all circumstances have their locks changed, be adequately boarded up to protect the partially completed works, excavations filled in, materials likely to endanger the public removed and scaffolding removed. Re-measurement of work carried out to date and valuation of any material or plant on site to be carried out by QS.

DA/COW

2.5 On no account is any person from the Contractor allowed on site, without the prior approval of the Development Agent, Director and Liquidator.

DA

2.6 If necessary Security Firms can be employed to ensure the site is protected and these costs together with any incurred under section 6, can be held against the Contractor and consequent assets from the company. Usually, these are deducted from any monies owed by Wellhouse Housing Association to the contractor.

2.7 The Development Agent or Director must arrange continuing insurance cover. On liquidation or Section 21 and 22 insurances under funders supplement to SBCC form of contract void. A phone call followed by a letter, is required.

DA, D

2.8 The Development Agent or Director must inform liquidator or receiver of Wellhouse Housing Association interests by giving details of contracts affected and current status - on site, in defects etc.

DA, D

2.9 The Development Agent must build-up a financial assessment of all affected contracts. This is to ensure there is sufficient money in retention or unreleased to complete the works without recourse to funders for additional funding is required by the funders. If additional should be given an indication of this early as possible. It may take some time before a full picture emerges.

2.10 Copies of the above should be sent to the funders and liquidators as early as possible, preferably also again when requesting approval to proceed with matters like completion contracts.

2.11 The Liquidator must be kept informed of all expenditure against their clients Final Account. Their agreement should be sought, but often due to pressure of time, they are often informed after the event.

2.12 The Quantity Surveyor must be asked to visit the site and reassess the value of the work completed. The QS has the power to re-value downwards any previously issued valuation in the light of current circumstances.

DA, QS

2.13 If the Contractor was engaged on a number of contracts with Wellhouse Association, it is possible to off-set balances due with credit claims. Indeed, every effort should be made to consider the contractors affairs with the Wellhouse Association in a whole.

2.14 Dependant upon the stage a contract is at when liquidation takes place, there are differing methods of ensuring completion of the works.

3. COMPLETION OF WORKS BY “COMPLETION CONTRACT”.

3.1 If the properties remained uncompleted i.e., not handed over a completion contract must be arranged. The Architect and Quantity Surveyor must draw up a specification of outstanding works on which, dependant upon estimated value, tenders or quotations may be invited. Approval to accept tender/quote and enter into a contract with a new contractor must be sought from both the funders and the Liquidator. The usual contract signing procedure applies. Correspondence seeking receiving approval should be copied to the Finance Section

ARCH/QS/DA

3.2 Following successful completion of the work, final costs can be tabulated, the final account procedures followed and the Liquidator eventually paid the balance of monies held in balance, a claim must be made to the Liquidator for reimbursement. It is not likely that this will be recovered and thus the funders is required to meet the difference, with the circumstances thoroughly justified and explained.

3.3 The completion Contractor is not responsible for defects on the work completed by the original Contractor. They may be asked to deal with them, but the resultant cost held against the Liquidator.

4. **COMPLETION OF WORK BY ASSIGNMENT.**

4.1 Occasionally a Liquidator may decide that it will most effectively represent their client's interests if the remaining works are "assigned". This effectively means the right to finish the works is bought from Liquidator by the highest bidder. The funders approval is required and the employment of an experienced Solicitor to ensure our interests are represented under the terms of the Assignment and that only our approved contractors bid for the work. **DA, D**

4.2 The Development Agent and Director must control the resolving of these issues. **DS,D**

4.3 If negotiations with the liquidator, our Solicitor, the new Contractor and the funders are satisfactorily resolved, an assignment can be positively beneficial to the Association. By assigning the contract, the new contractor takes over all liabilities of the earlier contractor (for the benefit of receiving outstanding monies) and thus the Association enjoys continuity similar to an uninterrupted contract.

5. **COMPLETION OF DEFECTS.**

5.1 A contractor may go into liquidation after Practical Completion, but prior to expiry of defect period. In this instance it will probably be best to allow the defects period to run their course until final one expires and then let an "Attention to Defects Contract" Architects should still arrange for Defects Period of the remaining property; the Quantity Surveyor will be required by the Development Agent to provide an estimate of the likely cost of full rectification. This information will be used to a) seek the funder's approval to invite tenders, quotations, or negotiate b) to inform the Liquidator of the contracts current status.

5.2 Whichever is followed the results hence details of recommended contractor and cost are sent to the funders for approval prior to entering into an agreement of contract. Contract signing and final account procedures are to follow after this.

6. **ATTENTION TO DEFECTS DURING THE DEFECT PERIOD AND EMERGENCY REPAIRS**

6.1 Prior to letting an "Attention to Defects" contract the above will arise, as notified by the tenant to the Maintenance Section.

6.2 As soon as the contractor goes into liquidation during a defect period the Development Agent will inform the Liquidator of the Contractors liabilities, their obvious inability to deal with the defects and our intention to employ approved contractors and deduct the cost from the balance owing. This will prepare the way for the Association to respond rapidly to tenants' problems without awaiting liquidator's approval.

DA

6.3 Some liquidators may attempt to insist sub-contractors who continue trading sought to be employed - but if these are not on the list of contractors Wellhouse Housing Association would normally use, Development Agent should resist this imposition.

DA

7. REPAIRS ARISING DURING DEFECT PERIOD.

- 7.1 As with any defect the Maintenance Section should liaise with the Architect, which will decide whether it is a defect or additional work.

DA, MS

8. COMPLETION OF THE WORKS BY THE LIQUIDATOR.

- 8.1 In this instance a liquidator attempts to complete the works by keeping the company running and acts as the management. The funders and legal approval should be sought by the Development Agent as this is not necessarily in Wellhouse Housing Association interests.

DS

9. REPORTING

- 9.1 The Management Committee will be informed immediately via a special meeting and followed by updates at Committee meetings.