

Automatic Disqualification Policy Staff

Category	Governance
Lead	Governance Officer
Committee / Approver	Board of Management
Action	Consider & Approve
Review Date	December 2025
Review Due	December 2026
Purpose	Statutory Duty
Internal/External	Both

Introduction

As Angus Housing Association is a registered Scottish Charity, the organisation is required to comply with Charities legislation. The Charities and Trustee Investment (Scotland) Act 2005 outlines Automatic Disqualification criteria which apply to Board members. The Charities (Regulation and Administration) (Scotland) Act 2023 amends this Act. The amendments include updated criteria and extend this to staff and volunteers who have a 'senior management function' within the organisation. As this policy references charity law, the following terms mean:

Board Member / Charity Trustee / Trustee – a member of the Board of Management of Angus Housing Association

This policy directly evidences 5.1 and 5.2 of the Standards of Governance and Financial Management for Registered Social Landlords. This policy outlines the implications for specific staff at Angus Housing Association. For information about how this affects Board Members, please refer to the Board version.

Aims of the Policy

This policy sets out:

- The duties for Angus Housing Association under this legislation
- Outlines what is meant by a 'senior management function' and what posts this refers to
- Outlines what are the Automatic Disqualification Criteria
- Outlines what happens if the Automatic Disqualification Criteria are met by an affected person

Duties

The Charities and Trustee Investment (Scotland) Act 2005 as amended by the Charities (Regulation and Administration) (Scotland) Act 2023 brings the following changes:

- Register of Mergers to be published by the Office of the Scottish Charity Regulator (OSCR)
- Charities to provide trustee details to OSCR
- Automatic Disqualification Criteria expanded and now include people undertaking a senior management function for a charity
- Publication of trustee names
- Publication of charity accounts

Whilst the main changes are around administering charities (including maintaining information about trustees), the expanded list of Automatic Disqualification Criteria covers a broader range of offences which not only preclude people from being trustees of charities but also extend to staff and volunteers undertaking a 'senior management function'. This means that there is a duty for Angus Housing Association to ensure that people who have a 'senior management function' do not have certain offences. This has a direct impact on some members of staff.

‘Senior Management Function’

Under charity law, a function carried out by a person holding office or employment is considered to be a ‘senior management function’ if:

- The function relates to the management of the charity whereby the person is only directly accountable to the trustees
- The function involves control over the charity’s money, and the person is only responsible for that function either: directly to the trustees, or, to a person carrying out a senior management function that does not involve control over money

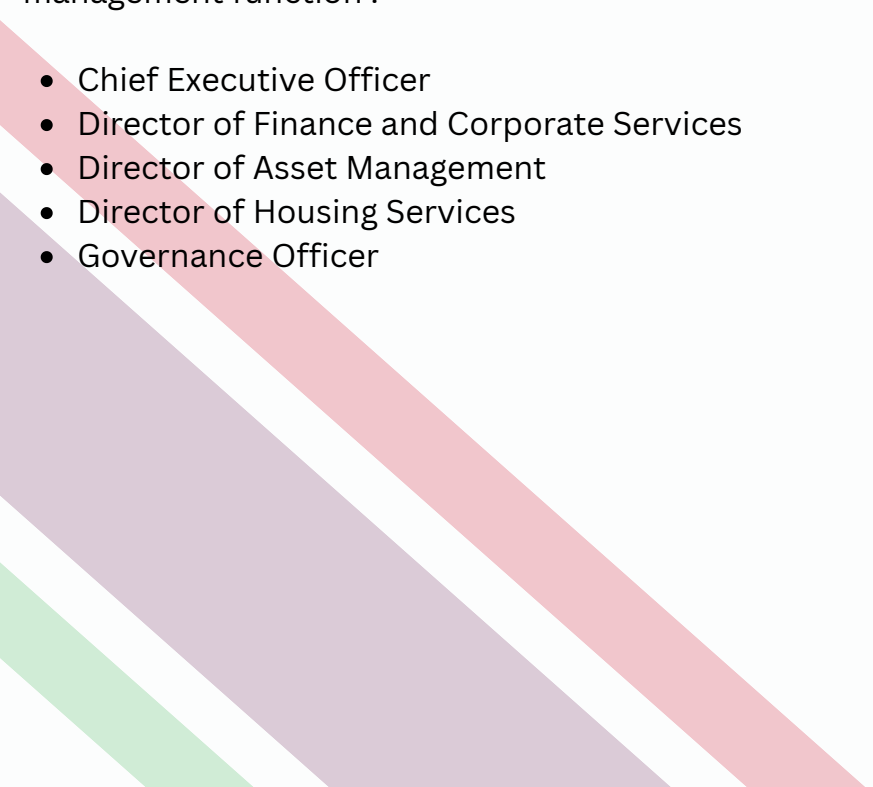
‘Management of the charity’ means having responsibility for the day-to-day control and operation of the charity including decision on key operational matters.

‘Control over money’ means having responsibility for the charity’s financial performance and spending, financial policies and controls.

This means that a ‘senior management function’ is not based on job/role title but is based on what the job/role entails. Whilst the legislation covers paid and unpaid roles, at Angus Housing Association there are no volunteer roles that have senior management functions. Whilst Board members are volunteers, their capacity is as charity trustees which is distinct and not the same as an unpaid role that has a senior management function. In addition, whilst the term ‘Senior Management Team’ is used to collectively refer to the Chief Executive Officer, Director of Finance and Corporate Services, Director of Housing Services, and Director of Asset Management, this does not mean that all these roles have a ‘senior management function’ automatically under charity law and posts must be assessed using the criteria on the OSCR website:

<https://www.oscr.org.uk/managing-a-charity/managing-charity-trustees/guidance-on-disqualification-criteria-for-charity-trustees-and-those-undertaking-a-senior-management-function/what-is-a-senior-management-function/>

After screening the organisational structure, the following roles are deemed to have a ‘senior management function’:

- Chief Executive Officer
 - Director of Finance and Corporate Services
 - Director of Asset Management
 - Director of Housing Services
 - Governance Officer
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Automatic Disqualification Criteria

The Automatic Disqualification Criteria are a list of named offences. The Charities and Trustee Investment (Scotland) Act 2005 outlines the main list as:

- Conviction of an offence involving dishonesty
- Disqualification as a company director
- Undischarged bankruptcy or protected trust deed
- Removed as a trustee by the Court

The Charities (Regulation and Administration) (Scotland) Act 2023 adds the following:

- Conviction of offences under bribery legislation
- Conviction under proceeds of crime legislation
- Conviction for perverting the course of justice
- A conviction of terrorism or association with proscribed terrorist group
- Misconduct or negligence as a public official
- Disobedience with an order of court
- Sexual offences subject to notification

The full list is available on the OSCR website:

<https://www.oscr.org.uk/managing-a-charity/managing-charity-trustees/guidance-on-disqualification-criteria-for-charity-trustees-and-those-undertaking-a-senior-management-function/annex-1-criteria-for-disqualification/>

Staff with a 'senior management function' are required to sign off that they do not meet the Automatic Disqualification Criteria annually.

What happens if the Automatic Disqualification Criteria are met

If a person with a senior management function meets any of the criteria, disqualification is automatic under charity law, and the person cannot become, or continue employment in a role with a senior management function in a charity. Anyone who acts in a role with a senior management function for a charity whilst disqualified is guilty of an offence punishable by a fine, imprisonment, or both. In addition, if the Automatic Disqualification Criteria are met by the Chief Executive Officer, this is a Notifiable Event to the Scottish Housing Regulator which must be made in accordance with the Notifiable Events Policy.

If you are, or become disqualified as a member of staff with a senior management function:

You must report this to your line manager, or in the case of the Chief Executive Officer, the Chair of the Board, and you cannot discharge any duties.

Further action will be made in accordance with Angus Housing Association's Disciplinary Policy.

As this is an automatic outcome, this may include suspension, garden leave, demotion, or dismissal. Advice must be sought to ensure that this is done in line with existing employment law. As there is no statutory power for the Scottish Housing Regulator to be involved in human resource issues, a course of action will be set by Angus Housing Association.

Time Periods

However, disqualification is not necessarily permanent and may be for a specific period of time. For example, convictions may become spent after a set period, and bankruptcy is usually for up to 12 months. When these periods have ended, the person may become a charity trustee or employed in a post/role with a senior management function again. Individuals should seek appropriate advice about their own circumstances. There is a waiver application process which can be accessed on the OSCR website:

<https://www.oscr.org.uk/managing-a-charity/managing-charity-trustees/guidance-on-disqualification-criteria-for-charity-trustees-and-those-undertaking-a-senior-management-function/are-there-any-exceptions/>





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