



Cassiltoun

Housing Association

COLLATERAL WARRANTIES POLICY

Date Approved	Proposed Review Date
May 2020	May 2023
Chair Person/Office Bearers Signature:	

CASSILTOUN HOUSING ASSOCIATION LTD
Castlemilk Stables, 59 MACHRIE ROAD, GLASGOW G45 OAS

Cassiltoun Housing Association is a recognised Scottish Charity no. 035544

COLLATERAL WARRANTIES POLICY

1.0 POLICY OBJECTIVES

- 1.1 The objective of this policy is to ensure that the Association's interests are protected and that a clear and concise document is provided to avoid any doubt as to the requirements of the Association.
- 1.2 This policy clarifies Cassiltoun's requirements in terms of securing warranties from designers on major developments where CHA is not directly employing the designers.

2.0 LEGAL AND REGULATORY FRAMEWORK

- 2.1 As a registered social landlord, Cassiltoun HA must comply with the Regulatory Standards of Governance and Financial Management set out by Scottish Housing Regulator. Standard 4 is of relevance to this Policy.¹

Standard 4

The governing body bases its decisions on good quality information and advice and identifies and mitigates risks to the organisation's purpose.

- 2.2 Collateral warranties protect the interests of Cassiltoun HA by creating a contractual relationship with designers where otherwise and with whom it would have no direct relationship and therefore no recourse to, should problems arise in the future with the design.

3.0 EQUAL OPPORTUNITIES STATEMENT

- 3.1 We recognise our pro-active role in valuing and promoting diversity, fairness, social justice and equality of opportunity by adopting and promoting fair policies and procedures. We will check this policy and associated procedures regularly for their equal opportunity implications, taking appropriate action to address inequalities likely to result or resulting from the implementation of the policy and procedures. We are committed to providing fair and equal treatment to all applicants including tenants and will not discriminate against any on the grounds of race, colour, ethnic or national origin, religion, age, gender, sex, sexual orientation, marital status, family circumstances, employment status or physical ability.

4.0 RESPONSIBILITY

- 4.1 It shall be the responsibility of the Association's Development Consultant to liaise with the Association's Cost Consultant to ensure that the requirement for all necessary collateral warranties are included within contract documents.
- 4.2 It shall be the responsibility of the Association's Development Consultant to ensure Collateral Warranties are in place prior to a main contractor commencing on site.

¹ <https://www.housingregulator.gov.scot/media/1350/regulatory-framework-regulation-of-social-housing-in-scotland-february-2019-website.pdf>

5.0 PURPOSE OF COLLATERAL WARRANTIES

- 5.1 In a Design & Build Contract, the Association will have a direct contractual link with the Main Contractor. The Main Contractor undertakes responsibility for the design element of a project and appoints the professional team, e.g. Architect, Engineer, etc. As such, the Association has no contractual link with the professional team.
- 5.2 If a problem arises after completion of the project, e.g. a latent or inherent defect, the Association's recourse is to the contractor, who in turn has recourse to the professional team. If the contractor disappears for whatever reason, e.g. insolvency or group re-organisation, the Association has no route to pursue the professional team, as it has no contract with them.
- 5.3 It is therefore necessary to bridge the contractual gap between the Association and the professional team appointed by the contractor with Collateral Warranties.
- 5.4 Similarly, where the contractor is appointed via a traditionally tendered route, there will often be elements of the work that are not designed by the design team that is employed by CHA- but are designed by the Main Contractor's sub-contractors. A good example of this is the timber kit design. If the main contractor becomes insolvent and a future problem arises with a key element that has been designed by a sub-contractor, the Association needs a collateral warranty with that sub-contractor in order to have a direct legal route to pursue them.

6.0 POLICY

- 6.1 For each development project, the Association shall engage its legal advisers to provide amendments to standard building contracts to include wording to form the basis of a Collateral Warranty Agreement between "the firm" (Consultant/ sub-contractor appointed by the Main Contractor) and "the Purchaser" (the Association).
- 6.2 The Association shall include a draft form of Collateral Warranty Agreement in the draft tender documents, which will be issued to the Main Contractor at the Briefing Stage prior to the Main Contractor appointing Consultants.
- 6.3 Prior to Cassiltoun's appointment of a Main Contractor, the Contractor will be required to provide evidence of the Form of Appointment of each design consultant along with a clear schedule of services covered by the appointment.
- 6.4 Prior to appointment by the Main Contractor, their design consultants will be required to confirm their acceptance of the terms of the Collateral Warranty. It is noted that it may not be possible for sub-contractors to confirm their acceptance at that stage as they may not have been appointed.
- 6.5 The Association requires the Collateral Warranties with the main contractor's design consultants to be in place prior to site start.
- 6.6 The Association requires that Collateral Warranties with the main contractor's sub-contractors to be in place before that sub-contractor commences their element of work on-site.