



Regulator of  
Social Housing

# Becoming a registered provider

Information for intending applicants

May 2019



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## Foreword

The Regulator of Social Housing (RSH) receives around 90 applications for registration each year. Applicants vary significantly in terms of: the nature of the housing they provide or intend to provide, their corporate structures, and their motivations for seeking registration with the Regulator. While we receive many applications, many do not go on to become registered providers, often because it is only after starting the process that they begin to understand the responsibilities that come with being a registered provider.

Although we do not publish details of why individual organisations either choose not to proceed with their application, or are turned down by the Regulator, we are keen to share some of the learning and experience that we have gained from running the registration process. Drawing on a range of applications which we have considered, this document sets out the real issues that come to light and explains why we are unable to register a number of those bodies that seek registration with us.

This is intended to be a helpful guide for anyone considering applying for registration and for those that advise applicants; we hope that you find it useful.

RSH wishes to thank Sue Harvey and Sarah Brown at Campbell Tickell for their contribution to this report.

## 1. Introduction

- 1.1 Becoming a registered provider of social housing is a serious undertaking – together with advantages there are obligations that must be met.
- 1.2 This guide is for any organisation considering applying to become a registered provider. Its purpose is to share the Regulator's experience in dealing with a range of applications, to enable potential applicants to decide whether registration is the right course for their organisation.
- 1.3 It also aims to prompt organisations to think about whether they are ready and able to meet the Regulator's requirements. For some organisations these can be demanding. While we welcome new ways to increase the supply of social housing, we have to be satisfied that any new entrant is able to meet the obligations associated with being a registered provider.
- 1.4 Of those who begin the application process most – around 80% – do not become a registered provider. In the great majority of cases this is because the application has been withdrawn or not pursued as the applicant has better understood what registration with the Regulator means. We share here the common misconceptions about registration and the main issues that applicants encounter in seeking to demonstrate that they meet requirements.
- 1.5 For those who consider that it is the right course and that they can meet the requirements, we share common issues we find in the applications to us.

## 2. Facts and figures about registration

### Our role

- 2.1 As well as ensuring that registered providers are financially viable, properly governed and providing decent, well-managed homes, we have a duty to promote investment in social housing.
- 2.2 In practice, this means helping to ensure that lenders and other stakeholders remain confident in registered providers and that lenders continue to price their funding accordingly.
- 2.3 Our role therefore in considering applicants for registration is to ensure that new entrants to the register are capable of meeting the Regulator's requirements and have the capacity to sustain that into the future.

### Who can be registered

- 2.4 To be considered for registration, an applicant has to be an English body providing – or intending to provide – social housing in England. As long as it meets these conditions, any type of body can be considered.
- 2.5 Having established that it is eligible, an applicant then has to provide evidence to satisfy us that it complies with the Regulatory standards that registered providers must meet. The standards and the requirements they place on registered providers are set out in separate documents available on our website<sup>1</sup>. However, summaries of the requirements are provided in Section 7.
- 2.6 All applicants – whatever their size or status or business model – must be able to satisfy us that they meet the Governance and Financial Viability Standard at the point of registration and to be able to maintain that beyond the point of registration. They must also have management arrangements in place that enable them to demonstrate that they are able to meet the other Regulatory standards.

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<sup>1</sup> <https://www.gov.uk/guidance/regulatory-standards-procedures-and-guidance>

### Types of registered provider

- 2.7 Historically only non-profit-making organisations could be registered as providers of social housing. While many of these non-profit organisations make surpluses on their activities it is all reinvested in line with their purposes.
- 2.8 This changed with the Housing and Regeneration Act 2008 (HRA 2008). To encourage competition and increase the supply of affordable housing, the Act allowed profit-making organisations<sup>2</sup> to become registered providers. The change came into effect from April 2010.
- 2.9 New entrants to the registered provider sector are a diverse group and a mix of for-profit and non-profit organisations. They include organisations providing supported housing and care, local authority subsidiary companies, community groups seeking to develop new housing, commercial developers setting up small subsidiaries to receive Section 106)<sup>3</sup> affordable housing, subsidiaries of investment companies and funds and small charities, such as alms houses. They also include entities established by registered provider groups, either new parents for group structures or new subsidiaries. A minority of applicants seeking registration have allocations of capital grant.

### The registration process

- 2.10 There are two stages to the registration process. In the first stage – termed the ‘preliminary application process’ – the applicant is asked to provide evidence that will enable us to assess whether it meets the eligibility requirements. These are that the applicant is:
- an English body
  - providing, or intending to provide, social housing in England
  - is the landlord, or intending landlord, of the social housing.
- 2.11 If the applicant meets these eligibility requirements, it can progress to the second stage.

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<sup>2</sup> These are organisations that distribute their surpluses, or part of it, to shareholders or others. We consider non-profit and profit-making designation in Section 6 below.

<sup>3</sup> Section 106 of the Town and Country Planning Act 1990 (as amended), commonly known as an S106 Agreement is an agreement with the local planning authority in which the developer agrees to provide affordable housing in kind, or as a commuted payment along with other infrastructure requirements, in order to secure the grant of planning permission.

- 2.12 In the second stage – the ‘detailed application process’ – the applicant is asked to provide evidence that enables us to determine whether it meets the registration criteria.
- 2.13 The registration criteria are set by the Regulator and currently are that the applicant:
- meets the Governance and Financial Viability Standard at the point of registration and demonstrates that it can sustain its financial viability on an ongoing basis, and
  - has in place management arrangements that enable it to demonstrate the capacity to meet the other Regulatory standards.
- 2.14 Both the registration criteria and the Regulatory standards have evolved over time, reflecting the increasingly complex social housing market and what we have learned about how registered providers may get into difficulties.
- 2.15 For an applicant seeking registration as a non-profit provider, there are additional criteria relating to its constitution. For all applicants, the second stage also includes an assessment that the applicant continues to meet the eligibility requirements.
- 2.16 Each of the two stages requires the completion of an application form and the provision of supporting information. The two forms, available from the RSH website, contain guidance on how to complete each section.
- 2.17 *Guidance for new entrants on applying for registration as a provider of social housing*<sup>4</sup> explains in full how to apply for registration.

## How we assess applications

- 2.18 At the preliminary application stage our assessment is against the eligibility requirements. At the detailed application stage it is against the published registration criteria. At both stages our assessment is based on the completed application form and the additional information the applicant has provided to support its application.
- 2.19 Where we can, we use publicly available information to test the information supplied by the applicant. For example, commercial property websites and our own published data on social housing rents<sup>5</sup> may help us to verify the information provided about intended rent levels. We review the applicant’s own website, if it has one, and other information such as that provided on the Companies House or Charity Commission websites, amongst others.

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<sup>4</sup> <https://www.gov.uk/guidance/register-and-de-register-as-a-provider-of-social-housing>

<sup>5</sup> <https://www.gov.uk/government/collections/statistical-data-return-statistical-releases>

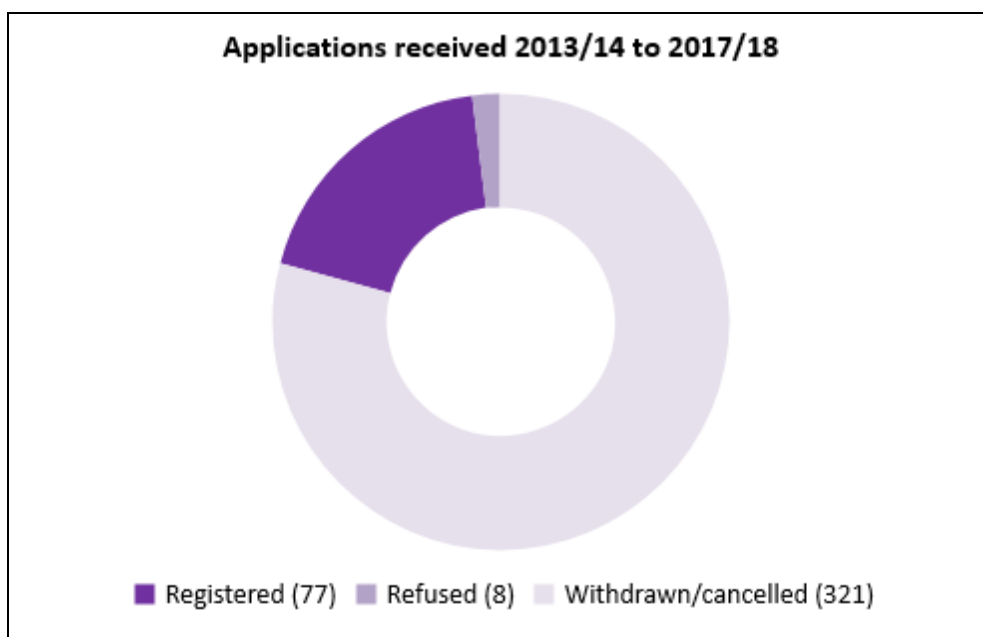


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- 2.20 We check for consistency between the information provided at preliminary and detailed application stages. We appreciate that plans may change between the preliminary and detailed stages but we need to be assured of the reasons for any differences.
- 2.21 Having assessed the application we provide feedback to the applicant, which identifies the areas where clarification or further evidence is needed. We seek further assurance or raise queries in almost all applications to us, and at this stage we may offer or agree to meet the applicant to clarify any issues. Following a formal response from the applicant we are then likely to conclude on final areas and seek to bring the application to a close.
- 2.22 In some instances we will want to meet the applicant's board members or attend a board meeting to inform our assessment.
- 2.23 In Sections 4 and 5 below we note some of the common issues we encounter in assessing applications at the preliminary and detailed stages.

### Registration statistics

- 2.24 As we note above, a high proportion of those who submit a preliminary application do not eventually go on to be registered. We refuse some applications – at both preliminary and detailed stage – but a far greater number simply fall away during the course of the assessment process. In many cases the application is withdrawn, in others it is cancelled by us where it has become clear that the application is not being progressed.
- 2.25 Figure A below shows that of the 406 applications received during the past five years – and not still in progress – 77 (19%) were registered, 8 (2%) refused and 321 (79%) withdrawn or cancelled.



- 2.26 The number of refusals shown in Figure A does not, however, reflect the full picture. Where we intend to refuse an application, we write to the applicant explaining our reasons and offering the opportunity to comment. The applicant may decide at that stage to withdraw its application and that would appear in the statistics as a withdrawal.
- 2.27 Most applications that fall away usually do so early in the process. Approximately half of all applicants drop out at the preliminary stage. In many cases this is because they are unable to demonstrate that the rents they charge or intend to charge are below market rent and/or are unable to provide sufficient evidence of their intent to become a provider of social housing.
- 2.28 Since we rarely get feedback from applicants that do not pursue their application there is no clear evidence as to why this is the case. We find, however, that often new start-up companies can approach us for registration without understanding the regulatory environment they are seeking to enter. Typically established non-profit applicants tend to have a better understanding of what it means to be regulated. They are also more likely to have existing frameworks to draw on to demonstrate effective governance.
- 2.29 Another factor may be that applicants reconsider whether the advantages of registration outweigh the obligations when they discover – perhaps through discussions with relevant local authorities – that some of the expected benefits (such as ‘exempt’ status for Housing Benefit purposes) may only be accorded to non-profit providers. However, it is important that applications reflect the genuine status of the applicant. Some are likely to conclude that the requirements of being registered outweigh the benefits. At Section 6 we set out some of the common misconceptions about registration and being regulated that we find in our dealings with applicants for registration.

### 3. What to consider before making an application

- 3.1 Applying for registration is a serious undertaking. A good application reflects both this and the professionalism of the applicant. It shows that an organisation is well-managed and financially sound, and that the applicant understands the registration process and the requirements that will apply to it if it is registered. In this section we set out what potential applicants should consider in advance of making an application to us.

#### **Be familiar with the application process**

- 3.2 Before embarking on an application the potential applicant should familiarise itself with both stages of the process and be satisfied that it will be able to meet all the requirements of registration and continuing registration. As we note above, a fair proportion of applications are not progressed by the applicant once they gain a better understanding of what is involved.
- 3.3 A potential applicant should also understand what it can and cannot expect from the Regulator during the process. It can expect us to be clear about the requirements for registration and to provide any further clarification needed. A potential applicant may contact us at any stage to discuss a prospective application. It cannot, however, expect us to provide advice on its business or about how it could meet the requirements, or to coach it through the application process.
- 3.4 An applicant can expect us to undertake a full assessment of its application and provide feedback on all aspects, identifying areas where clarification or further evidence is needed. Although we may have some follow-up questions, if we are not then provided with satisfactory assurance it is likely that we will seek to draw the process to a conclusion.

#### **Be familiar with the Regulatory standards**

- 3.5 The starting point for any organisation considering applying to be a registered provider is the published Regulatory standards. These define the expectations and outcomes that all providers are required to achieve. Accordingly, it is against these standards that an applicant will be assessed. The Codes that sit under the standards for Governance and Financial Viability and Value for Money amplify those standards and assist bodies in understanding how compliance with the standards might be achieved.
- 3.6 In preparing to submit an application, the applicant should consider in detail how it can demonstrate compliance with the standards. Guidance within the detailed application form will help the applicant to identify the sort of evidence it will need to provide.

### Know your business

- 3.7 The application must show that the applicant understands the nature of its business. It must show that the applicant has adopted governing documents – rules, articles of association etc. – that reflect the type of business and its purposes and that it is acting in accordance with them. Throughout the registration process we will be seeking assurance that the applicant is acting in ways that are consistent with its adopted rules.
- 3.8 We will also seek assurance that the applicant understands the skills required to manage the business. We expect the applicant to have identified the range of competencies, experience and technical knowledge needed for the type of the business it is involved in or planning to become involved in, and to have made sure that these skills are represented on its board. Alongside this, we expect the organisation to have adopted a code of governance that is appropriate for its type of business and to have in place arrangements to ensure that it complies with its chosen code.
- 3.9 A good application will demonstrate that the applicant has a clear understanding of the risks to which the business is exposed. While the organisation’s risk assessment should take account of broader sector risks<sup>6</sup> we expect it to identify the risks of its own particular business. We will be looking for applicants to understand what the risks are to delivering their plans and how they are managing those risks over the short, medium and long term.
- 3.10 Carrying out detailed and robust stress testing against identified risks and combination of risks and across a range of scenarios is a key requirement of the Regulatory standards. Again, we would expect an applicant to ask the ‘what if’ questions that are relevant to its particular business and to put appropriate mitigation strategies in place as a result.

### Know your stakeholders

- 3.11 The application should also show that the organisation has identified and gained the support of its stakeholders. These are likely to include relevant local authorities and lenders or grant-giving bodies.

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<sup>6</sup> As described in our *Sector Risk Profile*: <https://www.gov.uk/government/collections/sector-risk-profiles>

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- 3.12 While we do not expect binding contractual commitments to be in place we need to see that the business plan is underpinned by good evidence of support from relevant third parties. For example, where the business plan relies on a certain level of Housing Benefit we would expect to see evidence that this is supported by the local authority. Equally, where the plan assumes a grant allocation we would expect written confirmation from the grant-giving body. Where the applicant intends to provide social housing via a transfer of housing from another body, we expect written agreements setting out the terms of any transfer from relevant parties.
- 3.13 Key stakeholders will also include the organisation's intended tenants and, where relevant, organisations providing support to the particular client group. Again, we would expect evidence that the applicant has done its groundwork and has a good understanding of the needs and likely expectations of its client group.

### Apply at the right time

- 3.14 The right time to apply will usually be when the applicant's board has been formed and is in control, when the business model is fully developed, stakeholders are engaged and plans are in place that appear to be deliverable under a range of reasonable assumptions. Any earlier than this the applicant may find it difficult to demonstrate that it meets the registration requirements.
- 3.15 Where registration is a pre-condition to accessing grant or to another transaction, applicants will need to bear in the mind the time the application process may take and not leave it too late to apply.
- 3.16 The applicant will also need to bear in mind that it has to be in a position to submit a detailed application within six months of successful completion of the preliminary application stage.

### Provide the right information

- 3.17 The right information is information focused on the applicant's own business – the sort of information that a good board would be asking for to enable it to identify and manage the risks to achieving its objectives.
- 3.18 It is the relevance of the information that matters, not the quantity. The amount of information and evidence provided is likely to reflect factors such as the size of the applicant, its constitution and governance structure, its experience in social housing, the nature of its funding and future plans and the risks associated with its business model. We anticipate that the information and evidence required from applicants with straightforward business models will be less than for more complex or riskier business models.

## 4. Common issues at preliminary application stage

- 4.1 At the preliminary application stage the applicant is required to provide information that will enable us to assess whether it meets the eligibility requirements for registration defined in the HRA 2008. These are that it is an English body which is, or intends to become, a provider of social housing in England. We cannot register an applicant that does not meet these conditions.
- 4.2 Although the applicant's eligibility is first considered at preliminary application stage, it continues to be considered throughout the registration process. If relevant factors change, or if our review of the information provided at the detailed application stage raises doubts about whether the eligibility requirements are met, the applicant may no longer be able to proceed to registration.
- 4.3 We find that applicants commonly have difficulty providing assurance in relation to one or more of three key questions we ask to determine eligibility:
- Does the accommodation meet the definition of 'social housing'?
  - Where the applicant is not currently providing social housing is there evidence of its intent to do so?
  - Is the applicant the landlord?

### Is it social housing?

- 4.4 Social housing is housing to rent at below market level rents, or to buy through schemes such as shared ownership, that is made available to those whose needs are not served by the commercial housing market.

### Is rent below market level?

- 4.5 A very common issue at the preliminary application stage is that applicants do not provide sufficient assurance that the rent charged, or to be charged, is below market level. Applicants appear to find providing good evidence about a below market level of rent the most difficult part of the preliminary stage.
- 4.6 'Rent' in this context means the charge for the provision of the accommodation as distinct from any service charge identified separately to residents. We therefore ask applicants to provide information that clearly separates out rents from service charges or any other charged elements, so that a direct comparison can be made between the rent element and the market rental rate.

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- 4.7 In assessing the information supplied we look for assurance that the market rate – which will serve as the comparator for the applicant’s rent – has been determined on a sound basis, taking account of the type, size and location of the property. We expect evidence of the methodologies and definitions used and, in certain circumstances that valuations have been made in accordance with a method recognised by the Royal Institute of Chartered Surveyors.
- 4.8 We then look at the applicant’s approach to setting rent levels for new and existing tenants. This must provide assurance that rents are not subject to arrangements that will result in them ceasing to be below market rate.
- 4.9 Demonstrating that rents can be maintained below market level is often particularly difficult for applicants that intend to lease properties from the private sector to make available as social housing. Applicants that pay a market level for the properties they lease often fail to evidence that the rents they charge to their tenants are below market levels.
- 4.10 However, it may not be until the detailed application stage, when we ask for detailed costs and financial projections, that it is apparent that rental income previously stated will not cover costs. At this stage some applicants are not able to demonstrate ongoing viability based on rental and service charge assumptions.

### **Do service charges comply with legal requirements?**

- 4.11 To meet open market lease costs while keeping core rents below market level, some applicants seek to make up the shortfall by making a surplus on service charges. This is not permitted. The Landlord and Tenant Act 1985 requires that service charges are no higher than the actual cost of delivering the services.
- 4.12 We have seen instances where the applicant reconfigures its proposed rent and service charge levels during the course of the application process as it comes to understand more about legislative and Regulatory requirements. For example, the applicant might initially propose a weekly rent of £120 and a service charge of £80 but then – having appreciated the requirement to charge a below market rent – reverse it to £80 rent and £120 service charge and – having then recognised that service charge has to be limited to actual costs – seek to reverse or amend it again.

- 4.13 Constant changes in the assumptions about rents that underpin an application is an indicator to the following:
- the applicant does not have a robust rent setting methodology to ensure below market rates will continue to be charged
  - that there is a lack of clarity from the tenant's perspective about what rent and service charges they are charged
  - that the assumptions that form the basis of any financial forecasts or business plan may not be robust.

#### **Do rents comply with rent setting rules?**

- 4.14 Being below market rent is not the only requirement placed on the rents that may be charged by registered providers. At preliminary stage we seek assurance that rent setting methodologies ensure a below market level of rent is to be charged applicants must consider the implications of rent setting rules, which we will examine at detailed stage. For most social housing<sup>7</sup>, the way in which the initial rent and maximum annual rent increase is set is usually defined by the Regulatory Rent Standard and its associated guidance. However, for the period from 2016/17 to 2020/21, the Rent Standard rules are largely replaced by the rent setting provisions of the Welfare Reform and Work Act 2016 (WRWA 2016) in place to 2020.
- 4.15 In many cases applicants will also need to be familiar with Housing Benefit regulations. Although these are quite separate from the rent setting regulations (defined in the Rent Standard and the WRWA 2016) we find that there can be confusion between the two. A common misunderstanding, for example, is that the type of supported housing treated as 'exempt' accommodation for Housing Benefit purposes is also an 'excepted' category of accommodation for rent setting purposes, when different tests apply to each. Applicants may be providing accommodation that is an excepted category for rent setting purposes but the specific criteria set in WRWA 2016 must be evidenced.
- 4.16 Importantly, applicants need to be aware that welfare policy and requirements in relation to rent setting can and do change. This can have major implications for a provider's business plan. At the detailed application stage we seek assurance that the applicant has properly considered the risks to its income across a range of scenarios – including adverse changes to the rent setting and benefits regimes – and has put appropriate mitigation strategies in place as a result.

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<sup>7</sup> The Rent Standard and the rent-related provisions of the Welfare Reform and Work Act 2016 do not apply to certain types of the social housing. The excepted categories include intermediate rent accommodation, specialised supported housing, temporary social housing and care homes.



### Is housing being let to eligible tenants?

- 4.17 In addition to complying with rent requirements, to be classed as social housing the accommodation has to be made available to those whose needs are not served by the commercial housing market. Accordingly, we ask to see the applicant's allocation policy or, if the full policy has not yet been developed, evidence that the applicant has established the principles on which it will allocate its social housing.
- 4.18 We sometimes find that the allocation policy does not take account of the need to ensure that prospective tenants are eligible for social housing. This can be the case, for example, where the intended approach is just to advertise properties on lettings websites. We have also seen instances where the allocation policy is not aligned with the organisation's objectives, where it does not give priority to the client group that the applicant's rules state it intends to serve.

### Is there evidence of intent to provide social housing?

- 4.19 Although we are able to register organisations that are not yet, but are intending to become, providers of social housing we have to be satisfied that their plans are realisable. A statement of intent or a theoretical business model without evidence that it is achievable is not sufficient.
- 4.20 Applying at the right time is often key to providing assurance of intent. By the preliminary application stage we expect the applicant to be able to provide evidence either of existing housing that is to become social housing or of financial provision for leasing, buying or developing new social housing.
- 4.21 In assessing the application we will want to know what assurance the board has that its plan is realistic. How is the board satisfied that the funding will be available, that local authority support can be relied on, and that it will be able to lease property on terms that sustain rents at below market levels?
- 4.22 By the detailed application stage we expect to see that progress has been made towards becoming a provider. In particular we need to be satisfied that the funding on which the applicant is relying will be forthcoming at the time it is required and that the applicant can meet the terms on which it is provided. We expect any required planning permission to have been obtained.
- 4.23 We appreciate that applicants will be making progress on a number of fronts at the same time as progressing their application for registration. We appreciate too that it can be a 'chicken and egg' situation, that there is understandable reluctance to confirm a loan or perhaps offer a lease until an organisation is registered. Nonetheless, we cannot register an applicant unless we are satisfied that it has a realisable business proposition and that the assumptions upon which it is based are reliable and robust.

- 4.24 In most circumstances the plan should show the applicant becoming a provider of social housing within 12 months of registration. An applicant that is an intending provider will be required to commit to key milestones and a date by which it expects to become a landlord of social housing. If during the 12 months we are not satisfied by progress we are likely to propose compulsory de-registration.

**Is the applicant the landlord?**

- 4.25 We have received applications where the applicant's intention is that as a registered provider it would be the landlord in name only, with a third party undertaking the landlord's management and maintenance functions.
- 4.26 Such arrangements will be scrutinised in depth at detailed stage since, as landlord of the properties and recipient of the rent and any service charges, the applicant must demonstrate sufficient control and capacity to meet the consumer standards. How an applicant intends to ensure that the services for which it will charge tenants will be delivered is a particular area of focus.
- 4.27 Some applicants have present arrangements by which they sub-let their properties to a local authority or other body who then make it available to their licensees. In such circumstance the applicant would not be able to meet the criteria of a provider and landlord of the residential tenants.

## 5. Common issues at detailed application stage

- 5.1 At the detailed application stage the applicant must be able to satisfy us that it meets the Governance and Financial Viability Standard and has the capacity to meet the other Regulatory standards. It must also confirm that the information supplied at the preliminary stage as evidence of eligibility is unchanged or, if it is changed, to provide details. As we note above, we keep eligibility under review throughout the application process.
- 5.2 In assessing the information provided at the detailed stage we find that applicants commonly fail to provide assurance in relation to four particular areas of questioning:
- Is the business plan coherent and financial assumptions based on evidenced, robust assumptions?
  - Can the applicant demonstrate appropriate independence?
  - Are potential conflicts of interest managed effectively?
  - Does the board have the skills to manage the business?
- 5.3 Before registering an applicant we ask a further question to determine how it is to be designated on the register:
- Is the applicant non-profit or profit-making?
- 5.4 While the issues raised in the following part may not, in isolation, mean an applicant cannot demonstrate compliance with the relevant Standard. Where a number of issues in combination feature within a single application and we are presented with little or no mitigation strategies, it is likely the applicant will not be successful.

### **Is the business plan coherent?**

- 5.5 To assess compliance with the Governance and Financial Viability Standard we ask for the applicant's business plan, forecasts of income, expenditure and cash flow, the assumptions on which the forecasts are based, evidence as to the accuracy of assumptions and evidence of the resilience of the plan to adverse changes in the operating environment. Taking all elements together we may find that it does not amount to a coherent plan that appears capable of delivering the applicant's stated objectives.

### Specialised supported housing

- 5.6 We sometimes find a lack of coherence where the applicant is seeking registration as a provider of specialised supported accommodation. This is a category of supported housing that offers a high level of support to vulnerable adults, comparable to the services provided in a care home and provided under an agreement with a local authority or NHS commissioning body. It is also a type of housing that is not subject to the rent controls that apply to most social housing and this makes it an attractive prospect for private enterprise.
- 5.7 What we see from some applicants, however, is a budget where income reflects the higher rents permitted for specialised supported housing but expenditure does not allow for the level of housing support the applicant states it will provide. For example, the budget may include provision for only a half-time post where an applicant may state it will provide the equivalent of two support posts to help their tenants sustain their tenancies.

### Lease-based business models

- 5.8 The financial plans we review at detailed stage can also raise concerns simply because of the nature of the business model. As we note above, this is commonly the case where the applicant intends to lease property from the private sector to make available as social housing. We find issues with both long-term and short-term lease arrangements.
- 5.9 With long-term leases the issues are usually to do with lease costs being indexed to inflation over 30 years. How is the board assured that it can manage the long-term risks of index-linked lease costs when its income, from rents that have to remain below market level, is vulnerable to changes in welfare and rent setting policy? How does it manage the risks of the timescales for which there is certainty in income levels against the usually much longer time period of certainty in expense? What strategy does it have for a managed exit that protects tenants if changes in policy make the business model unviable?
- 5.10 With short-term leases the main issue again is viability; although with weekly tenancies the potential for a managed exit can be greater than with long-term tenancies. Nonetheless, the key question is the same: how to meet market rate lease costs while charging below market rents?
- 5.11 In short and long-term leasing arrangements assumptions about and protection against periods of voids are a key consideration in demonstrating that risks can be effectively managed.

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- 5.12 For some applicants the balancing factor is an opportunity to lease property at below market rate. We see examples where an applicant – usually a charity – has been able to negotiate a lease at below market rate because the social as well as financial return has been a consideration – for example, where the owner seeks to make the property available for a particular client group. In other instances, however, it can raise concerns about the relationship between the applicant and the property owner and about the independence of the intending provider.

### Can the applicant demonstrate independence?

- 5.13 A central requirement placed on registered providers by the Governance and Financial Viability Standard is that they manage their affairs with independence. Board members must exercise independent judgement and act wholly in the interests of the registered provider and its tenants.
- 5.14 Equally, registered providers must not act in a way that inappropriately benefits other organisations or individuals. The Standard states *'Registered providers shall ensure that any arrangements they enter into do not inappropriately advance the interests of third parties, or are arrangements which the Regulator could reasonably assume were for such purposes'*.
- 5.15 Accordingly, at the detailed application stage we ask the applicant to provide details of any relationship it has with a third party. A 'third party' in this context is any person or body which is not the applicant organisation. This includes the applicant's board members and directors acting in any capacity other than as the applicant's board member or director. It also of course includes any organisation or individual with which a board member or director has a business or personal relationship.

### Connected parties

- 5.16 Many applicants are subsidiaries of other organisations – which may or may not themselves be registered providers – and this does not in itself represent a breach of the requirement for independence. There must, however, be effective mechanisms in place to ensure that the activities or influence of the parent company or another part of the group cannot have a damaging effect on the registered provider or its ability to meet Regulatory requirements.
- 5.17 Questions about the independence of an applicant can arise where the applicant is constitutionally a separate entity but retains a connection with a founding organisation. We have found instances where the applicant's board members are outnumbered at meetings by attendees who have no constitutional role but instead have a connection with an associated company. In such circumstances we need to be assured that there are effective mechanisms in place to ensure that decisions are being taken in the interests of the applicant and not the associated company.

## Transaction charges

- 5.18 In reviewing arrangements with third parties, we focus in particular on the charge made for any transactions. We check that inflated prices are not being paid to a contractor or that services are not being delivered to or received from another organisation without a suitable charge being made. Where we find unusual charging arrangements it is often where the service is being delivered by or to a business partner or relative without effective procedures in place. This includes ensuring that the arrangement does not represent a method for extracting profit from a non-profit provider or breach the Governance and Financial Viability Standard by disadvantaging the provider and/or inappropriately benefiting a third party.
- 5.19 Inappropriate charging could also damage the provider's ability to comply with other Regulatory standards. Paying inflated prices, for example, would place it in breach of the Value for Money Standard which requires that registered providers obtain, and can demonstrate, best value from assets and resources.

## Are potential conflicts of interest managed effectively?

- 5.20 Conflicts of interest or perceived conflicts of interest can arise from time to time in any organisation and the applicant must be able to demonstrate that it is able to resolve them effectively. We expect to see appropriate provisions in governing documents and policies but we also need assurance about how conflicts are managed in practice. How is the board assured that conflicts are managed in line with its rules and code of governance, that decisions are made wholly in the interests of the applicant and that it is obtaining best value from its transactions?
- 5.21 We see instances where, rather than being an occasional unforeseen occurrence, conflicts of interest are inherent in the way the applicant or its business model is established – for example, where the applicant is proposing to lease property from a family member or where directors are also directors of the company providing the management services. As in all cases, the applicant must be able to demonstrate a realistic approach to managing conflicts. The interests of good governance are clearly not served by a majority of board members leaving the room whenever there are decisions to be made.
- 5.22 If an applicant is charitable we have to be satisfied that it is aware of and has frameworks in place to ensure it is meeting charity requirements as well as the Regulatory standards. While there are a range of requirements that must be met, one important requirement is that any benefit to individuals, other than the charity's beneficiaries, has to be incidental to the provision of the service. This is particularly relevant in applicants that have directors in common with organisations providing services or leasing housing to the charity.

### Does the board have the skills to manage the business?

- 5.23 As we note above, our co-Regulatory approach means that we regard the board of a registered provider as being responsible for ensuring that the business and its services are managed effectively and meet the requirements of the Regulatory standards. In assessing an applicant for registration we need to be assured therefore that its board is able to fulfil this role effectively.
- 5.24 Collectively board members must possess the mix of skills, experience and perspectives to match the activities they are undertaking, or planning to undertake, and to manage the risks those activities bring. The board must also be able to identify when it needs to supplement its own skills and bring in impartial external expertise to help it to make well-informed, high quality decisions.
- 5.25 We find instances where it appears that some members have been brought onto the board simply to add to the numbers rather than to bring relevant skills and experience. This may be where an applicant's board is comprised largely of persons connected to another organisation and it seeks to meet the Regulator's requirements by increasing the number of independent members. This only helps to meet Regulatory requirements if new members have the skills and experience to understand the business issues presented to them and their independent judgement is welcomed.

### Is the applicant non-profit or profit-making?

- 5.26 If an applicant is registered, the Regulator is required by the HRA 2008 to designate it on the register as non-profit or profit-making. The registration guidance<sup>8</sup> sets out the designation criteria.
- 5.27 Although the detailed application form asks the applicant whether it considers that it should be designated as non-profit or profit-making, designation is decided by the Regulator. We designate initially on admittance to the register and can re-designate after registration. If we believe that a non-profit registered provider has become profit-making we can change its designation to profit-making at any stage.

### Providing assurance of non-profit status

- 5.28 To be considered for designation as a non-profit provider, the applicant's non-profit purpose must be stated in its governing documents. This alone, however, does not provide sufficient assurance. We need to be satisfied not just that non-profit status is embedded in the constitution but that the applicant's business arrangements do not allow for surpluses to be channelled into other companies or to associated individuals.

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<sup>8</sup> 'Guidance for new entrants on applying for registration as a provider of social housing' and 'Detailed application form for registration of new entrants as providers of social housing', both available at <https://www.gov.uk/guidance/register-and-de-register-as-a-provider-of-social-housing>



- 5.29 While an applicant may not overtly be distributing surpluses to shareholders we find examples of profit being extracted from the business in other ways – directors being paid inflated salaries, loans at unusually high interest rates, fees for services provided by connected companies being higher than market levels. We will look for evidence that the board has tested and is satisfied that such charges are reasonable.

### **The importance of designation**

- 5.30 Non-profit designation is an important consideration for certain stakeholders. With local authorities generally preferring to work with non-profit registered providers, profit-making status can exclude a provider from benefiting from 'exempt' status for Housing Benefit purposes or from an s106 agreement. These exclusions can have significant implications for an applicant and we would need assurance as to how these are factored into the business plan.
- 5.31 The landlord being a non-profit organisation can also be important for social housing tenants. Profit-making status may disadvantage a registered provider where a transfer of stock from another provider requires a positive ballot outcome by tenants. Equally, a non-profit provider may find it easier than a profit-making provider to acquire a portfolio of shared ownership properties from another non-profit provider.
- 5.32 We find instances where, having understood the limitations of profit-making status, an applicant withdraws its original application and reapplies with the aim of being designated as non-profit. There have also been cases where a profit-making registered provider seeks re-designation to non-profit. In any such case we would need to be satisfied that the applicant was indeed operating as a non-profit provider.



## 6. Some misconceptions about registration

- 6.1 The high proportion of withdrawn or cancelled applications suggests that a number of applicants embark on the registration process without fully understanding what lies ahead. Applicants that have previously registered with Companies House or with the Regulator of Community Interest Companies can be surprised by what is involved in becoming a registered provider – that it is not a simple tick-box exercise with registration the certain outcome. We also find that applicants misunderstand their and our respective roles in the process. In this section we identify the common misconceptions about registration.

### ***‘The Regulator encourages new providers’***

- 6.2 We seek neither to encourage nor discourage applications for registration. The Regulator of Social Housing has no statutory duty to maximise the number of registered providers nor to help organisations to be registered. Our duty in relation to registration is to assess applicants and to register those who meet the criteria.

### ***‘Registration is a quick and simple process’***

- 6.3 Depending on the nature of the application and the responsiveness of the applicant to requests for additional information, the assessment process can take as much as a year or more to complete. We progress registration applications as quickly as we can but we have to be confident that any new entrant to the sector is, and will continue to be, well governed and financially viable and has the capacity to meet all Regulatory standards.

### ***‘The Regulator will seek out the assurance it needs’***

- 6.4 In preparing the application and responding to any requests for further evidence it is for the applicant’s board to decide what assurance it can provide that it meets requirements. It is up to the applicant to demonstrate that it meets the criteria and not for the Regulator to search for assurance.
- 6.5 We will provide feedback on the application and may need to ask for further evidence of compliance. We will not, however, enter into an iterative process with an applicant to elicit the assurance required.

***'Registration is automatic in certain circumstances'***

- 6.6 Local authorities that own homes are automatically registered but there are no other circumstances in which registration is 'automatic'.
- 6.7 We would note in particular that approval for grant does not imply, or lead to, approval for registration. Our decision to register is entirely separate from and independent of Homes England's or the Greater London Authority's investment decisions. Similarly, a developer building a scheme's social housing element as part of a s106 agreement has no automatic right to be registered as a provider.

***'Applicants only have to demonstrate a reasonable path to compliance'***

- 6.8 Until 2015 applicants were required only to demonstrate 'a reasonable path' to meeting the service delivery standards and the governance requirements of the Governance and Financial Viability Standard<sup>9</sup>. This is no longer the case. Applicants must fully meet the requirements of the Governance and Financial Viability Standard at the time of registration and be able to demonstrate that they are able to meet the other Regulatory standards.
- 6.9 We are not able to register an applicant conditionally i.e. set conditions that must be fulfilled for the registration to be effective, even if the applicant can demonstrate that it can meet the criteria within a very short time of any registration.

***'The Regulator helps applicants to achieve registration'***

- 6.10 We do not coach applicants. We publish guidance that explains the registration requirements and are happy to provide any clarification needed. It is not our role, however, to make sure that applications are successful.
- 6.11 Nor do we negotiate registration. If an applicant does not meet the criteria it cannot be registered.

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<sup>9</sup> It always was the case that applicants had to meet the financial viability requirements of the Governance and Financial Viability standard at the point of registration.

***'There are different requirements for different types of organisation'***

- 6.12 All applicants – whatever their size, status or type of business – are required to meet the same registration criteria.
- 6.13 We recognise, however, that each applicant will have a different business model – some involving more risk than others – and will be at a different stage in its development. We take this into account in reviewing the information provided and assessing compliance with the registration criteria.

***'There are lesser requirements for smaller organisations'***

- 6.14 All applicants – whatever their size, status or type of business – are required to meet the same registration criteria.

***'Registration takes account of housing needs'***

- 6.15 Provided the applicant meets the registration criteria, we make no judgement about the type of housing need it seeks to meet. For example, the extent of unmet housing need in a certain location would have no bearing on our assessment of an applicant. If an applicant meets the registration criteria it will be registered; if it does not it cannot be registered.

## 7. What it means to be registered

### Regulatory requirements

- 7.1 Being a registered provider brings serious and significant obligations that may have far-reaching implications for the way the organisation operates.
- 7.2 From all registered provider – large or small, non-profit or profit-making – we require compliance with our published standards. The standards and the requirements they place on registered providers are set out in separate documents available on our website. Box 1 summarises the standards.

#### Box 1: The regulatory standards

Standard	Summary of requirement
Governance and Financial Viability	Ensure effective governance and resource management that delivers long-term financial viability
Value for Money	Obtain best value from assets and resources
Rent	Charge rent in line with Government rules
Home	Keep homes safe, decent and in a good state of repair
Tenancy	Let homes and manage tenancies in a fair, transparent and efficient way
Neighbourhood and Community	Keep the wider area clean and safe, help to tackle anti-social behaviour and promote community wellbeing
Tenant Involvement and Empowerment	Understand and respond to the diverse needs of tenants, provide choice and opportunities for involvement, resolve complaints fairly and promptly

- 7.3 The Regulatory framework places expectations on providers that includes but is not limited to:
- Having a robust and prudent business planning, risk and control framework
  - Carrying out detailed and robust stress testing against identified risks and combinations of risks and putting appropriate mitigation strategies in place
  - Assessing compliance with the Governance and Financial Viability Standard at least once a year and certifying compliance in the annual accounts
  - Adopting and complying with an appropriate code of governance
  - Communicating in a timely manner with the Regulator on material issues that relate to non-compliance or potential non-compliance with the standards
  - Maintaining an up to date record of all assets and liabilities, including potential liabilities such as long-term lease commitments
  - Publishing information annually on Value for Money performance
  - Notifying the Regulator of certain activities
  - Registering with the Housing Ombudsman and promoting its service to tenants.
- 7.4 All registered providers are also required to prepare their annual accounts in accordance with our accounting direction<sup>10</sup> and the Statement of Recommendation Practice for registered social housing providers.
- 7.5 We appreciate that for some organisations and individuals who are used to operating – and operating successfully – in the private sector, being part of a regulated sector can seem bureaucratic and restrictive. However, as we note above, ensuring the continued good governance and viability of all providers is crucial to maintaining support for the sector.
- 7.6 Once gained, registered provider status is not easy to relinquish voluntarily. If a registered provider is providing social housing there are de-registration criteria to be met to ensure the continued protection of tenants and assets. Nor can registered provider status be suspended for a period and then resumed. Registration entails a continuing obligation to comply with the Regulator’s requirements.

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<sup>10</sup> <https://www.gov.uk/government/publications/the-accounting-direction-for-social-housing-in-england-from-april-2015>. The directive applies to profit-making registered providers only in so far as their accounts relate to social housing activities.

## How we ensure standards are met

- 7.7 Although we require ongoing compliance with the standards, we seek to minimise interference by taking what we term a ‘co-Regulatory’ approach. This means that we regard the provider’s board as being responsible to its tenants for ensuring that the business and its services are managed effectively and that the provider complies with all Regulatory standards.
- 7.8 It also means that we place the onus on providers to demonstrate their compliance – hence the requirement that providers assess themselves against Regulatory standards at least once a year and certify compliance in their annual accounts. Hence too the requirement that providers communicate with us in a timely manner on material issues and risks.
- 7.9 As regards our contact with providers after registration, we vary our approach depending on the size of the provider and the amount of risk to which they are exposed. We do not intend to be in regular contact with providers that have fewer than 1,000 social housing units although if we have reason to be concerned or if we judge the risks faced by an individual provider, or a certain type of provider, to be higher we will adjust our approach accordingly.
- 7.10 *Regulating the Standards*<sup>11</sup> describes our approach to regulation. Box 2 summarises the approach by provider size.

### Box 2: Summary of the approach to regulation by provider size

Regulatory approach	Registered providers owning	
	1000+ homes	<1000 homes
All Regulatory standards applicable	✓	✓
Annual data return requirements applicable	✓	In part
Must complete Quarterly Survey	✓	
Must publish annual Value for Money performance information	✓	✓
Must submit early information on restructures	✓	✓
Must submit relevant statutory notifications in relation to constitutional changes and disposals	✓	✓
Subject to annual Stability Check	✓	In part
Subject to periodic In Depth Assessment	✓	
Regulatory judgements published	✓	
Regulatory notices applicable	✓	✓
Gradings Under Review list applicable	✓	✓

<sup>11</sup> <https://www.gov.uk/government/publications/regulating-the-standards>

## Our powers of intervention and enforcement

- 7.11 In keeping with co-regulation principles we expect providers to identify problems and take effective action to resolve them. If a provider takes responsibility for self-improvement and we conclude that it has the ability to respond to the problems we will work with it to achieve the necessary corrective actions.
- 7.12 However, in circumstances where self-improvement has not succeeded or where a provider is unable or unwilling to respond positively or where we conclude that such an approach is not appropriate – for instance where urgent action is necessary – we may need to consider the use of our statutory powers.
- 7.13 The powers we can use when a provider breaches – or is likely to breach – one of the published standards varies according to the circumstances. In serious cases they include the power to order an inquiry, to suspend or remove board members and appoint others, and to direct the transfer of management or land to another provider.
- 7.14 Some powers can be exercised in relation to all private registered providers; some in relation to non-profit providers only.
- 7.15 *Guidance on the Regulator’s approach to intervention, enforcement and use of powers*<sup>12</sup> describes our general approach to intervention and enforcement and gives further information about our statutory powers.

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<sup>12</sup> <https://www.gov.uk/government/publications/guidance-on-the-Regulators-approach-to-intervention-enforcement-and-use-of-powers>

## 8. Further reading and references

Further information about the Regulator's approach to regulation and registration and about providers on the register is available on the Regulator's website: [www.rsh.gov.uk](http://www.rsh.gov.uk). Documents that may be of particular relevance and interest to applicants for registration are set out below.

### Regulatory standards and approach

- Regulating the Standards
- Regulator's approach to intervention, enforcement and use of powers
- Regulatory standards (and associated Codes of Practice\*)
- Rent Standard guidance
- Value for Money metrics – Technical Note
- Value for Money metrics – Summary and Technical regression reports

### Registration guidance and forms

- Guidance for new entrants on applying for registration as a provider of social housing
- Preliminary application form for registration of new entrants as providers of social housing
- Detailed application form for registration of new entrants as providers of social housing

### Summary of regulation and the information we require

- Brief guide to regulation of registered providers
- What is the Regulatory framework?
- Regulatory framework requirements
- Information required from registered providers

### Other regulatory reports

- Consumer regulation review
- Global accounts of private registered providers
- Quarterly survey of private registered providers
- Sector risk profile
- Statistical Data Return





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**RSH regulates private registered providers of social housing to promote a viable, efficient and well-governed social housing sector able to deliver homes that meet a range of needs.**