

Guidance Note

Separation of Services

Purpose of this guidance note

This guidance note is intended to outline our expectation that registered community housing providers (CHPs) have a clear organisational separation between the delivery of housing and any other support services they may offer to social housing tenants.

Introduction

As the Regulator, our role is to ensure:

- CHPs are well-governed, remain financially viable, and deliver appropriate housing services to their tenants; and
- there are sufficient protections in place for social housing tenants.

In our view, the blurring of the provision of housing and other social services potentially puts these objectives at risk. This is because the relationship between a landlord and tenant is not balanced; in one way or another, the landlord always holds the balance of power.

If there is no clear separation between the landlord and the service provider, a tenant could feel obligated to accept additional support services provided by their landlord's wider business operations in order to secure somewhere to live.

If a tenant is receiving support services from the wider organisation, which for some reason is not meeting their needs, they may not feel empowered to ask for a change in provider out of fear of losing their home.

Therefore, a social landlord's focus should be on "does this individual or family need a home?" Any other support service that you think they may benefit from should be offered and agreed in a separate process to the allocation of housing.

Our approach

We expect a CHP to assist its tenants to access additional services to help them sustain a tenancy, for example, by linking them to budgeting, employment or training services, or other health-related support services e.g. mental health services.

Indeed, one of the key themes of the Social Housing Reform Programme is to better integrate a tenants' housing need with other services, and it is recognised that CHPs are often in a better position to make these connections, than a single Government provider.

To link tenants to appropriate support services while ensuring that tenants' rights are protected, CHPs must:

- demonstrate an organisational separation between the housing arm and the support services arm, if the organisation offers support services as part of its wider business operations; and
- have in place, policies and procedures that ensure housing is offered to social housing tenants based on housing need, not on their willingness to accept additional support services.

Assessment against the Performance Standards

If there is no clear separation of services, or a CHP places non-housing related conditions in a tenancy agreement, this is potentially in breach of three key Performance Standards.

The potential breaches are outlined below.

Performance Standard 3: Demonstrates financial viability and solvency at all times

Registered CHPs must demonstrate that income from housing activities (i.e. rental income) is sufficient to cover expenses

associated with housing delivery.

This is because housing provision usually takes place over a longer period of time, whereas contracts for other services (e.g. mental health services purchased by a District Health Board) typically have shorter contract periods (1-3 years). If a CHP is using income from support service contracts to cross-subsidise its housing operations, this could put the provision of housing at risk should the contract for the additional support services end.

Performance Standard 4(a): Compliance with all relevant legislative requirements (including the Residential Tenancies Act 1986); and

Performance Standard 4(b): The tenancy management process is transparent and responsive

In order to comply with Performance Standards 4a and 4b, registered CHPs need to demonstrate compliance with all relevant legislation, and have policies and procedures that ensure housing is allocated fairly and transparently on the basis of housing need.

The Health and Disability Code of Consumer Rights Regulations 1996 (the Code)

The Code requires that providers, who offer counselling or other health services, ensure that those services are provided to consumers in a manner consistent with their needs, and only if that consumer has made an informed choice and gives informed consent.

Tying the offer of a house to a requirement to accept support services potentially undermines the tenant's ability to give informed consent, especially if they have no other housing options.

Tenancy agreements are therefore not an appropriate place for registered CHPs to require tenants or prospective tenants to accept non-housing services, especially health care.

The Bill of Rights Act 1990

The Act applies to all services offered by an organisation. Care should be taken that any actions by the CHP do not breach a tenant's right to freedom of thought, conscience, religion and belief, including the right to have opinions, without interference.

Finally, we encourage CHPs to consider their role as a landlord, and remember that under the *Residential Tenancies Act 1986*, a tenant has a right to the quiet enjoyment of their property.

Benefits of this approach

A clear organisational separation between the delivery of housing services and other support services will:

- provide reassurance to tenants that their application for housing is not dependent on their willingness to accept other services;
- ensure that registered CHPs are not breaching relevant legislation (and the Performance Standards) when providing housing services;
- ensure that registered CHPs remain financially viable and can provide sustainable housing for tenants; and
- align with international best practice.

Where a landlord is asked to provide housing to a tenant that is unlikely to succeed in their tenancy without appropriate support services in place, we recommend a separate agreement for service is signed between the landlord and the support service organisation.

We want to ensure CHPs and tenants are protected in the delivery of quality social housing in the community.

Further information

If you have any questions, please contact us at chra@mbie.govt.nz.