

## Leasing Property: Key Principles and Regulatory Expectations

### Introduction

1. In making decisions about whether or not to lease, Regulation & Inspection expects RSLs to follow the conditions set out in the General Consent and also in the Raising Standards Chapter, "*Housing with Support: Partnership Arrangements and Tenancy Issues*" (revised May 2004). This appendix summarises the key points in these documents but RSLs should refer to them for detailed guidance.

### Key Principles for RSLs when leasing

2. **Contribute to Supporting People** RSLs that are not direct support providers should consider partnership arrangements with specialist agencies in order to make their contribution to supporting people in the local community.
3. **Provide Direct Tenancies** Where tenants are receiving support in mainstream, self contained housing, the expectation is for the tenancies to be directly with the RSL. Leasing property should only be considered once all other options have been examined by the RSL and found to be inappropriate
4. **Maximise Security of Tenure** Different tenancy options are available depending on the nature of the housing. RSLs should aim to give the most secure form of tenancy compatible with the purpose of the housing.

### Leasing Properties

5. In general, leasing to another body is likely to be most appropriate where the accommodation is:
  - specialist supported accommodation and needs to be managed by a support provider. Examples include accommodation registered with the Care Commission as a care home, for example, for people with dementia;
  - very short term accommodation for specific groups, for example, a women's aid refuge;
  - property being leased to a local authority to provide a day care service;
  - for staff sleepover or office accommodation necessary to provide support to individuals in highly supported or multi property projects;
  - commercial property being leased on a commercial basis;
  - property being leased to an organisation for community benefit\* (where this fits with the RSL's wider action strategy and/or is property that is difficult to let);

- RSLs should only lease properties to a profit-making organisation where they are a specialist organisation providing housing to meet Scottish Ministers' priorities, for example housing for asylum seekers.
- \* Examples of community benefit include:
  - the lease of an accessible base which the community, or a number of people in the community, can get information and advice from. This could include advice on welfare rights, disability rights, money advice etc.
  - the lease of a base to allow staff from a project to deliver a service to the community. The base could be used as a drop in centre, a training venue, or could provide residential accommodation for staff while on duty (e.g. when providing support to residents in dispersed flats in the area).

### **Model Leases, Tenancies and Occupancy Agreements**

6. Where RSLs decide to lease property Regulation & Inspection expects the appropriate SFHA Model Leases and Occupancy Agreements to be used. These are available from the SFHA website. There may also be situations where other models are appropriate such as the short SST, the Short Assured Tenancy or Assured Tenancy.
7. If specific amendments are made to the Models or if these Models are not used, the RSL is expected to be able to justify the reasoning behind this and to have legal advice where appropriate. Communities Scotland may examine this as part of its regulatory role.
8. Where accommodation is let for very short periods (i.e significantly less than six months) there is no Model agreement currently available. RSLs must ensure that the agreements they use in these circumstances reflect, as a minimum, the regulations covering minimum rights for Hostel Dwellers due to be published under Section 7 of the Housing (Scotland) Act 2001.
9. Where a property is being leased on a commercial basis there is also no model lease available. RSLs should take legal advice when drawing up an appropriate agreement and should ensure that risks are managed and rental income is sufficient to cover all costs including major repairs.

### **Length of Lease**

10. When leasing property, RSLs must ensure this represents the best use of their assets and that the arrangement is sustainable.

11. In general, leases should be limited to a period of three years. Where properties are being leased to local authorities to provide temporary accommodation for homeless people the term should generally be limited to one year. This is to avoid properties being stigmatised. It will be acceptable to have leases for up to three years where there are sound management reasons such as the design of the property or level of investment by the local authority.
12. RSLs may enter into leases for longer than three years where the project is unlikely to alter in the foreseeable future. In some situations the support provider may find it difficult to plan for the longer term if the project's existence can be guaranteed only for three years.
13. RSLs are expected to regularly review how well a lease is operating and hold regular liaison meetings with the lessee. Over and above this, where RSLs enter into leases for longer periods, such as ten years, and are not using the Model lease, it is essential that the lease contains break clauses every three to five years. These arrangements allow the parties to terminate the lease more easily where they believe it is no longer the most satisfactory arrangement.
14. The review process for each leasing arrangement should be started three to six months before the lease is due to expire.
15. Longer leases, i.e. leases for longer than three years, are acceptable for commercial premises. However RSLs still need to ensure arrangements are sustainable and risks are managed.

### **Audit Trail**

16. RSLs must record the reasoning behind decisions to lease property. Before agreeing to a lease under the General Consent RSLs must have a system in place to ensure a reliable audit trail is maintained.
17. In particular, RSLs must be able to demonstrate that they have considered options in terms of whether to lease and what type of agreement is being used by the lessee. More detail on this is provided in the suggested Model Leasing Policy. Communities Scotland may examine this audit trail as part of its regulatory role.

## Model Policy (Example to be adapted by RSL)

### Purpose of policy

1. The purpose of this policy is to clearly define the circumstances in which we will lease properties and the organisations we will lease to. Staff have delegated authority to enter into leasing arrangements in line with this policy but any proposal to lease which falls outwith the terms of this policy must be referred to the governing body for a decision.

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2. Our aim is to meet our obligations to promote equalities and contribute to meeting the needs of the wider community. To achieve this we will make a number of properties available to organisations working with people with support needs and to local authorities where appropriate.

Where leasing is found to be the most appropriate option the governing body delegates authority to the **(named posts within the RSL at Management Team Level)** to sign agreements on its behalf.

- a) In line with Performance Standards and good practice **(Name of RSL)** will only lease properties to a third party on an exceptional basis. Our policy is to provide the most secure form of tenancy compatible with the purpose of the housing. Therefore, wherever possible we will provide direct tenancies for individuals. For example, generally when the accommodation is self contained and long term we do not consider leasing to be appropriate.
- b) When we lease property we will ensure the lessee uses the appropriate model leases, tenancy and occupancy agreements currently available (see Annex 2).
- c) When we enter into a lease where we need to consider a variation on an existing model tenancy or occupancy agreement we will seek legal advice to ensure that we are maximising the security of tenure for the individual. This may arise because of the design of the accommodation or the nature of the client group.

### Meeting the needs of our Client Groups

3. To meet our policy objectives we will generally only lease property for use as temporary accommodation. There will be exceptions however where the accommodation is a person's permanent home. Accommodation registered with the Care Commission as a care home, for example, for people with dementia would fall into this category.

4. We will lease properties to the following organisations where it is appropriate due to the client group being housed and the nature of the support being provided. (***This list should be tailored by each RSL as appropriate***)
  - Women's Aid. Accommodation for use as a refuge.
  - (Name of Local Authority(ies)) Accommodation for use as temporary accommodation for homeless people.
  - (Name of Voluntary organisation or RSL) Accommodation registered as a care home, for example, for people with dementia.
  - (Name of Voluntary organisation or RSL) Office / sleepover accommodation for staff serving highly supported or multi property projects.
5. We will make every effort to safeguard our properties and the people living in them. In determining an organisation's suitability as a lessee we will consider its track record including its financial position (consideration of financial viability is relaxed in the case of local authorities).
6. If organisations not listed want to lease property from us the (**named senior member(s) of RSL staff**) will present a report to the governing body making recommendations as to their suitability.

### **Managing Equalities**

7. Our policy is to ensure fair and open access to our housing and to be responsive to people's individual support needs. We will therefore ensure that appropriate selection and assessment criteria are used by the lessee in allocating the properties.
8. We undertake to ensure that equal access to appropriate property types and locations across the range of our stock is given to lessees. Properties made available for leasing should not be confined to one particular area or to less desirable stock.

### **Audit Trail**

9. We will maintain a clear audit trail showing that we have;
  - a) Examined all other available options in deciding that leasing is the most appropriate arrangement;
  - b) Ensured that the lessee has granted the most secure form of tenure compatible with the purpose of the housing;
  - c) Demonstrated good reasons for departing from the terms of any model agreements. This should include where the;
    - I. lease is for longer than three years;
    - II. appropriate SFHA Model lease is not used;
    - III. Model is used but some clauses are omitted or amended;
    - IV. appropriate model occupancy or tenancy agreement is not used.

- d) Managed risks, covered costs and taken steps to ensure sustainability where it is a commercial lease.

### **Performance and Review**

10. We will review the management of leased properties regularly by holding liaison meetings with the lessee at least every six months or as appropriate to the project.
11. We will report quarterly/six-monthly/annually (the frequency of reporting will depend on the volume of leases but **as a minimum should be annually**) to the governing body setting out;
  - the number of leases;
  - the organisations we have leased property to;
  - the expiry date for the lease;
  - any management issues relating to the conduct of the lease (this should include estate management issues, complaints made and received, financial issues and repairs) and;
  - whether we have renewed leases.
12. This policy will be updated as required and reviewed annually.

## General Guide to Tenancy and Occupancy Agreements

1. RSLs must seek legal advice where they propose to enter into a new type of let to ensure that they are maximising the rights of the tenant or occupant. The following gives some general examples of the options for residential property leased for residential purposes. These examples do not cover every situation and each RSL will need to assess the most appropriate arrangements for each set of circumstances bearing in mind the key principles and regulatory expectations relating to leasing.
2. Where property which can be classed as a separate dwelling is leased to a local authority to house homeless people temporarily and the person is likely to be in the property for 6 months or more, the Short SST should be used.
3. If accommodation is let for very short periods (i.e significantly less than six months) there is no model agreement currently available. RSLs must ensure that the agreements they use in these circumstances reflect, as a minimum, the regulations covering minimum rights for Hostel Dwellers due to be published under Section 7 of the Housing (Scotland) Act 2001.
4. Generally, we would expect the appropriate Model occupancy agreement to be used where RSLs are leasing property which cannot be classed as a separate dwelling, or is short term to a local authority or voluntary organisation providing accommodation for single people needing support.
5. Leases of longer term accommodation, which can be classed as a separate dwelling, to either a local authority or another RSL for people needing support would generally use a short SST or the Model Occupancy Agreement.
6. Where there is a lease to a voluntary organisation of separate dwellings which are providing longer term accommodation to people needing support we generally expect assured, short assured tenancies or the Model Occupancy Agreement to be used.