



Separation of Services Guidance Note

Purpose of the guidance note

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

Introduction

As the Regulator, one of our legislated objectives is to ensure that tenants are appropriately housed.

The blurring of the provision of housing and other support services potentially puts this objective 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 a tenant is receiving support services from the wider organisation, which is not meeting their needs, they may not feel empowered to disengage with support services or ask for a change in provider out of fear of losing their home.

In addition, if there is no clear separation between the landlord and the support provider, a prospective tenant could feel obligated to accept additional support services in order to secure somewhere to live.

CHPs must also be able to demonstrate that their community housing operations are independently financially viable and that income received from their housing

operations is sufficient to meet its own expenses.

Our expectations

A key theme of the social housing system is to better integrate a tenant's housing need with other services. This recognises that CHPs, as community-based organisations, are often in a better position to make these connections than a government agency is.

We expect a CHP to assist its tenants to access additional services, to help them sustain a tenancy, where the tenant requests this support. This assistance should be limited to providing information on appropriate support services to tenants. This approach recognises that CHPs are not referral agencies and should not get involved in the details.

To ensure any contact with appropriate support services safeguards tenants' rights, 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
- 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

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) 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 4.1: Compliance with all relevant legislative requirements (including the Residential Tenancies Act 1986), and

Performance Standard 4.2: The tenancy management process is transparent and responsive

To meet these standards, CHPs must comply with relevant legislation. Policies and procedures need to ensure housing is allocated fairly and transparently on the basis of housing need. Relevant legislation includes:

The Residential Tenancies Act 1986

A tenant has a right to the quiet enjoyment of their home¹. This means that a landlord should not interfere in the way tenants run

their homes, or what services they may access, so long as the tenant is meeting their obligations under the RTA. Any request for assistance should be managed in line with this guidance note.

Any other support service that tenants may benefit from should be offered and agreed separately to, and after, the allocation of housing.

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

The Code requires that the consumer has made an informed choice and gives informed consent to accepting support services.

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

Providers who offer support services must ensure that those services are provided to consumers in a manner consistent with their needs at any given time i.e. the need for support may come and go, and should not be locked in to long term agreements, such as a tenancy agreement.

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.

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

¹ [RTA 1986 Quiet enjoyment](#)

on their willingness to accept other services

- ensure that CHPs are not breaching relevant legislation (and the Performance Standards) when providing housing services
- ensure that CHPs remain financially viable and can provide sustainable housing for tenants
- align with international best practice.

Where a landlord is asked by a support provider to house a tenant that is unlikely to succeed in their tenancy without ongoing support in place, we recommend a separate agreement for service is signed between the landlord and the support provider that sets out the expectations of each party. If a dispute arises over the failure to provide those support services, it should be resolved between the agreed parties, and not involve the tenant.

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@hud.govt.nz.