Good Practice Guide Classification of Specialised Supported Housing

Learning Disability and Autism Housing Network

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Learning Disability and Autism Housing Network

The Learning Disability and Autism Housing Network is a coalition of national and regional housing associations across the UK providing homes and housing services for people with a learning disability and autistic people. The Network's vision is to provide, develop and promote quality homes and housing services for people with a learning disability and autism.

The Network members housing provision includes commission-based accommodation in a mix of owned and leased properties, some of which receive higher rents under the specified accommodation housing benefit regulations and fall within the Regulator of Social Housing's Specialised Supported Housing criteria.

The Network has worked with Ian Copeman from the Housing LIN to review of the Specialised Supported Housing definition and identify how members were interpreting and applying the criteria and providing internal assurance.

From this work the Good Practice Guidance has been developed which aims to support members work consistently in terms of classification decisions and assurance approaches towards Specialised Supported Housing.

Learning Disability and Autism Housing Network

Introduction

Section 1

1. Registered Providers are operating in an increasingly complex regulatory environment, a key aspect of which is the setting of rents. Classifying Specialised Supported Housing (SSH) rents is particularly complex. This guidance has been produced by members of the Learning Disability and Autism Housing Network (LDAHN) to help make sense of some of this complexity for registered housing providers. Registered providers must set rents from 1 April 2020 in accordance with the Government's Policy Statement on Rents for Social Housing 2019.

2. It is important to stress that there is often more than one way of achieving rent compliance. For this reason, this guidance does not limit itself to a single approach, but rather outlines a range of practice which its authors consider would comply with both the letter and the spirit of the law, regulation and guidance.

3. We are very mindful of The Regulator of Social Housing's ("the Regulator's") concerns in relation to rent compliance across the social housing sector over recent years. We hope this guidance will contribute to the process of continuous improvement in this area.

4. The classification of SSH rents can be difficult and challenging. It includes both factual analysis and judgement, the latter supported by careful evidence gathering, often in partnership with a range of different stakeholders. This guidance embodies the fundamental principle that it is the landlord's responsibility to make those judgements and thereby to ensure compliance. This duty cannot, nor should it be, delegated to those other stakeholders. In exercising it the landlord must always act reasonably and should seek out relevant expertise and evidence, but the regulatory and legal obligations are its own.

5. In this context, the role of and support from health and adult social care commissioners is hugely important. We hope this guidance will help them to appreciate their key supporting role in the SSH classification process and perhaps to better understand some of the technical and detailed questions they may be asked by housing providers as part of it.

6. This guidance is also relevant to managing agents who manage SSH on behalf of a registered provider landlord.

The Definition

Section 2

1. The definition of Specialised Supported Housing is provided in the Government's Policy Statement on Rents for Social Housing updated 2022, with limited further commentary included in the Rent Standard. In order to be "excepted" from the Rent Standard, lettings must comply with all aspects of the SSH definition. The definition reads as follows:

   "Specialised supported housing

   5.5 In this policy statement, 'specialised supported housing' means supported housing (as defined in chapter 2):

   (a) which is designed, structurally altered, refurbished or designated for occupation by, and made available to, residents who require specialised services or support in order to enable them to live, or to adjust to living, independently within the community;

   (b) which offers a high level of support, which approximates to the services or support which would be provided in a care home, for residents for whom the only acceptable alternative would be a care home;

   (c) which is provided by a private registered provider under an agreement or arrangement with a local authority or a health service (within the meaning of the National Health Service Act 2006);

   (d) for which the rent charged, or to be charged, complies with the agreement or arrangement mentioned in paragraph (c); and

   (e) in respect of which at least one of the following conditions is satisfied:

   i. there was no, or negligible, public assistance, or

   ii. there was public assistance by means of a loan (secured by means of a charge or a mortgage against a property)."

2. Supported housing is defined in Chapter 2, paragraph 2.39 of the Policy Statement in these terms:

2 In this policy statement, the term 'supported housing' means low cost rental accommodation provided by a registered provider that:

a) is made available only in conjunction with the supply of support;

b) is made available exclusively to households including a person who has been identified as needing that support; and

c) falls into one or both of the following categories –

i) accommodation that has been designed, structurally altered or refurbished in order to enable residents with support needs to live independently; and
ii)accommodation that has been designated as being available only to individuals within an identified group with specific support needs

3 Section 69 of the Housing and Regeneration Act 2008 defines "low cost rental accommodation" in the following terms:

"Accommodation is low cost rental accommodation if—

a) it is made available for rent,
b) the rent is below the market rate, and
c) the accommodation is made available in accordance with rules designed to ensure that it is made available to people whose needs are not adequately served by the commercial housing market"

4 It is important to stress that each aspect of the definitions of SSH, of supported housing and of low cost rental accommodation must be met in order to classify accommodation as SSH. For the purposes of this guidance we have summarised these requirements in ten different elements, described in sections 4 to 13 inclusive.

There is overlap between the different requirements and the evidence required to demonstrate compliance with them, but in broad terms sections 4 to 7 inclusive address the definition of supported housing (including low cost rental accommodation), while sections 8 to 13 inclusive focus on the definition of SSH.

5 At paragraph 5.5 the definition refers to “housing” rather than “lettings”. The implication of this is that it is the housing (or the “scheme”) which is classified as SSH, rather than the individual tenant. In practice it is not always easy to draw this distinction, since part of the definition relates to the support needs of individuals, but it may be an important point to keep in mind, particularly when considering how to deal with changes in circumstances over time. This issue is considered further in section 14.



Governance and Assurance

Section 3

1. Providers' key regulatory obligations are summarised in Appendix 1.

2. The Regulator makes is clear that it is the responsibility of boards to ensure that these obligations are met.

3. It is recommended that providers identify the key policy principles relating to SSH rents and ensure that these issues are decided at the appropriate governance level within the organisation. In its "Addendum to the Sector Risk Profile 2018", The Regulator suggests that boards need to assure themselves that:

    a. The rents charged are in fact below market rents (as required by section 69 of the Housing and Regeneration Act 2008).
    b. That the lettings comply with other aspects of the SSH definition

4. Examples of potential policy principles arising from these obligations include the appropriate methodology for assessing market rents, the provider's approach to determining what constitutes a high level of support, whether or not periodic reviews of compliance should be undertaken, (all discussed in detail in sections 4 to 13 of this guidance) and the desired approach to giving assurance to the board that the correct rents are being charged. An aspect of the latter will be the board determining whether or not there is sufficient internal expertise in relation to all aspects of the rent setting process and where there is not, that appropriate independent advice is obtained. It will also include deciding upon the desired level of routine and exceptions reporting to the board on rent setting decisions along with appropriate internal and/or external audit or quality assurance arrangements.

5. Boards will also wish to assure themselves that systems are in place to ensure that rent decisions are properly reflected in data returns to The Regulator.

6. Providers should ensure that comprehensive procedures covering all aspects of the rent setting process are in place (covering the issues outlined in this guidance, particularly sections 4 onwards). Procedures should reflect key policy decisions (as outlined above). They should also clearly identify responsibilities so that key decisions are taken at the appropriate level within the organisation.

7. Procedures should be reinforced with appropriate training, particularly for key decision makers.

8. Providers should ensure that comprehensive records are retained in relation to each SSH classification decision.

9. Where SSH accommodation is managed on behalf of a registered provider landlord by a managing agent, the landlord should ensure that the relevant contract documents and/or service level agreement clearly lay out the responsibilities of each party, bearing in mind in particular that where tenancy agreements are issued in the registered provider's name, it is they who will be ultimately responsible for legal and regulatory compliance.

*See Appendix 1, "Key governance obligations in relation to SSH rents"

Low Cost Rental Housing

Section 4

Section 69 a) and b) of Housing and Regeneration Act 2008,
"a) is made available for rent
b) the rent is below the market rate"

1. SSH accommodation must be made available for rent. RPs will generally be able to evidence this very easily with application and tenancy agreement documents and rent account records.

2. The "market rate" is not defined in legislation. It is variously defined in other sources. In everyday language it simply means "the current value of a commodity" (Shorter Oxford English Dictionary) However, it is usually also taken to refer to the price that would be payable in the absence of unusual market conditions or restrictions. For example, the RICS defines market rent as "the estimated amount for which a property, or space within a property, should lease (let) on the date of valuation between a willing lessor and a willing lessee on appropriate terms in an arm's length transaction after proper marketing ..." (RICS Standard Valuation Terms and Conditions).

3. There is no evidence of a significantly sized private sector market for supported living outside the social housing sector. There are a small number of supported living providers which are not Registered Providers (that is, registered with The Regulator of Social Housing), but the vast majority of these will be charitable and/or not for profit providers in order to comply with the Specified Accommodation rules in the Housing Benefit regulations, (Specified accommodation (Schedule one, Universal Credit Regulations, 2013)).

4. To illustrate, the Government's 'Supported Accommodation Review; the scale, scope and cost of the supported housing sector', published in 2016, found that only 15% of accommodation for people with a learning disability and 8% of accommodation for people with mental health issues was provided by private landlords and that even these figures may overstate the role of such landlords given that much of this accommodation is ultimately managed by and/or the support provided by housing associations and charities, (page 44).

It is also important to stress that these figures will include many supported housing schemes offering very low levels of support and so not directly comparable to the normal SSH provision which is provided to individuals with 'high' support needs. The Supported Accommodation Review comments that, in practice, any "supported housing provided by a private sector landlord will be limited to LHA rates", (page 26).

5 In the absence of a private supported living market, RPs have adopted a number of different approaches.

a) Some providers compare their rents with the housing cost element of residential care, on the basis that SSH is to some extent defined as an alternative to care home provision. Paragraph 5.5 (b) of the Policy Statement states that, amongst other things, SSH "offers a high level of support, which approximates to the services or support which would be provided in a care home, for residents for whom the only acceptable alternative would be a care home".

NHS Digital's "Adult Social Care Activity and Finance Report, England – 2020-21, Table 53: Unit costs for clients aged 18 to 64 accessing residential or nursing long term support, by support setting and primary support reason, 2020-21" provides data on average residential care costs. Whilst the figures include an element of commissioning costs they exclude the cost of local authority provision, which is usually much higher than private sector provision and so may be regarded as a reasonable benchmark.

Unfortunately these figures do not identify the likely housing cost component of total care home fees and so providers will need to make their own assessments of this taking into account the available evidence and appropriate professional advice. For those providers using this approach a figure in the order of 24% is typical.

b) Another approach is to use SSH rents as the benchmark. This information is not routinely shared either by The Regulator of Social Housing or by local Housing Benefit authorities and so providers may need to put specific arrangements in place to collect this data such as local surveys or Freedom of Information requests.

This approach has the disadvantage that using the regulated market as the benchmark means that inevitably some schemes and/or providers will find themselves above the market rate. In other words, a methodology with SSH comparisons at its core is not an approach that will work for all providers.

c) A third approach involves a comparison with ordinary market rents which are then adjusted in some way, often to take account of the assumed "additional" capital and revenue (tenancy management) costs of catering for the need group in question or sometimes to allow for alternative use values (such as student accommodation or care settings). The output is an assumed level of income which a private sector investor might reasonably expect to generate from a given investment.

Again appropriate research and/or professional advice would be required to construct this benchmark for any individual scheme or in any given locality.

6. Whatever approach is taken, providers should consider whether appropriate legal and/or professional valuation advice should be obtained. The authors of this guidance believe that, at the time of writing, valuation approaches for the SSH market are relatively underdeveloped and that relevant knowledge and expertise in the valuation sector is limited. For this reason many providers rely on other sources of market intelligence some of which are indicated above.



Provision of support

Section 5

Section 2.3 of the Government's Policy Statement on rents:

- *"is made available only in conjunction with the supply of support"*

Section 69 c) of Housing and Regeneration Act 2008,

- *the accommodation is made available in accordance with rules designed to ensure that it is made available to people whose needs are not adequately served by the commercial housing market*

1 It is recommended that providers design their application, assessment and allocations procedures in such a way as to ensure that the link between the accommodation and the provision of support is made clear throughout the tenant selection process. Examples include:

2 a) making it clear in any application or assessment forms that the accommodation is provided for individuals with a support need and that the acceptance of support will be a condition of the tenancy

b) tenancy (or other occupancy) agreements should usually require the acceptance of support as a condition of the tenancy.

3 The requirements of section 69 c) may be evidenced in various ways, but it is suggested here that the primary indicator that the accommodation is provided for people "whose needs are not adequately served by the commercial housing market" is the provision of support. Other key indicators include the need for support (section 6), the importance of support in living or adjusting to living independently (section 7), the level of support (section 9) and the absence of a commercial market to meet all of these needs (section 4).

The issue of support being refused at some point after tenancy commencement, or support needs reducing, is discussed later in sections 9 and 14.

Support Need

Section 6

Section 2.38 of the Government's Policy Statement on rents:

- *is made available exclusively to residents who have been identified as needing support*

1. Providers should ensure that, wherever possible, applicants have a support needs assessment in place before an allocation is made and/or before the commencement of a tenancy. It is recognised that in urgent or exceptional cases this may not be possible, in which case assessments should be arranged as soon as reasonably practicable after tenancy commencement. Assessments will often be carried out by a commissioner or an adult social care team, but may also be completed by housing staff or other employees of the landlord where they have appropriate skills and experience and where adequate training is provided.

2. A care and support needs assessments carried out under the Care Act 2014 which indicates a need for publicly funded care or support should be sufficient evidence of a need for support.

3. Where a tenant or prospective tenant is in receipt of care or support as part of a package provided by a commissioner, this will have been assessed under the Care Act and so should be adequate evidence of a need for support.



Design or Designation Section 7

Section 2.38 of the Government's Policy Statement on rents:

- *falls into one or both of the following categories:*

i) Accommodation that has been designed, structurally altered or refurbished in order to enable residents to live independently, or

ii) Accommodation that has been designated as being available only to individuals within an identified group with specific needs

Section 5.5 of the Government's Policy Statement on rents:

- *which is designed, structurally altered, refurbished or designated for occupation by, and made available to, residents who require specialised services or support in order to enable them to live, or to adjust to living, independently within the community*

1. None of the relevant guidance or regulations specify the type or level of design features or alterations required to comply with the design (etc) provision, nor the nature of any designation required and so these matters are for the landlord to decide.

2. If the provider chooses to rely on clause i), there should be clear procedures in place to record the nature and extent of any design features and/or alterations. The decision as to whether these are sufficient to comply with this provision should sit at an appropriate level in the organisation and checks should be put in place to ensure that any errors or changes in circumstances are identified rapidly, with records being updated in a timely fashion.

3. At face value the second requirement ii) – that the scheme be designated as available only to individuals with specific needs - is less onerous than the first (relating to design or other features) and so is likely to be the condition upon which most landlords rely. The landlord should have clear procedures in place for schemes to be designated, for the decision to be recorded and for this to link with the relevant rent setting systems and processes. The authority to designate in this way should sit at the appropriate level in the organisation and checks should be put in place to ensure that any changes in circumstances are identified rapidly, with records being updated in a timely manner.

Live or Adjust to Living Independently

Section 8

Section 5.5 of the Government's Policy Statement on rents:

- *made available to, residents who require specialised services or support in order to enable them to live, or to adjust to living, independently within the community*

1. The condition that support be required to "live, or to adjust to living, independently in the community" is one which the landlord should make taking into account all the evidence available.

2. Clearly the care and support assessment referred to in section 6 will be relevant. In the majority of cases the assessment will have been or will be carried out under the Care Act 2014. Where it identifies the need for publicly funded care or support this means that there are one or more day to day tasks with which the individual requires help and so such an assessment is very likely to satisfy the requirement that support is needed in order to live independently.

3. In some cases it may be helpful to seek a specific comment from a commissioner or an adult social care specialist to confirm that support is required. The tenant's previous accommodation history may also be relevant as may any accommodation application form completed by or on behalf of the tenant.

4. The decision that support is required in order to live or adjust to living independently should be made at the appropriate level in the organisation and reasons for the decision carefully recorded.



High Level of Support Section 9

Section 5.5 of the Government's Policy Statement on rents:

- *which offers a high level of support, which approximates to the services or support which could be provided in a care home*

1. None of the relevant guidance or regulations define "high" in the context of support levels, nor the level or type of "services or support which could be provided in a care home". The landlord must make a decision on this issue taking into account all the relevant evidence.

2. It is clear that there are many different types of care home. The CQC defines it as "a place where personal care and accommodation are provided together." ('Service Types', CQC, May 2018). The same document lists the following examples (apparently not exhaustive) of services which fit under the care home category:
   - Residential home
   - Rest home
   - Convalescent home
   - Respite care
   - Mental health crisis house
   - Therapeutic communities

3. In some care home contexts, the amount of direct one to one care or support provided might be very low, with the real value of the service resting not solely on personal support hours, but on other factors such as the sense of security provided by living in the home, the provision of physical adaptations, the availability of emergency care should it be required, the provision of other types of counselling, support or supervision and so on. Many of these things may constitute the other 'services' referred to in the definition of specialised supported housing.

4. The traditional definition of "personal care" involves "supporting people in their homes (or where they are living at the time) with things like washing, bathing or cleaning themselves, getting dressed or going to the toilet" (CQC website). However, it is important to note that the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010, extends the definition of personal care from physical assistance with activities of daily living to 'prompting together with supervision' in order to assist people with activities of daily living.

5. The SSH definition uses the words “services or support” not care or personal care. Support is defined in the Policy Statement very broadly, by way of reference to the type of services provided in a range of different accommodation types, many of which are not typically associated with (or themselves defined by) the provision of personal care. Examples include sheltered accommodation, hostels for the homeless and support for offenders none of which would normally include personal care of the type referenced in the CQC definition.

6. For all these reasons, it is likely that personal care in the traditional sense of assistance with personal tasks such as dressing, bathing, feeding and toileting, is not a requirement of the SSH definition.

7. Determining what level of services or support might be “high” is equally difficult. As a starting principle, it would seem reasonable to include support and services available to occupants of schemes from a range of sources and not simply those provided directly by a commissioner, a landlord or a contracted care provider. This is no different for residents in a care home who may benefit from family support, day centre attendance and other support services outside their care home setting.

8. Providers will need to collect information about the level of services and support provided to each tenant. This can be difficult, not least because care providers may be reluctant to share exact details partly for GDPR reasons and partly perhaps because of fears about how the information might be used in a commissioning context. The housing provider may need to provide reassurance in relation to these matters. Providers should also take care only to collect that information which is reasonably necessary to fulfil their legal, regulatory and other management responsibilities. In most cases this will simply require information in relation to hours and the broad type of services or support being provided.

9. The provider will need to assess whether the level of services and support being provided is high and to assist with this task may find it helpful to use a benchmark level of support above which the level might normally considered “high” and below wish special justification might be needed to achieve compliance.

10 Having said this, any benchmark set by the landlord should be regarded as a guide rather than a pass or fail. For example, support hours can vary over time. Levels above the benchmark might be temporary in nature and not indicative of a continuing need. Similarly, support hours below the benchmark might not be fully indicative of the individual's likely continuing support needs.

11 For those organisations that use a benchmark of this type, commissioned support in the range of 15 to 20 hours per week is typical. Hours dedicated exclusively to the particular individual would be counted towards this total. With regard to shared hours, the landlord will need to make a judgement. For example, hours shared between a small number of tenants in a shared living environment may perhaps be counted in full, whereas shared hours in a much larger scheme where an individual tenant may benefit less directly may be more appropriate for apportionment.

12 Many providers will count overnight support hours in full for all those tenants who benefit from them. Indeed, it is likely that any tenant who requires overnight support will pass the "high" support test on this factor alone.

13 In a small number of cases a level of support below the benchmark, even if support is likely to continue at that level for some time, might be indicative of an overall support need which could nevertheless be considered high. For example, whilst paid for support might be low, other community, family or voluntary based support might be much higher and yet may still be linked to the provision of accommodation. Furthermore, it is not uncommon for support hours to fall, over a period of time, as tenants settle and they adjust to living in their home, but that any disruption, for example moving home and/or the removal of support might have such a negative impact that the individual is unable to continue living independently.

14 Instances of this nature, where support levels are lower than the landlord would normally expect in SSH, should be exceptional and the reasons for them should be carefully recorded. As with other aspects of the SSH definition, the landlord should consider all the available evidence including whether independent or specialist advice would be appropriate, for example in relation to the individual's ability to live independently.

15 Section 14 provides further guidance on how to deal with cases which at first glance may appear to fail the normal tests for SSH compliance and may be particularly relevant to cases where support hours are likely to change over time.

Only Acceptable Alternative

Section 10

Section 5.5 of the Government's Policy Statement on rents:

- *for residents whom the only acceptable alternative would be a care home*

1. The nature of a care home as a proxy comparator for supported living is not defined. Supported housing is fundamentally different from care homes in practice, purpose and ethos. The majority of LDAHN members attempt to seek an opinion from a commissioner on this issue, but many commissioners are unable or unwilling to provide it. Some no longer see care homes as an acceptable alternative for the SSH cohort and so are not willing to commit to a counter factual opinion of the type required – "if the SSH supported living category didn't exist, then we would have to use care homes". Others either do not understand the intricacies of the SSH definition sufficiently or do not see it as their role to pass judgement on such issues and so decline to do so.

2. In any event, as with all other aspects of the SSH definition, it is ultimately the landlord's responsibility to make a decision, taking into account all the available evidence and where appropriate, seeking specialist, independent advice.

3. The suggested approach, therefore, is that providers should seek an opinion from an appropriate commissioner or adult social care specialist and take that opinion into account.

4. Even when such an opinion is given, but certainly where it is absent or deficient, in practice the provider will need to consider what alternatives might be available for the tenant and consider their suitability. In practice there are five housing options for the vast majority of the SSH cohort:
   a) supported living
   b) care home
   c) general needs with or without support
   d) returning to live with family carers
   e) hospital setting

5. Working with a commissioner and taking into account what is known of the tenants support and accommodation history, the provider will usually be able to identify whether b and c are suitable and available.

6. It seems clear that it is not a public policy role for a housing provider to encourage an adult to return to a former family home to have their support needs when they have made the decision to live or to try to live independently in the community. In any event, an applicant and/or their advocate will generally have made their wishes in this respect clear either by means of, or during the course of, any application process.

7. In this way, a housing provider can reasonably come to a conclusion about this aspect of the SSH definition by means of evidence gathering followed by a carefully thought through process of elimination of the various alternatives.

8. As with other aspects of the SSH definition, the decision in relation to the "suitable alternative" requirement should be made at the appropriate level in the organisation and reasons for the decision carefully recorded.



Agreement or Arrangement

Section 11

Section 5.5 of the Government's Policy Statement on rents:

- *which is provided by a private registered provider under an agreement or by arrangement with: -*

i) a local authority
or
ii) the health service within the meaning of the National Health Service Act 2006

1. Neither of the terms agreement or arrangement are defined. In common usage, an agreement means "a coming into accord; a mutual understanding; a covenant; a treaty" (Shorter Oxford English Dictionary). Agreements may be in writing but equally they can be evidenced in other ways too. An arrangement is clearly something different from an agreement. Again, in common usage it is simply "the action of arranging" (Shorter Oxford English Dictionary). Like an agreement, it need not be in writing.

2. The meaning of the words is important because it is seems clear that the authors of the SSH definition were aware of and wished to reflect in their use of language the wide range of commissioning practice that exists in the supported living sector and of the complexities that can arise over a period of time in long term accommodation of this nature. For example, many supported living schemes were first established by way of formal written agreements between a commissioner, a housing provider and often involving a care provider too; over time, however, the commissioner may have ceased to exist, the formal written agreement may have expired and tenants may have moved on or their needs have changed. In such circumstances, there may still be an arrangement, but a formal agreement may be less easy to evidence. Many other examples could be given to explain why an "agreement or arrangement" may reasonably be evidenced in various different ways.

3 Having said this, wherever possible housing providers should attempt to enter into a written agreement with a commissioner. It is beyond the scope of these notes to give advice on non SSH related elements of such agreements, but so far as SSH is concerned the agreement should ideally include:

a) a brief description of the scheme, including in broad terms the nature of the support being provided and the linkage between that support and the provision of accommodation
b) a clear statement that the scheme is supported by the commissioner
c) the rent
d) the mechanism for reviewing and/or increasing the rent in future.
e) where appropriate, statements about the support needs of the individual tenants and in relation to the "care home as suitable alternative" requirement (see section 10)
f) any agreements relating to future periodic reviews and/or circumstances in which reviews may be prompted by actions or events.



4. Most commissioners will enter into such agreements for new schemes and some will do so for existing schemes. However, many will not, often favouring a more informal approach. Where this is the case, such agreements or arrangements might be evidenced in a number of ways:

a) the nomination of tenants by a commissioner
b) the payment for care and support for a tenant by a commissioner
c) where the tenant manages their own personal budget the payment for care and support from that budget provided it is in line with a care and support assessment carried out under the Care Act.
d) reference to the scheme in commissioner strategies, in review meetings with the commissioner or in other contexts which demonstrate that the scheme is supported by the commissioner
e) other evidence which indicates that the scheme is part of the arrangements by which a commissioner fulfils its legal and other obligations under the Care Act

The strength of evidence should be assessed on a case by case basis, being mindful also of the need for the rent charged to comply with the agreement or arrangement - see also section 12 below.



Rent Complies with Agreement or Arrangement

Section 12

Section 5.5 of the Government's Policy Statement on rents:

- *in respect of which the rent charged or to be charged complies with the agreement or arrangement mentioned in section 8 above, and*

1. As explained in section 11, these notes suggest that ideally both the initial rent level and the arrangements for reviewing and/or increasing the rent should be made explicit in the agreement or arrangement referred to above. With regard to rent increases it is worth noting that the SSH definition does not require commissioner consent for every change to the rent throughout the period of the tenancy; rather, it requires that at all times the rent complies with the agreement or arrangement – hence the relevance of agreeing rent setting and reviewing mechanisms rather than specific rent levels.

2. For various reasons, partly covered in section 11 above, many existing agreements or arrangements do not make explicit reference to rent levels and/or to mechanisms for rent increases. Where this is the case, it is suggested that housing providers should contact the relevant commissioner to confirm that the current rent is in line with the agreement or arrangement and to agree arrangements for dealing with any future rent increases.

3. Some commissioners are reluctant to comment directly on rent levels or related issues, perhaps because they believe the subject to be outside their field of expertise or because they do not see it as part of their role. Where this is the case the suggested approach is to provide the commissioner with relevant details and to seek their continued support for the scheme, which may be evidenced in the ways explained in section 11 relating to "arrangements".

Public Assistance

Section 13

Section 5.5 of the Government's Policy Statement on rents:

- *in respect of which either: -*

I. there was no public assistance,
II. if there was public assistance, it was by means of a loan secured by means of a charge or a mortgage against a property.

1. Public assistance is not defined in the regulations, but is variously described elsewhere, including in "The Social Housing Rents (Exceptions and Miscellaneous Provisions) Regulations 2016", where it is defined in these terms:
"social housing assistance or other public capital grant, subsidy or loan and includes any transfer of land for less than its unrestricted value;"

2. It is clear that public assistance includes not just "housing" related grants typically dispersed by Homes England or by local authorities, but a wide range of other grants and subsidies potentially allocated by any public body.

3. The regulations do not define the meaning of "negligible". In everyday terms it "capable of being neglected or disregarded" (Shorter Oxford English Dictionary). However, for the reasons outlined below, it may be difficult to identify a consistent benchmark, such as a percentage of total scheme costs. Factors which may affect the assessment include:

   a) the amount of the public assistance compared with the overall scheme cost

   b) the purpose to which the public assistance was applied in the context of the overall scheme. For example, a small amount of public assistance applied to a peripheral aspect of the scheme and which had no fundamental impact on whether or not the scheme went ahead or on its viability, might be considered negligible. A larger amount or a contribution without which the scheme would not have gone ahead or would not have been viable might be more material.

c) timing. For example, is grant received after scheme inception to be treated differently from grant received at or before this point? The SSH definition uses the phrase “there was no public assistance” (our emphasis). In its publication entitled "Lease-based providers of specialised supported housing" (April 2019) The Regulator comments that SSH must "not receive any public assistance ... for its construction or acquisition", suggesting that “was” should be interpreted as meaning assistance provided at the time of development or land acquisition. It will be individual providers to take a view on this point, based on the particular circumstances of any individual scheme and drawing on their own independent advice if required.

d) identity of the grant receiver. For example, a local authority grant to assist with the cost of disabled adaptations paid directly to the provider might fall within the definition of public assistance, whereas as Disabled Facilities Grant paid directly to the tenant (as is the norm for DFGs) might not.

e) An emerging area of grant support is in relation to net zero commitments and these will need to be assessed in line with the above factors.

4. Again, individual providers will need to seek appropriate independent advice where there is doubt.



Periodic Review

Section 14

All areas of compliance, particularly those which may change over time.

1. The regulations are not clear on whether SSH compliance is a single event to be determined at scheme inception or whether compliance assurance should be viewed as an ongoing process, responding to actual or potential changes in circumstances relating to the tenants or more likely to the scheme itself. This guidance recommends the latter approach, which means that providers would need to put in place some form of review process which is either:

   a) periodic. Some providers classify their schemes according to the likelihood that circumstances might change in a way that impacts the SSH definition, with more stable schemes reviewed less frequently (say 3 or 5 yearly) and others more frequently (perhaps annually). Or

   b) activated by a specific trigger or triggers. Examples might include significant reduction in support and care needs or a strategic review by a commissioner affecting the type or level of provision in a given area. Or

   c) some providers include both these approaches in their procedures.

2. Reviews can be complex and weighing the evidence gathered may involve careful judgements. The interests of tenants must be central to any review process and to any decisions which flow from it. Amongst other things, providers will have in mind their consultation obligations as laid out in the Tenant Involvement and Empowerment Standard, although it is likely that the issue of SSH compliance will be a largely technical one rather than a matter of housing policy or practice and that, therefore, consultation will relate more to the management of impacts than to any decisions about SSH classification. It is worth noting that at time of writing, the Social Housing (Regulation) Bill is making its way through Parliament. If enacted this will give The Regulator enhanced powers to take action in relation to breaches of consumer standards such as the Tenant Involvement and Empowerment Standard. Providers will wish to monitor developments in this regard.

3. Where a review raises doubts about SSH compliance, the housing provider will need to consider whether either:

a) those concerns can be addressed within a reasonable period of time or
b) the letting or the scheme should no longer be classified as SSH (and/or the letting or scheme should be decommissioned).

4. In making these judgements the provider will need to take all relevant factors into account, including:

a) in some instances the factor giving cause for concern may be temporary. There could be many reasons for this, for example, an individual is currently refusing all support but the relevant support agencies and/or the commissioner believe that support is needed and/or is working with the individual to assess whether or not support will be needed and/or reinstated.

In this scenario providers will need to carefully identify the issues, their likely duration and the nature of the further changes that may to lead to full compliance assurance. It may be appropriate to allow a reasonable time for these issues to be properly explored before either confirming the current classification as SSH or implementing other decisions such as moving tenants to non SSH schemes or de-classifying the accommodation as SSH.

b) The impact on individual tenants, including their ability or otherwise to move to more suitable, non SSH accommodation. Again, it may be necessary to allow a reasonable period of time for this to be assessed and for any re-housing decisions to be explored and implemented, during which time the provider will need to consider whether it is reasonable to continue to classify the letting and/or the scheme as SSH.

c) The nature of the scheme in question and in particular whether it is a single letting or self-contained scheme, as opposed to a multiple person or shared scheme. For example, although providers will make every effort to allocate places in shared schemes to individuals with similar support needs, those needs can change and diverge over time, perhaps resulting in one person no longer needing high levels of support or other services, whilst the other tenants' needs remain unchanged. In this instance, the provider may wish to take steps to find more appropriate accommodation for the one tenant, but will need to decide whether it is reasonable to continue to classify the letting and the whole scheme as SSH whilst those options are explored. This may be particularly relevant where the tenant in question has security of tenure and so rehousing options may not be straightforward and/or may take some time.

APPENDIX 1

Key governance obligations in relation to SSH rents

1

Rent standard required outcomes 1.1

Registered providers must set rents from 1 April 2020 in accordance with the Government's Policy Statement on Rents for Social Housing 2019 (hereafter Rent Policy Statement) which can be found on the Ministry of Housing, Communities and Local Government (MHCLG) website.

2

Rent standard required outcomes 2.2

This Rent Standard does not apply to the following categories of property, as defined in Chapter 5 of the Rent Policy Statement: Specialised supported housing

3

Governance and FV standard 1.1

Registered providers [footnote] shall ensure effective governance arrangements that deliver their aims, objectives and intended outcomes for tenants and potential tenants in an effective, transparent and accountable manner.

4

Governance and FV standard 2.3

Registered providers shall communicate in a timely manner with The Regulator on material issues that relate to non-compliance or potential non-compliance with the standards.

5

Governance and FV standard 2.8

Registered providers shall assess their compliance with the Governance and Financial Viability Standard at least once a year. Registered providers' boards shall certify in their annual accounts their compliance with this Governance and Financial Viability Standard.

6

Code of Practice paragraph 2

Responsibility lies with the boards of registered providers to meet these standards.

7

Code of Practice paragraph 15

To ensure that registered providers have the requisite skills and capability to perform their functions, The Regulator would expect them to:
ensure that all material decisions are made with appropriate internal/external expertise or advice and should satisfy themselves of the impartiality of any support or advice

8

Code of Practice paragraph 35

The Regulator expects registered providers, as part of their risk management approach, to stress test their plans against different scenarios across the whole group. The scenarios used will vary according to the size, type and structure of the organisation

9

Lease-based providers of specialised supported housing Addendum to the Sector Risk Profile 2018 April 2019 para 2.2

These regulatory judgements and notices have revealed some recurring themes, which include:
·a lack of assurance about whether appropriate rents are being charged.

10

Lease-based providers of specialised supported housing Addendum to the Sector Risk Profile 2018 April 2019 para 5.11

For properties that the RP reports as part of their SSH provision, the RP boards need to assure themselves that:

- the rents charged are in fact below-market rents (which is part of the definition of social housing in the Housing and Regeneration Act 2008), and
- that the letting meets the definition of SSH in the Social Housing Rents (Exceptions and Miscellaneous Provisions) Regulations 2016, as explained in the above section

Good Practice Guidance in Relation to the Classification of Specialised Supported Housing Rents

Learning Disability and Autism Housing Network