

How We Regulate

Group Structures and Partnerships

August 2020



Contents

1. Introduction	3
2. Background.....	3
3. Charitable RHAs	4
4. Group Structures – Context	4
5. Partnerships – Context	5
6. Our Policy Principles.....	6
7. The Operation of Group Structures – Regulatory Requirements	8
Governance	8
Control and Independence.....	10
Committees within a group.....	12
Board membership.....	12
Board membership – a subsidiary that is an RHA.....	13
Board membership – a non-registered subsidiary.....	13
Conflicts of interest	14
Service Provision	14
Financial issues within group structures	15
Managing risk.....	17
8. Ensuring transparency and accountability in the way groups work	18
9. RHAs considering creating or joining a group structure	19
Becoming a subsidiary	19
Non-registered subsidiaries	20

1.Introduction

1.1. The Department for Communities (DfC) is the Regulatory Authority for all Registered Housing Associations (RHAs) in Northern Ireland. The Housing Regulation Branch within DfC undertakes this Regulation activity on behalf of the Department. We seek to protect the interests of tenants, homeless people and others who use the services provided by RHAs.

1.2. This guide is relevant to:

- RHAs in group structures, whether they are the group parent or the subsidiary of another RHA
- RHAs considering creating or joining a group structure
- Connected bodies and inquiries

1.3. This guidance should be read in conjunction with our regulatory requirements set out in the [Regulatory Framework](#) which incorporates our regulatory standards, guidance, and requirements. RHAs considering creating or joining a group structure or entering into a merger should also refer to the regulatory guidance on [Notifiable Events Advice Note](#).

2.Background

2.1. RHAs are permitted to maintain non registered subsidiaries within their group where their powers and objects allow (the definition of "subsidiary" is contained in [Article 23\(9\)-\(12\) of the Housing \(Northern Ireland\) Order 1992](#)). We recognise this can be a useful way of undertaking activities for constitutional or business reasons.

2.2. These procedures apply to proposals by an RHA to make constitutional changes to become the subsidiary of another RHA. Provisions for this can be found at [Credit Unions and Co-operative and Community Benefit Societies](#). In addition, we must be notified of changes to an RHAs name or registered office within 28 days.

3.Charitable RHAs

- 3.1. All RHAs are required to refer to charity law and to guidance produced by the Charity Commission for Northern Ireland (CCNI) (www.charitycommissionni.org.uk). Board members of the RHA will need to take full account of their obligations and duties under charity law when developing proposals to create or join a group structure, and when operating within a group structure or entering into a merger.
- 3.2. An RHA seeking to change its constitution to become a subsidiary of another RHA will need to apply to CCNI for consent if this involves a change to its charitable purposes. RHAs should consider whether they need to seek professional advice to help them make decisions about creating, joining and managing group structures.

4.Group Structures – Context

- 4.1. Group structures are usually created when an RHA sets up a new organisation as a subsidiary or when it becomes the subsidiary of another RHA.
- 4.2. The advantages for setting up subsidiaries include:
- to carry out trading or commercial activities which the parent has been advised not to carry out itself, typically because of charitable or RHA status
 - to generate profits or surpluses which can be applied for the purposes of the group
 - to provide a wider range of services to tenants and other service users
 - to create separate governance and management for particular specialist business streams - such as care or social enterprises - which need governing bodies with particular skills or expertise, or which may be regulated by another regulator
 - for reasons of tax efficiency, or to deal with risks connected with managing pension liabilities

- as special purpose vehicles for funding or development projects

4.3. The main potential disadvantages of a group structure can arise because of risk caused by complexity and could include:

- potential difficulties of operating complex structures
- a lack of common purpose and the development or persistence of a number of different cultures
- control by the parent is not clear and not always consistent, particularly in relation to the autonomy of the subsidiaries
- lack of clarity about decision-making, and about which decision should be taken by which body
- delays in the decision-making process, with a need to refer matters up and down the structure before finalisation is possible
- duplication of effort, with the same papers being considered at a number of meetings with agreement required for decisions already taken
- senior staff spending a large proportion of their time servicing governance structures rather than working on other priorities
- significant secretarial, legal, audit and other governance costs
- obstacles to the creation of sensible operational structures with arrangements that may have arisen as ‘accidents of history’
- difficulties in charging assets, for instance in connection with bond issues

4.4. If you are considering entering into a group structure with another RHA, you must in accordance with The Housing (NI) Order 1992 notify us. More information on how to notify us is included in our [Notifiable Events Advice Note](#).

5. Partnerships – Context

5.1. Any RHA may choose to work in partnership with other RHAs through a partnership arrangement or consortium. A group structure or merger creates a permanent constitutional relationship. However, a partnership arrangement

typically involves a time-limited contract agreed for specific circumstances.

5.2. RHAs do not need our consent to enter into contractual arrangements with other RHAs, however, the RHA will need to notify us if:

- a contract involves a change to the constitution of any of the RHAs involved
- the proposed contract involves the disposal of property covered by Article 13 of the Housing (NI) Order 1992

5.3. Guidance on which events RHAs are required to notify us about and how this should be done can be found here; [Notifiable Events](#)

6.Our Policy Principles

6.1. We expect RHAs to carefully assess all of the options, benefits and risks and to take specialist professional advice before forming any kind of partnership. We also expect RHAs to have binding and enforceable agreements in place between parties, to manage risk and to cover situations where there is deadlock or dispute.

6.2. We neither encourage nor discourage group structures, mergers or other forms of partnerships, nor do we prescribe or recommend any particular model. We do however require RHAs to comply with our Regulatory Standards when operating in, or setting up a group structure.

6.3. Some group structures evolve in ways that may impact our regulatory risk assessments, for example due to the types of activities which subsidiaries become involved in. We therefore require RHAs to manage relationships and performance within a group structure so that any risks to the RHA and to tenants and other stakeholder's interests are managed effectively. Our level of scrutiny will reflect the complexity of the arrangement.

6.4. We recognise that RHAs should be in control of developing structures that support achievement of their objectives in an efficient and effective way. We require the RHAs Boards to be in full control of any changes proposed. They must ensure

the decision has been informed by appropriate professional advice, consulted with tenants and other stakeholders, and based on a full examination of the RHA's options.

6.5. Any RHA considering setting up a subsidiary to undertake activities in which it has limited prior experience should consider what skills and expertise are needed in the governance and management of the subsidiary to successfully take forward the new activity. The parent RHA must ensure it has the skills and expertise to monitor the activities of the subsidiary, and to correctly identify and manage any risks arising from the activities of the subsidiary.

6.6. In examining the RHAs structures for management and delivery, we will want to see evidence of how these contribute to the following Regulatory outcomes:

- compliance with our Regulatory Governance and Finance Standards and guidance related to this
- good quality results in relation to the Regulatory Consumer Standards to optimize service quality and promote opportunities for tenant and service user involvement in decision-making at a local level
- ensuring the RHA will meet all of its statutory and contractual obligations
- safeguarding tenants' homes and public and private investment, through effective management of risks

6.7. We place a strong emphasis on the role the parent body plays within the group structure, for example; by determining the group's strategy and objectives; monitoring the performance of subsidiaries; and taking action where objectives and standards are not being met. It is important that RHAs ensure they get the right balance between strategic control by the parent and operational independence for subsidiaries, based on their objectives and the particular risks they need to manage.

7.The Operation of Group Structures – Regulatory Requirements

7.1. This section sets out the regulatory requirements for RHAs that are part of a group structure, either as a group parent or as a subsidiary of another RHA. Our regulatory requirements focus on key principles and potential risk areas. We will refer to these regulatory requirements when we assess risks for RHAs in group structures, and when considering proposals for new group structures. It covers the following aspects of how group structures work:

- Governance
- Service provision
- Financial management
- Managing risk

Governance

7.2. Good governance within a group is supported by governance structures that are:

- clearly defined to minimise areas of overlapping responsibilities
- clear about responsibility and accountability for decision-making. This is essential, to prevent responsibility for decisions becoming fragmented or blurred as a result of lack of clarity in the governance arrangements between members of the group
- fully accountable to the RHA's tenants and stakeholders
- successful in attracting Board members with the skills and experience; that meet the varying needs of each part of the group;
- sustainable and cost-effective
- regularly reviewed to ensure that they remain effective in changing circumstances and that they comply with statutory and regulatory requirements and reflect current best practice

7.3. All RHAs within a group structure should comply with our Regulatory Standards of

7.4. With regard to constitutional requirements, there are specific requirements which apply to RHAs that are part of a group structure, as follows:

- each organisation within the group must have a distinct legal identity and separate constitution. The constitutional and financial relationships between all organisations in the group (registered and non-registered) must be documented formally and in terms that are transparent and understandable
- the role and relationships of the parent with other group members must be consistent with charity law
- the model rules of group members must enable the parent to exercise control and to take corrective action, where required
- there are procedures in place designed to avoid conflicts of interest, particularly where members of the subsidiary's Board are also members of the parent's Board
- where it is a subsidiary of another body, the RHA's rules permits control by the parent but with sufficient independence to carry out its business, within limits set by the parent

7.5. Devising the right constitutional arrangements within a group structure is a matter for careful judgment, informed by expert legal advice.

7.6. At the heart of any group should be a comprehensive Intra Group Agreement (IGA) or similar document, defining all aspects of the parent/subsidiary relationship and how the group is to operate. Drawing up the IGA is an important initial task in forming a group.

7.7. RHAs should ensure that those who are Board members in more than one organisation have a clear understanding of their governance responsibilities.

7.8. The principles of good governance and conduct, as set out in an appropriate code of conduct, should apply to all organisations within the group whether the

organisation is an RHA or not. Further information on good governance and conduct can be found at [Northern Ireland Federation of Housing Associations](#) website.

7.9. We expect RHAs in group structures to regularly review the effectiveness of governance and control arrangements within the group. These reviews should ensure that the governance and control arrangements are effective and appropriate in the context, as well as understood and properly implemented. The review must ensure that the arrangements remain appropriate in terms of charity law.

Control and Independence

7.10. Within group structures, the parent must have constitutional control over its subsidiaries. Constitutional control should not be confused with control over operational decisions: the subsidiary should exercise independent operational control over operational matters, within the limits that have been set by its parent organisation.

7.11. The RHAs powers of control should be enshrined in the subsidiary's rules, taking account of the legal status of members of the group. For example, a parent RHA may only exercise these powers in the best interests of the charity. In addition, a charitable subsidiary must have operational independence while properly carrying out its charitable purposes.

7.12. Parent RHAs should exercise high-level control, by monitoring the activities and performance of their subsidiaries. Parent RHAs should take timely and effective action if their subsidiaries do not operate within approved limits or fail to meet agreed standards of performance. The basis for interventions by the parent should be clearly described and applied. For example:

- if a subsidiary does not adhere to financial or other agreed limits, the parent should have clearly defined rights to step in and take action
- the parent RHA should have unrestricted step-in rights where a subsidiary

or its Board is experiencing serious problems. Step-in rights should include the power to appoint and, where necessary, remove members of the subsidiary's governing body

- where the group contains registered charities, this should be reflected in the way step-in rights are clearly defined and exercised, since Board Members must always act in the best interests of the charity

7.13. The balance between strategic control by the parent and operational independence for subsidiaries is for group Board members to decide, and should reflect the group's objectives, the legal status of its members and the risks involved. For example an RHA whose subsidiaries deliver core landlord services to tenants would typically exercise a higher level of control over its subsidiaries. However, a subsidiary set up to deliver entirely commercial activities may operate on more of an arm's length basis, to minimise risk to the parent.

7.14. The RHA should take suitable professional advice to inform its decision about the appropriate level of strategic control/operational independence and how it can achieve this. The RHA should identify any risks arising from the arrangements it puts in place.

7.15. A subsidiary should have sufficient independence to manage its affairs without undue interference in operational matters by the parent organisation. The parent RHA should establish clear financial and other limits within which its subsidiaries should work. For example this can be managed by:

- Establishing a group strategy and objectives
- The parent RHA approving its subsidiaries' business plans
- An Intra Group Agreement/independence agreement or similar procedural document
- Making clear what group policies, if any, subsidiaries are expected to apply
- Ensuring that there is a clear reporting framework
- A balanced Board composition

7.16. Within these limits, subsidiary RHAs should have sufficient autonomy to plan, manage and deliver their services in a way which is responsive to their local context and the views of their tenants. Subsidiary RHAs should also have sufficient rights and resources to be able to meet their obligations effectively. For example the Board of a subsidiary RHA should have:

- The right to negotiate and agree the terms of legal and procedural documents that govern roles and responsibilities within the group;
- Involvement in developing the group corporate plan
- The power to prepare its own business plan
- The right to be consulted about any group policies that will apply to it
- Access to independent professional advice, where appropriate

Committees within a group

7.17. Committee structures within groups, as within stand-alone RHAs, should be clearly structured and add value to scrutiny and decision-making without duplication of effort. The creation, or continued existence, of a committee has the potential to reduce clarity and increase duplication. In considering establishing further committees, such as sub committees, the parent Board should be satisfied that there are good reasons why the proposed functions cannot be carried out by the whole Board. It should also be satisfied that the proposed functions are indeed Board and not executive functions.

7.18. Committee structures should be kept under review and can evolve to meet the changing needs of the group.

Board membership

7.19. The following sets out our expectations for Board membership within group structures.

7.20. The Board of the parent RHA should always be able to make objective decisions about the RHAs relationships with its subsidiaries. RHAs can seek to address this by ensuring that not all of their Board members serve on the Board of a particular subsidiary. This means the parent RHA always has Board members who are free from any potential conflict of interest between the parent and the subsidiary.

7.21. A parent RHA must ensure that its constitutional arrangements and Board membership do not allow a subsidiary to exercise control or undue influence over the parent.

7.22. The members of the Board must have the range of skills and experience needed to govern the full range of activities undertaken by the parent and its subsidiaries.

Board membership – a subsidiary that is an RHA

7.23. A subsidiary which is also an RHA generally has its own Board members, with only a small number of members also serving on the Board of the parent RHA. We require that if a subsidiary is an RHA, its Board should as a minimum have sufficient members to form a quorum independently of any members who are Board members of the parent organisation. This does not restrict the constitutional rights a parent may have to appoint or remove Board members of a subsidiary or to use any other step-in rights.

7.24. The parent Board will need a 'clear line of sight' into the subsidiary Board. Often, one or more parent Board members will sit on each subsidiary Board. This can help with communication and transparency. Where this is not the case, careful thought will have to be given to ensuring that the work of the subsidiary Board, and indeed of the parent, are clear to each other.

Board membership – a non-registered subsidiary

7.25. There is no reason why Board members or employees of a parent RHA should

not also be Board members of a non-registered subsidiary. Indeed, this may form part of an RHAs approach to achieving its overall group objectives and managing any risks resulting from the activities of the subsidiary.

7.26. However, it would be good governance practice to include some members who are not also members of the parent's Board, as:

- it can promote Board membership by a subsidiary's service users and by people with expertise in the subsidiary's business activities
- if the composition of parent and subsidiary Boards is identical, it may become difficult for members to keep clearly in mind whether they are taking a decision as members of the parent or of the subsidiary

7.27. Any subsidiary, RHA or other, must have the necessary skills and experience to manage its affairs, ideally based on an agreed skills matrix.

Conflicts of interest

7.28. The management of conflicts of interest should be governed by either a bespoke policy, appropriate code of conduct or by the terms of the Intra Group Agreement (or similar document).

7.29. RHAs and subsidiaries must provide their Board members with clear guidance on declaring and managing conflicts of interest which may arise, based on the group's objectives and structure. To assist RHAs in group structures to manage conflicts of interest we require that each organisation in the group has a different Chairperson.

Service Provision

7.30. Service provision between group members should be set out in written service level agreements or contracts. The efficiency and effectiveness of service provision within the group should be reviewed regularly. Where service contracts are of a larger scale, we expect this to be reflected in the process used to test the value of

the services provided/received. It is for RHAs to decide, taking appropriate advice, whether there is a requirement (such as from EU procurement directives and regulations) to expose existing services to competition, in their particular circumstances.

Financial issues within group structures

7.31. RHAs must comply with our Regulatory Framework and should obtain and act in accordance with specialist professional advice (including taxation and accounting requirements).

7.32. Within groups there should be clarity about financial arrangements. We expect the parent to ensure that there is a comprehensive register of loan agreements, conditions and covenants for all borrowing within the group, and a comprehensive and up to date asset register for each organisation within the group. This does not remove the need for individual members of the group to retain appropriate information in line with regulatory requirements.

7.33. If providing financial support to a subsidiary a parent RHA must have the legal capacity to do so and must manage the risks effectively. In particular we expect that:

- the RHA lending to or investing in another organisation should ensure that it is legally able to do so (for example if the RHA is a charity, trustees should ensure that the terms of the loan, including the interest rates, are carefully considered and comply with charitable obligations and duties);
- any on-lending within the group must be on arm's length terms and minimise the risks to which the RHA is exposed; and
- any cross-collateralisation, guarantees (including cross guarantees), equity investment or lending should be clearly identified in the group members' business plans, budgets, financial reports and annual accounts.

7.34. In groups with more than one RHA, to maximise assurance for tenants, we expect

each RHA within the group to demonstrate financial viability on a stand-alone basis. In particular we expect that:

- each RHA should have, or be able to borrow, sufficient funds to meet its current and future commitments and funding obligations
- if a registered organisation will not be viable on a stand-alone basis in the short term, the reasons for this should be explicit and justifiable and sustainability in the long term should be demonstrated
- the parent RHA should have the legal capacity and the financial resources to deliver the support required

7.35. Our expectations about RHAs with non-registered subsidiaries are as follows:

- the Board should consider any risks to the RHA, and be satisfied that providing support is in the RHA's best interests, and will make a demonstrable contribution to achieving its objectives
- a parent RHA should ensure that it is not exposed to risks that are unreasonable or unmanageable, in relation to its viability or reputation, as a result of its non-registered subsidiary
- a parent should formally define the scope of the subsidiary's activities, describing any limits that apply. The parent should document the financial and other limits within which the subsidiary must operate. Banking arrangements should ensure that the parent RHA's financial exposure is limited
- any financial support or guarantee provided by the RHA should not threaten its financial viability or its ability to meet its obligations towards tenants and funders or jeopardise its charitable status if it is a charity. Contractual limits should be in place for any guarantees entered into by the parent RHA on behalf of the subsidiary
- specific advice should be sought before any charitable RHA considers offering any financial support or guarantee on behalf of a subsidiary, to ensure this is an appropriate use of charitable funds or assets
- funding or lending provided should be surplus to what is needed for

current or future social housing purposes

- funding or lending by the parent to the subsidiary should be formalised, with appropriate arrangements for monitoring and control
- a parent RHA should not take general financial responsibility for its non-registered subsidiary, nor imply to third parties that it will do so. Any letters to funders issued by the parent RHA in relation to the subsidiary should be drafted with professional advice, so that they are not considered to be general assurances in respect of the debts or liabilities of the subsidiary
- the extent of an RHA's liabilities for the debts of a non-registered subsidiary should not exceed any guarantees it has provided and/or its available resources
- all financial and contractual arrangements must be on arm's length terms and minimise the risks to which the RHA is exposed

Managing risk

7.36. RHAs should identify and manage the risks associated with the operation of the group structure. Tenants' homes and services and the RHAs assets and reputation should not be put at risk by the operation of the group. The RHA should ensure it fully understands any financial or other risks from its subsidiaries. The RHAs risk management strategy should address any risks arising from its relationships with non-registered subsidiaries.

7.37. The parent should ensure that the operation of audit and risk management within the group is effective. An integrated approach to audit and risk, with a single Audit (or Audit and Risk) Committee, and an overarching group risk map should help the parent to exercise effective oversight of the identification of risk and risk management arrangements.

7.38. Responsibility for the process of risk management and reviewing internal controls can be delegated to a groups Audit (or Audit and Risk) Committee, however prime responsibility for managing risk across the group still remains with the parent. This is a key role for the parent Board and includes:

- determining the groups approach to risk and the procedures and circumstances when matters and emerging risks need to be referred to the parent Board
- risk identification
- maintaining an understanding of the groups exposure to risk and how this might change as a result of changes to strategy or in the operating environment
- challenging assumptions about the effectiveness of risk management and mitigation strategies
- oversight of risk management arrangements
- crisis management

7.39. As with all group and committee arrangements, it is essential that there is clarity about the respective roles and responsibilities of the parent Board, the subsidiary governing Board(s) and the Audit (or Audit and Risk) Committee.

7.40. RHAs should always obtain legal and financial advice on how they can minimise and manage risks to the registered organisation, and reflect this advice in group documentation and in working practices.

8.Ensuring transparency and accountability in the way groups work

8.1. RHAs should ensure transparency about identities, responsibilities and relationships within groups.

8.2. Each member of the group (whether or not it is an RHA) must always ensure that tenants, service users and other stakeholders receive clear information about:

- which organisation they are dealing with
- which group member owns assets, issues tenancies and delivers

services

- how relationships work within the group
- the accountability of each group member

8.3. Board proceedings and operational procedures and working practices should be clear about the identity of each organisation within the group.

8.4. Group relationships and transactions between group members should be described in individual and group accounts as required by accounting standards, including the Housing Statement of Recommended Practice (SORP) 2018.

8.5. RHAs are required to disclose related party transactions within their accounts, in the circumstances specified in Accounting Standards. For charities, disclosure in accounts for related party transactions is also detailed in the Charities accounting SORP.

9. RHAs considering creating or joining a group structure

9.1. This section covers:

- RHAs who wish to change their rules to become a regulated subsidiary of another organisation
- RHAs setting up a non-registered subsidiary

Becoming a subsidiary

9.2. Any RHA which changes its rules to become the subsidiary of another body needs to notify the Department. [Notifiable Events](#) sets out the requirements for RHAs notifying us of the creation or change of constitutional partnerships.

9.3. The RHA seeking to change its rules to become a subsidiary of another RHA must also obtain CCNIs prior consent if the change to the rules includes a change

to the RHA's purposes.

Non-registered subsidiaries

9.4. RHAs do not need to get our consent to set up a non-registered subsidiary but are required to notify us about this in line with our [Notifiable Events](#) guidance. The RHA should contact us at an early stage in the process.

9.5. We expect the RHA to make a full appraisal of objectives, options and risks, and to follow specialist legal and financial advice before it decides to set up a non-registered subsidiary. The RHA should always get its own legal advice, and have regard to [CCNI guidance](#).

9.6. We recognise that many non-registered subsidiaries are small in scale and that their purpose is often to undertake activities that are closely related to the community regeneration and neighborhood management objectives of the parent RHA.

9.7. There are two main situations where we will take a closer regulatory interest in the relationship between a non-registered subsidiary and the RHA:

- If the RHA contracts with a non-registered subsidiary to deliver some or all of the landlord services we regulate
- If we need assurance about any possible risks to the RHA from the activities of its non-registered subsidiary

9.8. Where the RHA provides core landlord services through a non-registered subsidiary we expect the RHA to have a strong framework in place for monitoring the performance of the subsidiary, for example to ensure the services that are provided meet the outcomes and standards within the Regulatory Framework.