

Guidance Note

Sub-contracting by a Registered Community Housing Provider

Purpose of this guidance note

To provide information on the requirements of the Community Housing Regulatory Authority (the Authority) regarding contractual arrangements between registered community housing providers (CHPs) and sub-contractors, and outline which organisation will be held responsible for meeting the prescribed Performance Standards.

Introduction

The sub-contracting of services by registered CHPs can be complex. Increasingly, we are dealing with applications where organisations seeking registration as a CHP wish, for a variety of reasons, to sub-contract tenancy management, property and/or asset management services.

In this Guidance Note, we outline our position on how we view sub-contracting arrangements in terms of satisfying the initial and on-going registration requirements.

Is sub-contracting allowed?

The answer is yes – to a certain extent. A registered CHP *can* sub-contract the functions of tenancy management, property and/or asset management services, but it must have the operational ability and resources within the organisation to manage those contracts and monitor service delivery in accordance with the Performance Standards. We refer to this as being an organisation of enduring substance i.e. not a shell company.

However, a registered CHP *cannot* delegate accountability for meeting the eligibility criteria and Performance Standards to another organisation, even if that

organisation is also a registered CHP.

What does this mean?

In practice, this means the registered CHP will be held accountable for meeting the Performance Standards regardless of any sub-contracts in place.

The registered CHP must:

- have its own policies and procedures in place that meet the Performance Standards, and these must be in the name of the organisation seeking registration (not in the name of the sub-contractor);
- report to the Authority on an annual basis on how they and the sub-contracted party are meeting the Performance Standards;
- have an executed agreement in place (this could include term sheets) that specifies:
 - what core functions have been sub-contracted, which party is responsible for specific activities related to these functions, and the financial arrangements in place between the parties to cover the costs of the delivery of those functions;
 - the delegations and lines of reporting between both parties, including advising each other of complaints and the procedures for dealing with them;
 - how the sub-contracted party is complying with the Performance Standards and following the policies and procedures of the registered CHP that have been approved by the Authority;
 - enforceable remedies for any breaches of the agreement,

particularly following a breach of the Performance Standards; and

- transition clauses in respect of actions that must be taken if the agreement is terminated by either party;
- ensure those contracts are actively managed by suitably skilled staff within the registered CHP's organisation, to ensure compliance with its own policies and procedures;
- respond to any problems with sub-contractors that could result in a failure to meet the Performance Standards; and
- comply with all applicable New Zealand legislation.

The registered CHP is the entity that engages directly with the Authority and the Ministry of Social Development. It is the only entity that can receive Income Related Rent Subsidy payments for those properties that are the subject of the executed agreement.

Why does the registered CHP need its own policies and procedures?

We register organisations that have demonstrated the capacity to meet the prescribed Performance Standards. The policies and procedures provided by the organisation seeking registration are the ones we have assessed, and the ones we will hold the registered CHP accountable to for compliance purposes.

A registered CHP that sub-contracts functions may, for any reason, change its provider at any time. If the policies and procedures belong to the sub-contractor, this organisation could take these policies and procedures with them when the contract is terminated or expires. Our focus, should a change of sub-contractor occur, is to minimise the disruption to tenants. This is why we require the policies and procedures to be in the name of the registered CHP that is sub-contracting its functions. That way, if there is a change in sub-contractor, a new one can be

brought in and held to the same policies and procedures that the Authority has approved.

What happens if you change your sub-contractor?

To ensure registration is maintained, the registered CHP that is sub-contracting its functions must have a suitable transition plan in place to minimise disruption to tenants. It must also ensure any new sub-contractor brought in delivers the contracted functions in accordance with the Performance Standards.

A Change Report would need to be submitted to the Authority regarding the change of sub-contractor. It is likely we would also request a copy of the transition plan to ensure disruption to tenants is minimised.

Further information

We recognise this is a complex issue, and there can be different variations when it comes to sub-contracting tenancy, property and asset management services, for example sub-contracting with another registered CHP. If your organisation is thinking of entering into an agreement to sub-contract services, we encourage you to talk to us as soon as possible to discuss your proposed approach. Contact us at chra@mbie.govt.nz.