

12 August 2016

Briefing:

Voluntary Right to Buy: scheme design

This briefing provides the latest thinking about the design of the Voluntary Right to Buy scheme. It is intended to support housing associations to start thinking through how they will implement the scheme and to begin developing local policies. It covers five key stages in the process:

1. Establishing a local sales policy
2. Before an application is submitted
3. The application process
4. Operating the portable discount
5. Replacing homes sold.

Introduction

In 2015, the Government made a commitment to extend Right to Buy to housing association tenants in its manifesto. The National Housing Federation, on behalf of the housing association sector, made an offer to the Government to implement this commitment through a voluntary rather than statutory approach, with government paying Right to Buy level discounts to eligible tenants.

The offer of Voluntary Right to Buy (VRTB) was accepted by the Government and, as a result, the Housing and Planning Act 2016 was drafted to only include what was necessary to underpin the agreement. This included powers to compensate housing associations for the cost of a discount and to create home ownership criteria requiring all housing associations to provide a home ownership offer to their tenants, which will be monitored by the regulator.

Key principles

The agreement between the Government and the housing association sector was based on four key principles (more information on these can be found in [our briefing on the agreement](#)):

- Right to Buy level discounts for eligible housing association tenants
- board control over which homes to sell, though a general presumption in favour of sale
- housing associations receive full compensation for properties sold
- flexible one for one replacement on a national basis.

Purpose of this briefing

Over the past eight months, we've been working with housing associations, the Government and its agencies to put the key principles within the agreement into practice. To find out more about the process we've been following, read [our briefing on the policy development process](#).

This briefing outlines the latest thinking about the design of the scheme and is intended to support you in the process of starting to develop your local policies. It reflects working level discussions with government but does not represent an agreed approach by ministers, and may therefore be subject to change.

We aim to publish joint guidance with the Department for Communities and Local Government (DCLG) once the scheme details are finalised with government. This will provide confirmed detail on the operation of the scheme so that housing associations have the information they need to process VRTB applications in an efficient and effective way.

The Government will also, in due course, finalise the tenant eligibility criteria, scheme start date and funding. Until it does so it is very hard for organisations to predict the scale of the scheme and the likely demand for Right to Buy level discounts from tenants, and to therefore

plan resourcing. Therefore, **this briefing is intended to prompt thought rather than action at this stage.**

This briefing is divided into five sections, each covering a different stage in the VRTB process.

1. [Establishing a local sales policy](#)
2. [Before an application is submitted](#)
3. [The application process](#)
4. [Operating the portable discount](#)
5. [Replacing homes sold.](#)

1. Establishing a local sales policy

One of the core principles of the VRTB agreement is that housing associations will have the final decision about whether to sell an individual property.

Within the agreement there is a presumption that you will sell an eligible tenant the property that they live in. However, there may be circumstances where you are unable to sell a particular property or where you may choose not to. In these circumstances you are able to exercise discretion not to sell. If you chose not to sell an individual property you will need to offer the tenant a portable discount to another housing association property ([see section 4](#)).

It is up to each association to decide how to operate their discretion locally, so you will need to develop a local policy setting out the circumstances where your housing association intends to operate discretion, which will need to be published by the time the scheme goes live. We have outlined below some key things to think about in order to establish your policy. The final decision about whether to sell an individual home will rest with your board.

Thinking about restrictions on sales

There are a range of reasons why housing associations may not be able to sell particular properties. In some cases there will be legal restrictions on sales that could prevent properties from being sold. This may include properties that are subject to sales limitations as part of:

- Section 106 agreements
- loan agreements
- transfer agreements
- nominations agreements.

Tip: the impact of restrictions

It's important that you are aware of the potential impact of restrictions, so you may want to start thinking about what information you already have that could be useful. Assets and liability registers may already contain some of this information. We have published [a guide on asset and liability registers](#), which may prove helpful.

Opportunities for renegotiating restrictions

Restrictions on properties won't always mean that the property can't be sold so you may want to consider your options for renegotiating restrictions.

There may be opportunities to renegotiate Section 106 agreements through strategic discussions with local authorities, focusing on schemes rather than individual properties. You have the freedom to decide on the approach that works best locally for you, so you may wish to consider initiating such discussions with your local authority.

Similarly, where you have used a property as loan security, while there will be additional factors to consider, in most cases this wouldn't need to prevent a sale.

Other examples of where discretion may be exercised

In addition to legal restrictions on sale, there may be other reasons why housing associations may choose not to sell particular properties. Some illustrative examples of where you may choose to exercise your discretion are listed below.

- In rural areas, where replacement may be difficult or costly.
- For supported housing, where ongoing management or replacement may be difficult or costly.
- Properties provided through charitable or public benefit resource or bequeathed.
- Specialist properties of historical interest.
- Properties where the landlord does not have sufficient legal interest to be able to grant a lease exceeding 21 years for a house or 50 years for a flat.
- Tied accommodation occupied because the tenant is employed by a social landlord.
- Properties held in a Community Land Trust where the association does not own the title to the land.
- Where clawback arrangements in transfer agreements mean that the association would not receive 100% compensation for the sale.
- In circumstances where the sale would breach the cost floor.

Tip: making a fair policy

Make sure your local sales policy feels fair and would stand up in the court of public opinion by asking yourself:

- does it feel like Right to Buy to eligible tenants?
- does it make a 'presumption in favour of sale'?

These examples are not exhaustive, nor do you need to decline a sale if a property falls into one of these categories. Only the board of housing associations can decide when and under what circumstances it chooses to sell, or not sell, particular properties.

Developing a local sales policy

Publishing a clear and transparent local policy that sets out how you intend to use your discretion will be an important part of managing tenant expectations and dealing with any complaints.

As part of developing a local sales policy, you will want to agree clearly with your board the circumstances under which you will sell properties to eligible tenants. As part of this discussion it may be useful to consider the following:

- The different housing markets you operate in.
- The different types of homes you provide to tenants and the demand for those homes.
- Formal restrictions on sales.
- Asset cover and properties in charge.

- How you will define what rural means in the context of your local area.
- Working with local authorities locally to meet housing need.
- How sales and replacements under VRTB could support or undermine your organisation's asset management and development strategy.
- How to communicate your policy to tenants, demonstrate that it is fair and equitable, and how to manage complaints.

Points to consider

- **Start thinking about contractual limitations** on any sales as a result of Section 106 agreements or other restrictive covenants.
- **Discuss with your board** how you intend to exercise your discretion and the key principles by which you will operate the VRTB in your local area.
- **Develop your local policy** on how you intend to use your discretion so that it can be published and made clearly available to tenants when the scheme goes live.
- **Consider your sales policy** alongside your portable discount policy to ensure one does not undermine the other.

2. Before an application is submitted

Signposting information for tenants

Housing associations may want to think about how they will publish and publicise the details of the scheme to ensure that tenants are aware of the opportunity.

It may be useful to think about where VRTB sits in relation to the other services and products you already offer, in particular any other home ownership products. You can also signpost tenants to [the Government's Right to Buy website](#) for information and to register for updates about the progress of the scheme.

Case study: signposting information for tenants, Sovereign Housing Association:

Sovereign, one of the VRTB pilots, explained the programme to their tenants in a range of ways. This included an [online video](#) setting out the process and things to consider before applying.

Responding effectively to tenant complaints

You may also wish to consider how you will handle and respond effectively to tenant complaints. Your complaints handling procedure will be the first port of call but if it is not possible to resolve the complaint here, then the tenant could make a complaint to the Housing Ombudsman.

It should be clear to tenants participating in this process how they should raise a complaint and what they can expect from their landlord to resolve that complaint. The following case study from Riverside outlines their approach to handling complaints as part of the VRTB pilot.

You can think now about how you would approach this, but you may want to wait until key information about the scheme, such as the scale and start date, has been confirmed before making any final decisions about resourcing for VRTB.

Case study: managing expectations and preparing to deal with complaints, Riverside

For most tenants applying to VRTB it will be the first time they have bought a home, so they are likely to have a range of questions about the details of the application process itself and the additional responsibilities of being a homeowner.

Riverside is one of the VRTB pilots, and for the pilot scheme they provided a clear and realistic timeline for the application process to tenants from the outset. This confirmed when and how often tenants should expect to hear from Riverside, and how long they should expect to wait for their valuation, formal offer notice and conveyancing.

Riverside have been transparent in explaining any issues or delays, for example legal complications which may arise, and give a timeframe for when they are likely to be resolved.

Riverside have a dedicated VRTB team that can provide detailed answers to the majority of tenants' queries. When a tenant phones the customer service centre they are put directly through to the specialist team so they receive an immediate response wherever possible.

Points to consider

- How you will **highlight key sources of information** and advice to your tenants. This will help them understand whether they are eligible for, can afford to, and wish to take up the opportunity to purchase a home using Right to Buy level discounts.
- How your approach to the VRTB can **integrate with your wider approach** to home ownership.
- How you will **handle and respond effectively** to tenant complaints.

3. The application process

This section outlines what we expect the application process to look like for eligible tenants who can afford to buy the home in which they currently live.

How the application process could work

Step 1: initial tenant registration

Applicants would register through the Government digital gateway before they apply. After a tenant has successfully registered they would apply directly to their landlord.

Step 2: tenant applies through their housing association

Once a tenant has completed the initial registration with their housing association they would complete an application form, provided to them by the housing association.

A standard application form will be made available by the Federation for housing associations to use. You can adapt this template to include additional questions and change the formatting and branding, but there may be certain standardised questions that will always need to be included. You will need to consider whether you wish to operate an online or paper based application process, as well as decide your general approach to processing applications.

At this stage we expect there to be a requirement to create a file in a central IT system – and for it to be updated on a regular basis – in order to meet data and financial requirements required by the Government to access the compensation.

Step 3: tenant eligibility check

Upon receipt of an application form you would check that the tenant(s) are eligible under the terms of the scheme. Tenants would be expected to provide relevant information to demonstrate that they meet the eligibility requirements.

Step 4: checking property restrictions on sales

You would also need to check whether the tenant's current home is available for sale under the terms of your discretion policy.

In the event that you use your discretion not to sell the tenant the property they live in, you would be expected to offer the tenant a portable discount. See [section four](#) for more detail.

Step 5: charging a fee

Tenants would be charged an application fee. The level of fee would be uniform across the sector and would be reviewed periodically. The fee would be primarily intended to reduce the numbers of speculative applications and in most cases, including on successful completion of the sale, would be fully refundable.

Step 6: valuing the property

You would commission a RICS qualified surveyor to value the property by compiling a short list of local professional RICS certified surveyors from which the tenant can choose.

Step 7: calculating the discount

You would calculate the discount for the property based on criteria provided by the Government.

Step 8: making the formal offer to sell

Before making the formal offer to sell, you would need to confirm that there is sufficient funding available for the sale to proceed. In the event that this is confirmed, you would make the tenant a formal offer to sell the property, which would confirm the sale price, taking into account the discount the tenant is entitled to.

Step 9: the sales process

A suite of standard documents will be available by the Federation to support you through the conveyancing process.

Fraud and exploitation

Managing the risk of fraud and reducing opportunities for exploitation within the VRTB scheme is a key priority for the Government, the Federation and housing associations. The scheme will be designed to help reduce the likelihood of fraud and exploitation as far as possible, and to capture learning from the statutory scheme.

You may also want to consider what additional checks and balances you could include in the process to help ensure you identify any fraudulent applications. A key part of this will be carefully checking the eligibility of every applicant to ensure that the information presented is truthful and accurate.

Points to consider

- Think about how you would operate key elements of the application process. For example, would you prefer:
 - an **online or paper application form**
 - **face to face** interviews with tenants or **home visits**.
- If you don't already have one, start developing your local **RICS accredited list** and consider whether you wish to do this independently or in partnership with others.
- Consider what **checks and balances** you could include in the process to help ensure you identify any fraudulent applications.

4. Operating the portable discount

When you use your discretion not to sell a property you will need to work with the tenant to offer them the opportunity to port their discount to purchase an alternative property. You can offer portable properties from either your own or, by agreement, another association's existing stock or development pipeline but not from the open market. You will need to develop a local policy setting out the terms of your porting policy that will need to be published by the time the scheme goes live. The tenant has the discretion to accept or decline the offer to port their Right to Buy level discount to an alternative property. If the tenant declines the option to port they are, in effect, declining the opportunity to access a government-funded Right to Buy level discount.

Establishing a local portability policy

Each housing association will need to develop a portability policy that sets out how they will work with eligible tenants to port their discount. This policy should:

- outline in clear terms how the process will work for the tenant
- set out a clear description and rationale for what is considered to be a reasonable offer
- outline what, if any, actions are expected of the tenant as part of the portability process
- clearly communicate the point at which the association will judge itself to have discharged the requirement to offer a portable discount under the scheme.

The key principles of portability

- Portability is offered where an association exercises their discretion not to sell one of their properties.
- Every housing association will need to develop a portability policy that should outline to tenants what a reasonable portability offer would look like.
- What constitutes a reasonable offer is likely to vary across housing associations depending on their individual circumstances.
- Housing associations are under no obligation to offer portability to the tenants of other housing associations but may choose to do so via partnership agreements.

Identifying alternative properties

There are several likely sources of properties that could be offered to tenants who are porting their Right to Buy level discount, including:

- new build pipeline – this is expected to be the primary source of properties for porting
- voids – it is not expected that associations specifically hold voids for people to port into
- choice based lettings
- tenancy swaps
- partnership with other housing associations.

For the majority of associations, availability is likely to be the key factor in defining what they will offer and what is considered a reasonable offer will vary across housing associations. For example, an association with a large development pipeline may feel that it is reasonable to offer the tenant an off plan brochure of their entire pipeline and allow the tenant to choose. Another, with highly limited stock in a geographically isolated area, may only have a single available property within the next year or not even that. Being clear in your policy on the extent of your ability (or otherwise) to meet expectations will be key in managing them.

How the porting process could work

The following steps outline how a standard process for porting could work. This process would provide the framework within which housing associations would operate their own local portability policies.

Step 1: exercising discretion not to sell

You would inform the tenant that they are unable to purchase the home they are currently living in and explain the rationale for this in line with your local policy.

Step 2: outlining options to the tenant

You would outline to the tenant the available portability offer(s) in line with your local portability policy. Tenants who do not want to avail themselves of the portability offer can, of course, remain a tenant in their existing home.

Step 3a: review suitable properties from own stock

As determined by your portability policy, you would identify a property/properties and make an offer to the tenant from your own stock.

Step 3b: if appropriate, pass tenant to partner housing association

If you have a partnership agreement in place and are not able to offer a property from your own stock, then the tenant may be passed to a partner association at this stage if that is feasible

Step 4a: tenant agrees to an available portable option

Step 4b: tenant agrees to a portable option but a suitable property is not immediately available (deferred portability)

You would need to consider how long it will take to identify a suitable property. This could be dependent on the frequency and likelihood of a void and/or readiness of new supply.

It is unlikely the Government will hold compensation funding for any significant period of time, in which case the tenant might have to reapply at a future date. You may wish to consider whether to offer any additional

support to tenants reapplying after a deferred portable discount.

Step 5: discount is calculated on the property the tenant is porting to

Step 6: offer is made to the tenant

The offer should set out any terms, including whether the offer is time limited, and any next steps should the tenant decline the offer.

Points to consider

- Remember, you only offer portability if you are declining a sale.
- Review and map which properties you are planning to exercise discretion not to sell.
- Review likely volume of available porting properties against volume of stock on which discretion will be exercised.
- Use this information to develop a portability policy so that it reflects the available properties you may be able to offer over a given time period, and ensure this is published before the scheme goes live.
- If desired, approach potential housing association partners to establish cross-organisational porting agreements.

5. Replacing homes sold

It is a fundamental principle of the voluntary agreement that the Government compensates housing associations for 100% of the value of the discount on homes sold, and that these homes will be replaced by housing associations on a one for one basis nationally.

It will provide a significant increase to the supply of new homes in England by ensuring that every home sold is replaced with a new property, using the considerable receipts which housing associations will reinvest in delivery of new housing supply. In some limited circumstances, it may not be appropriate or desirable for a housing association to build a new home to replace the one sold (for example where the receipt is insufficient) and housing associations would have flexibility to buy another one or bring an empty home back into use to replace the home sold.

Setting a local replacement policy

It will be up to each association to establish how they will deliver replacements for properties sold under the VRTB scheme. It is recommended that you develop a local policy to inform this.

In light of the sector-wide commitment, you should always consider how replacements could be delivered through new supply in the first instance, either through your own development schemes or through partnership arrangements with developing housing associations.

Receipts from the sale of homes under VRTB

When a property is sold, you will receive full open market value for that sale. This is a voluntary scheme based on the receipt of full compensation for the discount.

The agreement is clear that any receipts from VRTB sales are not intended to be subject to any transfer undertakings and agreements with local authorities. You may wish to check your transfer agreements to be clear on the requirements of their contractual agreement. Where this may be the case, this should be factored into your local discretion policy.

Payment of the discount to housing associations

The Government will pay full compensation for the VRTB discount to housing associations. Properties will be sold at the open market value. It is expected that the Government will pay you compensation for the discount in two tranches:

- 70% will be paid on completion of the sale.

Tip: establishing partnerships

You may want to consider as part of your preparation for the scheme how partnerships could help you replace homes sold. Working with other housing associations locally or with the local authority may be an option for some associations. Non-developing associations may particularly wish to give early thought to how they will partner with developing associations to replace homes sold.

- The remaining 30% will be paid when there is evidence of a 'start on site', or in exceptional circumstances bringing an empty property back into use or an acquisition.

Replacing homes sold

The agreement is clear that you should use receipts, minus any transaction costs and debt repayment, from sales to replace homes with any affordable tenure. Replacement homes can be built in any location and can be of any type or size of affordable tenure. This can include but is not limited to:

- Social rent.
- Affordable rent.
- Shared ownership and other part-rent, part-buy models.
- Starter Homes, subject to their status as affordable or otherwise. We expect that you will not be able to use Recycled Capital Grant Funding to build Starter Homes.

This will help associations respond to market pressures and local housing needs.

We expect that Recycled Capital Grant Funding will need to comply with capital funding guidance published by the Homes and Communities Agency and Greater London Authority. Current guidance is being considered in light of the VRTB agreement.

You may replace the home with a property of any size and in any location, but the property would have to be self-contained (i.e. have its own front door). In exceptional circumstances, where all other possibilities have been exhausted, you will be able to replace homes sold with:

- properties purchased on the open market
- empty properties brought back into use.

Counting replacement homes against the national one for one commitment

Individual housing associations will not be expected to replace properties sold on a one for one basis locally, but this is expected to be offset by housing associations delivering replacements at a ratio of more than one for one to meet the national commitment.

Points to consider

- Consider how you will replace the homes sold and how this can fit with and support your **broader development programme**.
- Include assumptions about sales and replacements in your **stress testing** projections.
- Consider whether you wish to work with other associations via a **development consortium** to build new homes.