



Make yourself at home with the new rules for social housing providers

Louise Leaver, Patricia Umunna and Marie-Louise King explain the new special insolvency regime for social housing providers.

There are more than 1,700 registered providers of social housing in the UK, responsible for over 2.5 million units. Although there is strict regulation of the companies, registered societies and charitable incorporated organisations that provide social housing (referred to as registered providers), financial distress or insolvency is always a lurking possibility.

The societal importance of social housing, the perceived inadequacy of the powers of the Regulator of Social Housing (RSH) and public policy considerations specific to the sector were the catalyst for the establishment of a special insolvency regime. This was brought in via the Housing and Planning Act 2016 (the 2016 Act), the Insolvency of Registered Providers of Social Housing Regulations 2018, and the Housing Administration (England and Wales) Rules 2018 (together, the 2018 regulations and rules). Under this new special insolvency regime, the affairs, business and property of the registered provider are to be managed by an

appointed housing administrator. The 2018 Regulations and Rules came into force on 5 July 2018.

The housing administration regime

The housing administration regime differs in significant respects from the 'ordinary' administration regime under schedule B1 of the Insolvency Act 1986 (IA 1986) and impacts on the secured and unsecured creditors of registered providers, as well as

the registered providers themselves, in terms of the accessibility of the various insolvency and enforcement procedures.

In relation to registered providers:

- a housing administration order can be made by the court only; and
- an application for a housing administration order may be made by the Secretary of State or, with their consent, by the RSH only.

Any person who has appointed, or who is entitled to appoint, an administrative receiver of the registered provider; or who would be entitled to appoint an administrator of the registered provider by reason of being the holder of a qualifying floating charge, is entitled to notice of the application.

The court hearing the application may make the order sought, dismiss the application, adjourn it with or without conditions, make an interim order or may treat it as a winding-up petition. In the latter event, the court may make any order it would be entitled to make under s125 IA 1986. The court may only make a housing administration order if satisfied that the

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registered provider is unable, or is likely to be unable, to pay its debts, or that it would be just and equitable in the public interest to wind up the registered provider.

Conversely, the court has no power to make a housing administration order in relation to a registered provider that is already in administration under schedule B1 or which has gone into liquidation.

Objectives

Once appointed, the housing administrator has two objectives:

- Objective 1: a ‘normal administration’ to (a) rescue the registered provider as a going concern; (b) achieve a better result for the registered provider’s creditors as a whole than would be likely if the registered provider were wound up (without first being in housing administration); or (c) realise property in order to make a distribution to one or more secured or preferential creditors.
- Objective 2: keeping the registered provider’s social housing in the regulated housing sector, namely its ownership by a private registered provider.

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The 2016 Act makes clear that while the housing administrator must, so far as possible, work towards both objectives, objective 1 (and, as with ordinary administration, in an order of priority) takes priority over objective 2. That means that in pursuing objective 2, the housing administrator must not do anything that would result in a worse distribution to creditors than would be the case if they did not need to pursue objective 2.

The housing administrator, who must be qualified to act as an insolvency practitioner, is required to aim to achieve the objectives of the housing administration as quickly and as efficiently as is reasonably practicable. The provisions of schedule B1 apply, with certain modifications, in relation to the conduct of the housing administration.

Secretary of State powers

Where a housing administration order is made, the Secretary of State has power under the 2016 Act to make grants or loans available to the registered provider to support the achievement of the objectives of the housing administration, to provide indemnities in respect of liabilities incurred or loss or damage sustained in connection

with the housing administrator’s carrying out of their functions, and provide guarantees in respect of financial obligations of the registered provider.

Restrictions on other insolvency procedures

The housing administration regime also imposes restrictions on other insolvency procedures.

The court may not exercise its powers on a winding-up petition unless at least 28 days’ notice of the petition has been given to the RSH, who in turn must give notice to the Secretary of State.

A registered provider that wishes to pass a resolution for voluntary winding up requires the permission of the court to do so. As with winding up, at least 28 days’ notice of an application for permission must be given to the RSH, who is in turn required to give notice to the Secretary of State.

Any application for an ordinary administration order must be dismissed if a housing administration order has been made or is in force. If a housing administration application or order has been made, or is in force, a person is not entitled to take any step to make an out-of-court appointment of an administrator under paragraphs 14 or 22 of schedule B1. In the event that an appointment is not precluded, an appointment of an administrator will not take effect unless at least 28 days’ notice of the appointment has been given to the RSH, who must in turn notify the Secretary of State. In the case of an application to court for an ordinary administration order, the court must not exercise its paragraph 13, schedule B1 powers unless the RSH has been given at least 28 days’ notice of the application. Moreover, the interim moratorium provisions of paragraph 44 of schedule B1 do not prevent the making of an application for a housing administration order before the appointment takes effect.

The requirement to give notice ensures that the Secretary of State (or, with their consent, the RSH) is afforded an opportunity to apply to court for a housing administration order before a winding-up petition, voluntary winding-up application or ordinary administration application is heard.

Impact on secured creditors and valuations

The restrictions on other insolvency procedures are extended into the area of

enforcement of security. Security cannot be enforced over property of a registered provider unless at least 28 days’ notice of the intention to do so has been given to the RSH who, in turn, must give notice to the Secretary of State.

The 2018 rules provide for the housing administrator to apply to court under paragraph 71 of schedule B1 for authority to dispose of charged property as if it were not. As in ordinary administration, such order as is granted would be subject to the condition that there be applied towards discharging the sums secured by the security, the net proceeds of sale and any additional money required to be added to such net proceeds so as to produce the amount determined by the court as the net amount, which would be realised on a sale of the property at market value. Part 5, chapter 2 of the 2018 rules contains provisions relating to the valuation and re-valuation of security.

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From a valuations perspective, no real change is anticipated. As objective 1 will take priority and creditors’ interests will therefore be protected, valuers have confirmed that the sector-standard market value subject to tenancy valuation can be retained.

Sea change?

To date very few registered providers have found themselves in financial difficulties and no funder in the housing association sector is believed to have suffered a loss.

It remains to be seen whether the introduction of the housing administration regime will be reflected in a change in practice in addressing distress in registered providers. The regime certainly gives the Secretary of State, or RSH, new powers, but will they wish to exercise them? □



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