CIPFA

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THE HRA RINGFENCE

AT THE HEART OF PUBLIC SERVICES

Introduction

1 This paper covers the following points in respect of ringfencing:

- the legal history of ringfencing
- the Ealing Ruling
- what the Department of the Environment Ringfence Circular tells us
- the CIPFA publications Accounting for Housing and Accounting for Central Services
- the promotion of best practice.

2 This paper is circulated to Scottish authorities for information only to update practitioners on current housing issues as they affect England and Wales. The ringfenced Housing Revenue Account is currently enshrined in the Housing (Scotland) Act 1987 and this Act includes all Scottish legislative requirements which are equivalent to those references included in this paper. The Institute considers that many of the issues included in this paper are pertinent to Scottish authorities and would wish to advise these authorities of the guidance currently being given to councils in England and Wales.

The legal history of ringfencing

3 Historically expenditure and income on the provision of Council Housing has been treated differently in that it has had to be accounted for within the Housing Revenue Account, unlike other services such as education, leisure or environmental health which were accounted for in the General Fund. Since 1936 there had been several housing acts, the last of which was the 1985 Housing Act. This consolidated earlier legislation. Expenditure and income incurred in accordance with the provisions of Part II of this Act had to be accounted for within the HRA. Schedule 14 of the Act prescribed the debits and credits to the HRA.

4 Although debits and credits to the HRA were prescribed, it did not really matter if authorities had perhaps treated as HRA expenditure which should have been General Fund expenditure (or for that matter vice versa) as deficits on the HRA had to be made good by a contribution from the General Rate Fund. Equally surpluses on the HRA could be transferred to the General Rate Fund.

5 The Local Government and Housing Act 1989 changed all that with the introduction of a new financial regime for housing. From 1 April 1990 there were to be no transfers from the General Fund to make good deficits on the HRA, and transfers from the HRA to the General Fund were only allowed in certain prescribed circumstances. The HRA had become "ringfenced". Prior to the introduction of ringfencing some authorities believed a definition of what should be in the HRA was needed. However, other authorities felt it was better not to have a definition.

6 In the summer of 1989 the Department of the Environment had issued a questionnaire seeking information about the items which local authorities charged to the Housing Revenue Account and General Fund respectively. The results of the survey showed most authorities had charged items of a landlord nature, such as estate management and rent collection, to the Housing Revenue Account but there were a number of items where authorities had exercised discretion in charging expenditure. These were:

i. Wardens' services
ii. Estate shops
iii. Homelessness Administration
iv. Community Centres
v. Landlords' Services
vi. Ground Maintenance, site and environmental works
vii. Hostels
viii. Housing advice.

7 Accordingly a further survey was carried out in November 1990 concerning the above items. At the time preliminary results of that survey showed gross expenditure of £232 million on those heads was charged to the Housing Revenue Accounts in 1989/90. Most of this expenditure related to Wardens' Services.

8 Nothing further came out of the Department and so authorities were left with statute for a definition of the HRA as follows:

9 Section 66 of the Local Government and Housing Act 1989 states that local authorities should observe proper accounting practice in the preparation of Accounts. Authorities should therefore have regard to Statements of Recommended Practice, such as the Code of Practice on Local Authority Accounting in Great Britain.

10 Section 74 of the Local Government and Housing Act 1989 (the 1989 Act) requires local authorities to keep a Housing Revenue Account (the HRA) unless the Secretary of State has consented to their not doing so.

11 Section 74 defines those properties to which the HRA must relate. These are the same as those formerly included in the HRA under Section 417 and Schedule 14 to the Housing Act 1985, except that land acquired for resale and dwellings built for sale could no longer be included in the account.

12 Schedule 4 of the 1989 Act defined the debits and credits which could be included within the HRA. Item 1 of part II of the Schedule refers to expenditure of the authority in respect of management and maintenance of houses and other property in the HRA.

13 It was the definition of management which was to be called into question by the "Ealing" court case.

The Ealing Judgement

14 In April 1992 the Court of Appeal ruled against the London Borough of Ealing on its inclusion of costs of certain services within the HRA. A tenant of the London Borough of Ealing argued that the Council had charged certain items of expenditure to the HRA which should have been charged to the General Fund. These items were a proportion of the costs of:

i. the Homeless Persons Unit
ii. the Housing Advisory Service
iii. the Sheltered Housing Service.

15 The case turned on the interpretation of "management" in item 1 of Part II of Schedule 4 to the Local Government and Housing Act 1989. Expenditure on these 3 services could only be charged to the HRA if it related to the management of the local authority's HRA housing and other property within the HRA. The court held that while the Secretary of State has discretion under item 1 to make a direction including or not including any expenditure within this item, he cannot go beyond the "ordinary and natural meaning" of the words used in item 1.

16 The Court held that the amounts of expenditure charged to the Housing Revenue Account in respect of the 3 services were too high as not all of the activities of the Council in respect of these services could be construed as management of its HRA stock. The court laid down relevant principles which an authority should have regard to in deciding whether to charge expenditure to the HRA or General Fund. The London Borough of Ealing undertook to carry out a review of the apportionment of costs between the HRA and General Fund and make whatever adjustments were necessary in the light of the decision of the Court of Appeal. This review was duly undertaken. The total gross expenditure of Ealing in the HRA was over £100 million. The services and sums transferred from the HRA to the General Fund in respect of 1992/93 and following years were:

	£'000
Homeless Persons on Unit	151
Housing Advisory Service	(12)
Warden Service	124
Total	263

17 The impact on weekly rents of these transfers was approximately 30 pence per week and de minimis in the context of prevailing rent levels of over £65 per week.

18 More fundamentally the Ealing judgement caused problems for many district Councils and some Metropolitan Councils which over the years had developed Sheltered Housing Schemes, some of which involved high levels of care. In the 1980s there had been a lot of special need housing built on the principle that the movement of older tenants into such units would create vacancies in existing Council stock for younger tenants. Shire District Councils, however, would find it a massive burden on their General Fund to have to meet the Welfare costs of sheltered housing. In addition there was no statutory authority to charge such costs to the General Fund as they were not social services authorities. County Councils were unlikely to offer any help in view of the budgetary constraints they were under. The situation with regard to wardens accommodation was resolved by:

19 Sections 126 and 127 of the Leasehold Reform, Housing and Urban Development Act 1993 empower housing authorities to provide welfare services and to account for them within the General Fund or the HRA, as they wish. This legislation is retrospective to 1 April 1990. It is primarily in respect of the provision of welfare services by Wardens.

20 The above discretion is not unlimited as the Housing (Welfare Services) Order 1994 lists certain items of essential care which must be accounted for in the General Fund with effect from 1 April 1994. These are:

i. assistance with personal mobility
ii. assistance at meal times
iii. assistance with personal appearance and hygiene
iv. administration of medication
v. nursing care

21 A guidance note prepared by the Department of the Environment which contains advice on the interpretation of the 1994 order was sent to housing authorities on 27 January 1994.

22 As further guidance on the HRA, the Department of the Environment has issued its Circular 8/95 on the operation of the HRA ringfence.

The Department of the Environment Ringfence Circular

23 Note: paragraphs in the circular to which this paper refers are highlighted in italics.

General (Paragraphs 1 to 8)

24 The circular restates Ministers' established policy for the HRA and introduces no new issues of principle. It is intended as a helpful reference document but it is not intended as an authoritative statement of the law on the keeping of the HRA. It is essential that authorities take their own legal and accounting advice, as necessary, and they will need to satisfy their auditors about their decisions. The circular states that the current statutory provisions governing the HRA, namely Section 74 (as amended by Section 127 of the 1993 Act) and Schedule 4 of the 1989 Act reflect the Government's policy that the HRA should primarily be a landlord account, containing the income and expenditure arising from a housing authority's landlord functions. This principle is central to the guidance in the circular, which covers the following main areas:

i. Property in the HRA (Paragraphs 9 to 18)
ii. Housing Welfare Services (Paragraphs 19 to 27)
iii. Non-welfare services and functions (Paragraphs 28 to 52)
iv. Statutorily permitted transfer across the ringfence (Paragraph 53)
v. Finance considerations (Paragraph 54).

25 The paragraphs below do not provide a detailed paragraph by paragraph commentary in the circular. Rather they highlight what are considered as key aspects of the circular. One thing that must be pointed out is the language used, which includes words and phrases such as:

- ... may no longer fulfil ...
- ... authorities should consider ...
- ... authorities should have regard to ...
- ... the Department considers ...
- ... it is for the authority to form its own judgement ...
- ... much will depend upon local circumstances ...
- ... if authorities decide it is appropriate to do so ...
- ... the authority may choose to charge ....

26 While there are "musts" and "requires" in the circular, the use of the above phrases does show that the Department of the Environment has produced a circular which is seeking to provide help and guidance.

Property within the HRA (Paragraphs 9 to 18)

27 Property has to be accounted for within the HRA if it is currently provided under Part II of the 1985 Act, or any of the powers specified in Section 74 of the 1989 Act. However all leases of 3 years or less entered into after 31.3.1992 must not be included within the HRA.

28 Certain property currently within the HRA may no longer fulfil its original purpose. In this situation the authority should consider its removal from the HRA. Here, as commentary, authorities are reminded that the operative word is 'consider'. It may not be appropriate to remove commercial premises from the HRA where such property is an integral part of Council estates. However, where authorities believe that commercial properties no longer have any connection with local authority housing then they may wish to appropriate such property out of the HRA. They must be mindful of the following:

i. Statutory powers (the circular is silent on the powers)
ii. the financial consequences to both the HRA and General Fund, in view of the need to comply with the relevant Item 8 and subsidy determinations.

29 Where an authority has a policy of letting, on a long term basis, blocks of HRA garages to people who are not HRA tenants, the authority should consider appropriating the garages to the General Fund. This is because the Department considers where tenants do not have the opportunity to rent those garages, then the provision of those garages does not form part of an authority's housing function.

Housing welfare services (Paragraphs 19 to 27)

30 The position in respect of welfare services provided by wardens has been discussed earlier. Annex B of the circular gives examples of services provided by wardens which the Department considers have sufficient connection with authorities' landlord functions to justify the costs being charged to the HRA.

31 With regard to other welfare services not provided by wardens it is not considered appropriate that items such as social and leisure activities for tenants in general, youth club activities, creches for the under 5s, even if their parents are tenants, or facilities for the mentally or physically handicapped should be charged to the HRA in view of the landlord nature of the HRA. On the other hand the circular acknowledges that in cases of special needs and the most difficult and challenging housing estates, the responsibility of managers covers a wide range of functions, alongside the efficient and effective delivery of normal estate management duties. It is recognised that there may occasionally be circumstances which warrant a member of staff spending all of his or her time on associated welfare services for a particular group of tenants, as part of the more general housing service for that group. Where an authority is satisfied that this is the most cost effective option, the circular states that they may choose to charge the cost to the HRA.

32 However the Secretary of State is concerned that Section 127 of the 1993 Act should not be used as a basis to debit the HRA with the costs of services which go beyond the supplementary nature of the items in Annex B of the circular. Specific examples which the circular gives of items which it is considered should not be

met from the HRA include estate-based employment advisory services and drug rehabilitation centres.

33 In addition authorities are warned that if the Secretary of State considers that Section 127 was being used in a way in which it was not intended, he would consider whether its scope should be narrowed any further than the existing provisions relating to essential care.

Non-welfare services and functions (Paragraphs 28 to 52)

34 Where services benefit HRA tenants and other people, there should be a fair apportionment of the associated costs and income between the HRA and the General Fund.

35 One of the most controversial issues has been how to account for Large Scale Voluntary Transfer (LSVT) costs. There has been much discussion between the Department of the Environment and the Audit Commission. As a result advice was sought from Counsel. The position is as follows:

i. Statutory consultation costs must be a debit to the HRA whether or not transfer proceeds, or there is a capital receipt
ii. No other LSVT expenditure can be charged to HRA under item 1, as it is not considered to be expenditure in respect of the management of property within that account. The Department is preparing additional guidance on the treatment of LSVT related expenditure.
iii. However those authorities which have incurred expenditure in the light of the previous Department of the Environment guidance are advised that the Secretary of State may consider applications for a special determination under item 8 of Part II of Schedule 4 of the 1989 Act.

36 With regard to Homelessness Administration and Housing Advisory Services, the circular advises authorities to consult the Court of Appeal's decision on the Ealing case when deciding how to account for the costs. The court decided that Ealing had charged too much to the HRA on the grounds that the sum of the homelessness activities could not be construed as selection of tenants and therefore management under item 1 of Part 2 of Schedule 4. In deciding on where to account for homelessness and housing advice costs local authorities will need to look at the local circumstances. For example a local authority may take the view that homelessness costs incurred up to the issue of the Section 64 notice under the Housing Act 1985 should be General Fund. Once the Section 64 notice is issued, i.e. the authority acknowledges it has a responsibility for providing housing accommodation for the homeless family, then some of the costs could be charged to the HRA if the resulting accommodation is to be provided through the HRA on the grounds that the work is part of the selection of tenants and therefore a housing management HRA function. In addition, if an authority places homeless families temporarily in HRA accommodation under licence, prior to the issue of a S64 notice, it may be reasonable to charge some of the administration costs to the HRA. With regard to Housing Advice, an assessment will need to be made as to how much is in respect of the Councils landlord role, i.e. HRA, and how much relates to advice on improvement grants, how to obtain accommodation with a housing association, how to deal with a landlord who is harassing a tenant, etc. These will need to be met from the General Fund.

37 Service charge income in respect of flats and maisonettes sold on long leases should be accounted for within the HRA where the expenditure which the income is meant to recover is in the common parts of a building which remains within the HRA. The definition of common part, could be quite wide and reference will need to be made to the provisions of the lease. It also follows that provisions for bad debts on service charges will have to be met from within the HRA. Only expenditure relating to the dwelling itself, once it has been sold, should go to the General Fund.

38 Paragraph 46 of the circular states that the property which is subject to housing management CCT is housing accommodation (except hostels) provided by the authority under Part II of the 1985 Housing Act, including garages, parking spaces and outhouses. The circular goes on to state that housing management CCT expenditure and income should usually be accounted for in the HRA including start up and monitoring costs. This statement specifically refers to preparatory work and contract costs. Once a contract is let the charge to the HRA in respect of housing management CCT will be either a payment to an external contractor or the in-house DSO. Expenditure incurred by the DSO in fulfilling its contractual obligations should be included within the Housing Management DSO account, and subsequently recovered from the HRA by means of the contract charge. Expenditure by the DSO contractor is not included within the HRA, only the charges.

39 From 1993/94 onwards authorities have the opportunity to credit surpluses earned by DSOs on HRA related work to the HRA, but Secretary of State approval is needed. The wording of the circular is such that where, for example, rent collection is within the finance defined activity and included within the Finance DSO then the surplus attributed to rent collection on that DSO, subject to an application to transfer to the HRA being successfully made to the Department of the Environment, can be transferred to the HRA. Any application to transfer HRA related deficits to the HRA will be considered on its merits but there is a strong presumption against granting such requests.

Statutorily permitted transfers across the ringfence (paragraph 53)

40 The circular states that, although as a general principle authorities do not have discretion to transfer expenditure and income between the HRA and the General Fund, there is a limited number of specific instances where this can, or sometimes must, occur. The relevant statutory provision is Schedule 4 to the 1989 Act and authorities should have particular regard to paragraph 3 of Part III of that Schedule. This is the section relating to amenities shared by the whole community. Examples of such amenities are:

i. open spaces
ii. community centres
iii. playgrounds.

41 Local authorities need to assess the benefit to the community as a whole of such amenities, rather than Council tenants, and then make a contribution to the HRA from the General Fund.

42 The size of such contributions will vary between local authorities to reflect the differing circumstances of those authorities which range from small shire districts to large inner city authorities. However, the size of the contributions has to be

specifically and correctly calculated. The apportionment must reflect the reality. The authority cannot opt out of making this calculation.

Financial considerations (paragraph 54)

43 As the circular reaffirms the extant principles in legislation and those of proper accounting practices on the keeping of the HRA then the Department is of the view that it does not impose any new burdens on local authorities' general funds.

44 Consequently there is no intention to make any adjustments to public expenditure provision between HRA subsidy and revenue support grant.

Conclusion on the Ringfence Circular

45 The circular offers guidance on how authorities should account for items between the HRA and General Fund but at the same time makes it clear that local authorities must not see it as a substitute for the source legislative material. In the final analysis local authorities have to consider the legislation, make their own judgements and take responsibility for them.

The CIPFA Publications Accounting for Housing and Accounting for Central Services

46 Chapter 5 of Accounting for Housing provides guidance on Housing Management and Support Services. The overriding need is to carefully distinguish between support services relating to HRA services and General Fund housing services. However support service recharges are calculated, the same principles should be used for the HRA and General Fund. Where charges are negotiated for services the aim must be to keep any year end balances on the Support Service holding account to a minimum. This is not only to avoid distorting the true cost of providing the service, but also to avoid being in the position of seeming to be illegally carrying forward HRA deficits hidden by failing to account properly for support service costs. Where year end balances are material these should be debited or credited to the appropriate account.

47 Proper accounting for support services to the HRA is essential because of the moves to Housing Management CCT. The Housing Management DSO must bear a charge which represents the net marginal cost of:

- the full cost of all activities and support services which would not be needed if private contractors were to be employed instead of DSOs; less
- the full costs of any activities and support services which would be needed in that event.

48 Within Accounting for Central Services there is a new CIPFA statement in Accounting for Overheads. In this the Institute Council recommends that:

i. charges or apportionments covering all support service costs should be made to all their users
ii. the costs of service management should be apportioned to the accounts representing the activities managed
iii. the costs of the corporate and democratic core, service strategy and regulation and unapportionable central overheads should be allocated to separate objective heads kept for the purpose, and should not be apportioned to any other head.

49 With regard to 1 and 2 above, it is essential as stated before that the HRA bears a proper charge. However items in 3 above should not be charged to the HRA by virtue of the fact that they are allocated to separate objective heads and should not be apportioned any further.

i. The corporate and democratic core (or CDC) is defined as:
ii. corporate policy making
iii. representing local interests
iv. support to elected bodies
v. public accountability.

50 Local authorities need to keep their support service recharges under review and ensure that their HRA is not being charged with such items. Chapter 3 of Accounting for Central Services provides further information on the items which make up the CDC.

51 Unapportionable central overheads are overheads for which no user now benefits. They include:

i. pension back-funding
ii. unused shares of IT facilities
iii. shares of other long-term unused but realisable assets
iv. deficiencies on assets rents where cheaper accommodation would have been satisfactory.

52 Again more information is provided in Chapter 4 of Accounting for Central Services.

53 Service Strategy and Regulation relating to Housing is explained in Chapter 3 of Accounting for Housing. SSR is a charge to the General Fund. When Accounting for Housing was issued for consultation there was concern from local authorities that this would increase the burden on their General Fund. However there are a number of points needing to be made:

i. It is important to differentiate between service or operational management, which is broadly proportional to the size of activity managed, and service strategy. The former is charged to the HRA if the activities managed are of a landlord nature.
ii. When the HIP bid is being prepared it is important to distinguish between the "consultee" role, which is service management, and the "consultor" role, which is service strategy.
iii. As soon as expenditure can be identified to the HRA it should be charged there.
iv. Finally, in most authorities the amount charged to SSR will be very small in relation to total expenditure and some authorities may choose to regard the expenditure as de minimis and not make a charge re SSR.

Promoting best practice

54 Local authorities should look at the legislation and ensure that the principles they adopt in including income and expenditure within the HRA comply with statute.

55 Those principles need to be kept under review as circumstances are changing. For example the move from being a provider of housing to a housing enabler, working through housing associations, may mean that more management costs need charging to the General Fund rather than the HRA. Alternatively office

changes, e.g. the relocation of staff or the use of less office space, may mean a rework of accommodation charges.

56 Working papers must be kept which explain the basis of the charges to the HRA, General Fund and also contributions in respect of shared amenities for both direct charges and support service charges. Even if in certain instances assessments have to be very subjective it is essential that splits are made and the authority can show that it has at least considered the issues.

57 Ideally where costs need to be split between the HRA and General Fund then there is some detailed method behind the split, such as time sheets filled in by staff on a weekly/monthly basis showing the split. Failing this staff will need to make best estimates. Sometimes if the pattern of work is consistent on a weekly or monthly basis it may only be necessary to keep records for a particular week or month.

58 Where tenants, leaseholders or residents are unhappy with the apportionment, officers may wish to meet them to explain the bases used and the reasons they were selected

59 As stated above the ideal is for there to be a detailed analysis on which to base charges to the HRA. If this does not exist local authorities will have to use their judgement. However any judgement must be as well founded as possible. Where no data exists to support it, it must appear to be based on a reasonable judgement. Authorities must not look at what is the maximum or minimum they can charge to the HRA but what is the correct amount.

60 In arriving at the correct amount they will need to be mindful of the overriding principle that costs charged to the HRA, whether direct or in respect of support services, must relate to the management and maintenance of the housing stock.