



# SAFE SUCCESSFUL SUSTAINABLE

A shared vision for better homes,  
support and opportunities

*An evidence-based account from  
a housing provider that chose to close*

October 2021

# CONTENTS

Executive summary .....	4
The Prospect Story .....	6

## Section 1 8

### An introduction to lease based exempt accommodation

1.1 An explanation of “Exempt Accommodation” .....	8
1.2 Funding exempt accommodation .....	9
1.3 Prospect and its lease based model .....	10
1.4 Oversight of exempt accommodation providers .....	11
1.5 Support provision .....	12
1.6 The needs of residents in exempt accommodation .....	13
1.7 Exempt accommodation in England .....	14
1.8 A focus on exempt accommodation in Birmingham .....	15

## Section 2 17

### The challenges emerging from the lease based exempt accommodation model – the Prospect experience

2.1 The initial referral for non-commissioned, leased based, exempt funded accommodation .....	17
2.2 Compliance with the Rent Standard and the interaction with Housing Benefit .....	19
2.3 Support of residents – Quality of care provision and funding .....	20
2.4 Security of tenure and opportunities for residents to access independent livings .....	22
2.5 Operational control within the lease based model .....	24
2.7 Conflict of Interests .....	25

## Section 3 29

### Other practices and emerging trends of concern in the exempt accommodation sector

3.1	Evasion of Regulatory Oversight .....	29
3.2	Usage of CICs in providing exempt accommodation .....	30
3.3	Criminality, Sharp Practice and Maladministration .....	31
3.4	Damage to the reputation of the sector .....	32
3.5	Concentrations of exempt accommodation in locations and impacts on the wider community .....	33
3.6	Exempt providers becoming too big to fail .....	34

## Section 4 35

### Recommendations for securing the future of lease based exempt accommodation

4.1	Financing exempt accommodation .....	35
4.2	Accountability and oversight as a driver for change .....	36
4.3	A focus on the operating model .....	37
4.4	Greater ownership of the relationship with residents .....	39
4.5	A renewed focus on governance .....	40
4.6	Summary table of key asks .....	41

## Section 5: Resident stories 42

5.1	Alan's story .....	42
5.2	Sunil's story .....	43
5.3	Jayne's story .....	44
5.4	Alison's story .....	44
5.5	John's story .....	45
5.6	Marek's story .....	45

# EXECUTIVE SUMMARY

Written by the new Board and Executive charged with overseeing the closure of Prospect, this document summarises the findings of the detailed investigation into the organisation's failure. It is for national and local politicians, other registered housing providers, regulators, responsible landlords, charities and others to understand the model and the challenges both inherent within it and exerted upon it. We think that these stakeholders, working collectively, can help address the issues that impacted on Prospect, and which we know are affecting others, to offer higher quality homes, improved services and better prospects for vulnerable people living in exempt accommodation.

The piece concludes with a summary table setting out the various asks we make throughout the report to those stakeholders. This can be found on page 42. Whilst many of these asks will require long term systemic change, a number can be achieved quickly without any significant legislative or funding changes. In summary, the most vital of these are:

- **That efforts are made to close a number of loopholes in funding and regulatory regimes, preventing some from taking advantage of vulnerable homeless people in need of housing.**
- **Introduction of new Housing Benefit guidance to support Local Authorities to make more informed choices about the use of exempt funding.**
- **RPs in the sector taking greater ownership of the relationship with residents, taking control of all the key touch points throughout their tenure.**
- **Where third parties are engaged, the RP always maintains a clear line of accountability to them, ensuring that they are aware of their obligations and that they are providing robust assurance that these are being met.**
- **That more is done to support residents into permanent accommodation and give them the springboard for independent living, preventing exempt accommodation from becoming a poverty trap to them.**
- **That the Boards of lease based exempt accommodation providers are clear on the obligations they have, that they ensure their members have the requisite skills to manage complex businesses and that their conduct is always exemplary.**
- **Revisions to funding streams to ensure that property and care costs are paid for appropriately and deliver better value for money, whilst also helping lease based exempt accommodation providers to have viable businesses models.**

The model operated by Prospect and others is commonly described as “exempt provision”. However, it would more accurately be described as non-commissioned, leased based, supported housing, funded through exempt Housing Benefit. The exempt housing sector came in to being to solve a genuine problem. Several factors (including a lack of new affordable homes, the end of Supported People funding, inadequate care services and a rise in homelessness) led to at least 50,000 people requiring a different type of supported accommodation. Sadly, the quality of some of this accommodation and the support provided is poor. Our view is that residents deserve better.

It should be pointed out that there are many successful and well-respected services using exempt funding to support the provision of accommodation to meet the needs of those people. It should also be pointed out that within Prospect, there were at least two Managing Agents who delivered excellent services, as did the internal support team. This report should not reflect badly on them or the exemplary work they do in supporting the most vulnerable in society. However, there is a sub-market within that which typically operates on a non-commissioned, lease based housing model that is not compliant with Regulatory Standards and which creates unacceptable risks for residents, communities and public finances.

We open this report with an explanation of what exempt accommodation is and how the lease based model works. In our experience, this sector of the market is poorly understood, and our story cannot be fully explained without understanding the basis on which we worked. We have also conducted some research using Freedom of Information requests to Local Authorities in the UK. Amongst other findings, it conservatively estimates an annual spend of £1bn on exempt accommodation by local authorities (and ultimately the UK taxpayer) to exempt accommodation landlords, a figure that has increased over the last three years.

We go on to explore how the current funding approach for exempt accommodation is flawed and fails to consider how vulnerable people with high

support needs housed in the accommodation should be funded. We are aware that this approach is problematic for all providers in this area and causes many viability issues. We suggest ways in which changes could be made to put lease based exempt accommodation on a firmer financial footing.

We also explore the complex governance issues and commercial arrangements with both the landlords and Managing Agents we leased homes from and through. These arrangements made controlling and monitoring Prospect’s activities extremely difficult. The operating model meant that monitoring delivery of services and statutory obligations was difficult, including property related health and safety compliance. This was made worse by ineffectual commercial agreements which prevented Prospect from holding landlords to account and making them meet their obligations. Most critically, it prevented Prospect from owning the relationship with residents and ensuring that their needs were understood and met.

The complexities of these arrangements were compounded by loopholes in how funding and regulation is applied to exempt providers. We have witnessed some worrying trends in which organisations game the system through sharp practices, engage and take advantage of clear conflicts of interest or are simply using the letting of exempt accommodation to enable criminality. This results in poor value for the public purse, with many residents being inappropriately housed in the accommodation. We would like to see Local Authorities consider taking on more responsibility for the referral process, directing people towards the most appropriate provider to meet their needs.

In addition to exploring the funding, governance and other issues which led to Prospect’s decision to close, the paper also proposes potential solutions to address the shortcomings in the sector more widely. These are split into immediate suggestions which can deliver quick wins to some of the very evident problems in some parts of the sector. We then consider some deeper, systemic issues that are likely to take longer to instigate, but which we think are vital to the continuation of exempt accommodation and the life changing services most providers deliver.



Our enduring hope is that this document helps other to learn from the mistakes and experiences of Prospect, helping them to safeguard the well-being of those vulnerable residents that find themselves in exempt accommodation. As we have set out, most organisations and individuals providing supported housing (particularly in the

commissioned sector) are dedicated and diligent, often going above and beyond what is required of them to deliver for their residents. We want to see a stable and sustainable platform from which they can continue to do this vital work and make even more of a difference in the lives of those that need their help.

## THE PROSPECT STORY

Prospect Housing was established as a Registered Provider (RP) in 2013. Its mission was to provide high quality accommodation and support for vulnerable adults at risk of homelessness in the Birmingham area. Prospect's clients included young people, care leavers, offenders, people with substance misuse issues, mental health, learning disabilities and refugees.



Prospect's model of providing leased homes and associated care for those it housed would ultimately become unviable. For reasons discussed in this report, the organisation was unable to deliver a long-term viable business plan whilst maintaining compliance with Regulatory Standards and Housing Benefit regulations.

Alongside this, Prospect was impacted by inadequate oversight and risk management, insufficiently robust governance arrangements and unfavourable lease agreements. All of these were identified as factors in the Regulator of Social Housing's (RSH) governance downgrade of the organisation. These issues were not unique to Prospect however, and several organisations operating a lease based exempt accommodation business model have also received Regulatory notices from RSH.

Despite being cognisant of what was required to achieve improvement and having a plan in place to achieve it, Prospect was unable to affect change. The legacy issues of the organisation's lease arrangements prevented it from being able to sufficiently influence some of the property owners and Managing Agents from which housing was leased. Consequently, Prospect was unable to improve oversight, assurance and control over much of the housing stock it managed.

In 2020, the Prospect board started to explore options which would ensure its viability and deliver the wellbeing and welfare of its staff and customers. With a new Executive and Board Chair in place, the Board uncovered several concerns over previous practices. This included a lack of evidenced health and safety compliance and resident safeguarding concerns. Work was

undertaken immediately to address these concerns and a new approach to enforce contractual terms with the Managing Agents to improve governance and oversight was also applied. Self-reporting these issues to RSH resulted in a regulatory downgrade<sup>1</sup> and in October 2020 three additional “statutory” appointments joined the then Board, as required by the regulator.

The Board commissioned a full options appraisal to try and establish a sustainable future for the organisation. Its aim was to identify the most robust way to return to compliance with the Regulator and deliver a long-term viable business plan, whilst improving service delivery.

## THE OPTIONS APPRAISAL

The Board took independent, legal and financial advice which delivered a comprehensive options appraisal and identified ten potential ways forward for the organisation. These ranged from transfer of activities to other housing organisations, different funding and structure models and a winding-up of the business. The Board assessed each option against pre-determined criteria including:

- **Resident well-being and welfare;**
- **Financial viability;** and
- **Each Regulatory Standard.**

The most important factor in the decision making was ensuring the best outcome for the organisation’s residents. The new Board and Executive were adamant that this had to be the primary consideration of any option taken.

After exploring all the options fully, the Board made the difficult but necessary decision for Prospect to cease trading and consider other arrangements for the organisation’s 1,500 residents. Despite the best efforts of all involved, there was no way of retuning the business to Regulatory compliance whilst simultaneously ensuring its viability.

## What happened next?

Prospect committed itself to a well-managed resolution for all its stakeholders. The priority was to put the needs of residents first (working with RSH and Birmingham City council) to make sure that their needs were met, that personalised support was in place for them and that they were being clearly communicated with throughout.

An extended consultation was undertaken with them to understand what we could do to make the process easier. All our residents were seen at least once as part of the consultation. Through the consultation, we developed a comprehensive picture of everyone’s individual needs. Taking this into account, we were able to work with our partners and residents to provide an appropriate housing solution which matched with the residents wishes.

99% of residents chose to stay in their current home under their current Managing Agent, but with a new RP in place<sup>2</sup>. We worked tirelessly to make sure that this could be achieved. Thanks to the careful management and hard work of Prospect’s staff, none of our residents experienced homelessness because of the closure.

Many of our staff have now gone onto to find alternative employment across the city, going on to do a similarly dedicated and diligent job in providing care for others that need it. We aided many to find this employment by offering a retraining package leading to new qualifications. Equally, many were able to find work on the strength of their reputation alone.

<sup>1</sup> Only Registered Providers with more than 1,000 units are designated a regulatory grading (for governance and financial viability). RPs with below 1,000 units do not have a formal grading and are not proactively inspected or reviewed by the RSH. As such, Prospect is one of only a few exempt accommodation providing RPs that has a regulatory grading.

<sup>2</sup> This was affected by most Managing Agents finding a new RP to work with once their contractual relationship with Prospect ended.

## Section 1

# An introduction to lease based exempt accommodation

Prospect was an RP which operated by leasing properties from the private sector, the costs of which were funded from Housing Benefit. From our discussions with others, it has become clear that this model is poorly understood. In this opening section, we aim to provide some background and context to the lease based model for exempt accommodation which Prospect and others operated. We also provide some insights into the usage of this type of accommodation by local authorities nationally and consider these in the context of our own experiences of providing lease based accommodation.

### 1.1 An explanation of “Exempt Accommodation”

The term “Exempt Accommodation” first came into use in 1995 and was used to describe types of accommodation which were exempt from both Local Reference Rents and Local Housing Allowance (LHA). Local Reference Rents were used as a mechanism to cap the amount of rent that private landlords could charge for their properties and represented the average rent for a property meeting claimant’s needs in that area. LHA rates are used to calculate housing benefit for tenants renting from private landlords.

The legal definition of ‘Exempt Accommodation’ can be found in paragraph 4(10) of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006<sup>1</sup> specifically:

*Accommodation which is provided by a non-metropolitan county council in England within the meaning of section 1 of the Local Government Act 1972, a Housing Association, a registered charity or voluntary organisation where that body or a person acting on its behalf also provides the claimant with care, support or supervision.*

Exempt Accommodation was introduced in acknowledgment of the higher costs associated with certain types of supported or supervised

accommodation. It is for this reason that residents are allowed to apply for benefits that are more than the LHA. The provision of “care, support and supervision” is critical, as without it, the accommodation cannot be considered as exempt accommodation.

The accommodation is also exempt from several requirements which usually apply to social housing including:

- **Exemption from rent restrictions, including LHA caps in the private rented sector.**
- **Allowing qualifying providers to claim rental costs through Housing Benefit that are more than LHA rates or social sector ‘general needs’ rents**
- **Houses in Multiple Occupation provided by RPs and used for exempt accommodation are also exempt from licensing under Housing Act 2004 and from Management of Houses of Multiple Occupation (England) Regulations 2006, including exemption from selective and additional licensing.**

It should be noted that there is no statutory definition of what “care, support or supervision” is in the context of exempt accommodation.



This reflects the varying support needs amongst residents. However, case law set out in *Bristol City Council v AW* [2009] UKUT 109 (AAC) indicates that “a satisfactory test for determining whether support of more than a minimal amount is provided is to ask whether the support provided was likely to make a real difference to the Claimant’s ability to live in the Property”.

The definition “more than a minimal amount” introduces a high degree of ambiguity around what a resident can expect in terms of the

amount of support that is provided and how it is to be funded. Support related to exempt accommodation cannot be funded by Housing Benefit under current regulations.

The accommodation provided by Prospect was considered exempt accommodation on the basis that Prospect was an RP and it provides “care, support or supervision” to residents. Support provision was either provided directly by Prospect or via a contract with one of its Managing Agents.

## 1.2 Funding exempt accommodation

The diagram below sets out the funding flows that exist between the parties.

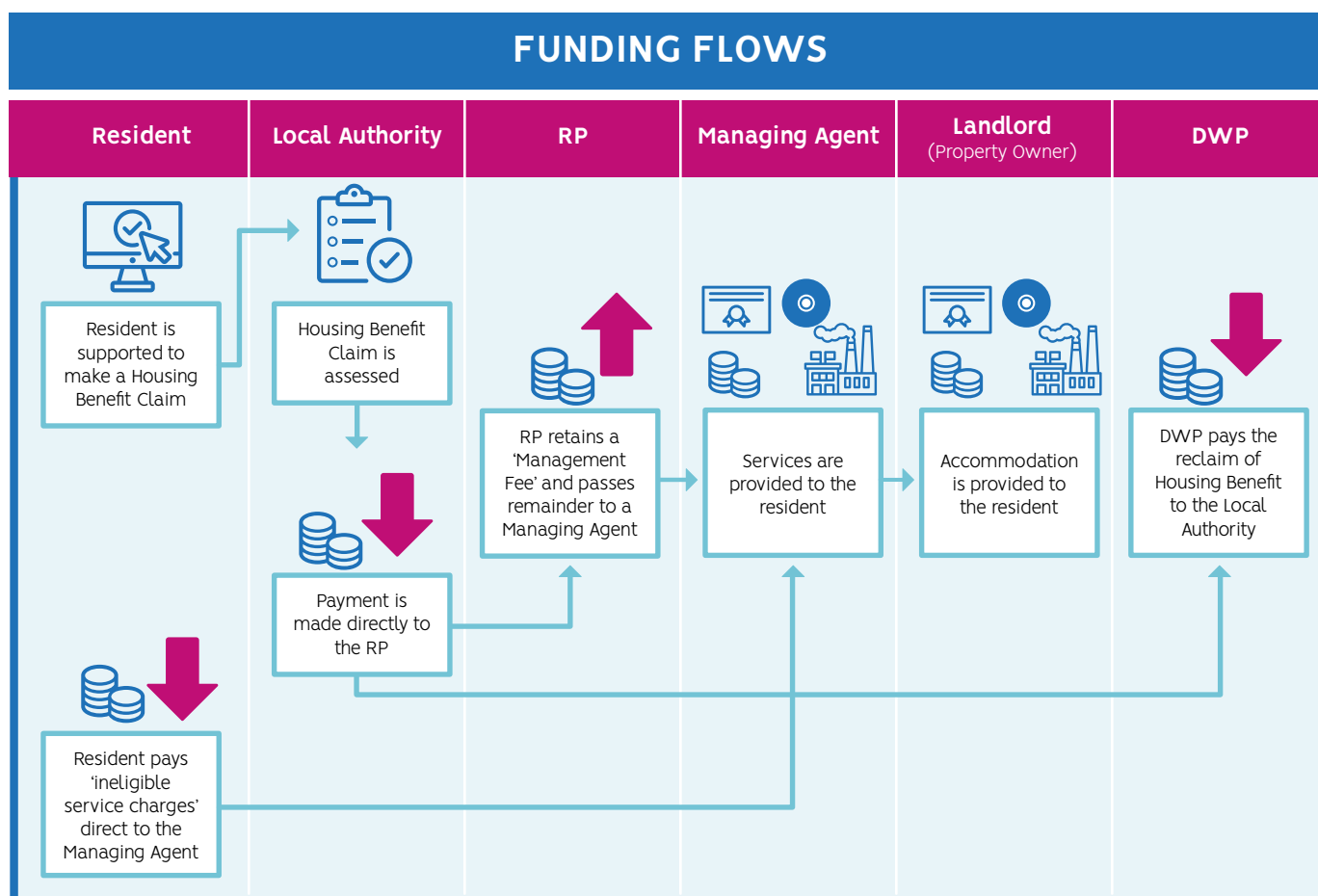


Figure 1 Funding flow for Exempt Accommodation

### Additional notes:

1. Prospect operated several different operating models within which there were differing service delivery arrangements between Prospect and the Managing Agent. There is further differentiation and varying models also evident across the rest of the sector. As a result, the management fee retained by RPs differs extensively.

2. In some cases, the Landlord may deliver some of the support services as well as the accommodation. This will be agreed between the Managing Agent and the Landlord. Often, the RP has no awareness of this.
3. The reclaim values differ depending upon the type of organisation providing the services. RPs attract a 100% reclaim from DWP<sup>3</sup>, whilst non RPs can only reclaim 60%. This is why RPs are usually the preferred partner for Local Authorities.
4. The Managing Agent is involved in the referral and sign up of the resident that leads to the Housing Benefit Claim.
5. Where there are elements of service delivery that are ineligible for Housing Benefit, the resident has to pay the provider for them directly. These payments are often made to the Managing Agent, but it does vary depending upon the model.
6. In this model, the resident must pay those charges which are ineligible for Housing Benefit. In the case of Prospect (any many other Birmingham based providers), this amounted to £15pw for their support and £5pw for utilities relating to their private room. The issues of affordability and collection rates for this charge are explored elsewhere in the document.

It is important to note that Exempt Accommodation funding flows in broadly the same way for both traditional RPs providing such accommodation (where such housing is typically owned and forms a small part of their portfolio) and organisations such as Prospect who offered this type of accommodation exclusively, and through a lease based model.

### 1.3 Prospect and its lease based model

At its largest, Prospect had over 2,000 units of accommodation in over 300 buildings. Prospect leased all these properties from private landlords, primarily through relationships with over 20 Managing Agents.

Lease based models are not uncommon in the social housing sector. For the most part, they are used to provide housing in areas where it would ordinarily be difficult or expensive to develop homes. Typically, such models are provided in partnership with large institutional providers or investors and are governed by comprehensive commercial agreements. These agreements include reward clauses to support efficient service delivery and conflict resolution mechanisms to address issues as they arise. The agreements Prospect had in place with landlords and Managing Agents were less robust, with little or no recourse to remedy performance failure. The implications of this are discussed in more detail in a later section.

*Figure 2 sets out the multiple overlapping agreements that were in place at Prospect (it should be noted that this is also a common arrangement in other similar lease based exempt providers). In the main, Prospect contracted with Managing Agents who in turn leased properties from private landlords. In many cases the Managing Agent and the Landlord were the same individuals or parties who had some form of relationship.*

Prospect, in common with other providers in the sector, issued licences to its residents rather than tenancies. The split of accountabilities in this model and its impact are further explored in a later section of the report.

<sup>3</sup> As set out in Income-related Benefits (Subsidy to Authorities) Order 1998 (1998/562) as amended by the Income-related Benefits (Subsidy to Authorities) Amendment Order (SI 2010 No 2481)

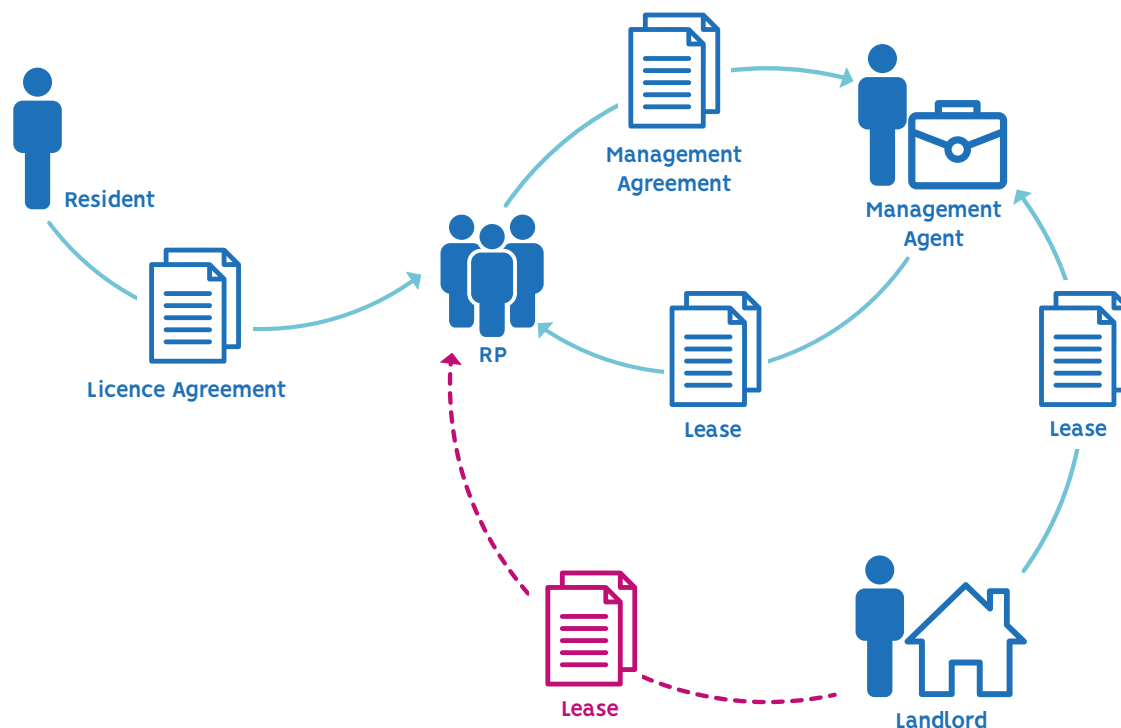


Figure 2 Agreements in place at Prospect Housing Limited 2020/21

#### Additional notes:

1. The management agreement sets out the split of functions that the Managing Agent will undertake under sub contract and those that the RP will deliver directly. In the case of Prospect, the management agreement falls away at the point where there are no leases between the Managing Agent and the RP.
2. The Lease between the Managing Agent and the RP is usually short term (in the case of Prospect generally 1 year). A lease is in place for each property that is leased by the RP, regardless of the number of units within the property.
3. The Lease between the Landlord and the Managing Agent is typically longer (in the case of Prospect these were commonly five-year leases). These are generally standard commercial leases.
4. Whilst the majority (85%) of the commercial agreements Prospect held were as set out above, there was a variant in which some of the leases were held directly between the Landlord and Prospect. In these circumstances, the only agreement with the Managing Agent was the management agreement, and the leases with the landlord were typically longer.

## 1.4 Oversight of exempt accommodation providers

The RSH has regulatory oversight of RPs through the application and monitoring of a set of Regulatory Standards. RSH operates a system of co-regulation and this same mechanism is in place whether the RP is a traditional provider or a lease based exempt provider. Under the co-regulatory regime, the Boards of RPs have an important, if

not the most significant role in ensuring that the organisation complies with the Standards. Boards are responsible for monitoring organisational performance and having general oversight of its activities, ensuring it remains compliant with all its statutory obligations and is well run.

RSH takes a risk-based approach to regulation, focusing its engagement on those providers with more than 1,000 units. They state:

*“We use our sector risk analysis and assessments of registered providers with 1,000 or more social housing units to identify those we judge to be more complex and who consequently have an increased level of risk exposures. Providers with fewer than 1,000 social housing units are subject to a lower level of regulatory engagement.”<sup>4</sup>*

RSH also has responsibility for registering providers who want to become RPs. Historically only not-for-profit organisations<sup>5</sup> who could demonstrate their compliance with housing standards were able to apply to become a provider. This changed in 2010, with new registrants needing to just demonstrate “a path to compliance” following the introduction of the Housing and Regeneration Act 2008. The process was amended further in 2015 to ensure that only providers who can demonstrate compliance are now registered. RSH’s guide to becoming a Registered Provider states:

*“Until 2015 applicants were required only to demonstrate ‘a reasonable path’ to meeting the service delivery standards and the governance requirements of the Governance and Financial Viability Standard. This is no longer the case. Applicants must fully meet the requirements of the Governance and Financial Viability Standard at the time of registration and be able to demonstrate that they are able to meet the other Regulatory standards.”<sup>6</sup>*

Prospect became a Registered Provider in 2013. Several other RPs operating a similar model were also registered at that time. More recent entrants into the market have come from the acquisition of smaller providers who were previously operating a more traditional RP social housing model. After acquisition, they have switched to the provision of lease based exempt accommodation and grown quickly. This has allowed them to sidestep the registration process and regulation usually applied to newly registered providers.

RPs can also be subject to regulation by a number of other bodies. This can include:

- **The Charity Commission, if they are registered charities and are not exempt from regulation by this body;**
- **The Financial Conduct Authority;** and
- **The Office of the Regulator of Community Interest Companies if they have been established as CICs.**

Whilst not a regulator of RPs, Local Authorities also have an oversight role in ensuring that Housing Benefit claims comply with requirements set out in legislation. Some Local Authorities take this enforcement role more seriously than others, as we discuss later.

## 1.5 Support provision

Prospect’s lease based model and that of many others operating in the sector does not benefit from any commissioned support and associated funding. However, as set out above, the need for support is a pre-requisite for residents to be eligible for exempt accommodation funding.

Under the Care Act 2014, local authorities must carry out an assessment of anyone who appears to require care and support, regardless of their likely eligibility for state-funded care<sup>7</sup>. As has been established above, a need for support is a pre-requisite for access to exempt accommodation. However, this assessment by the Local Authority is not undertaken as a matter of course when it comes to this type of accommodation. Needs are assessed in a more limited way by the RP or the Managing Agent, depending on which is providing the support.

Generally, most lease based exempt accommodation models see the Managing Agent delivering care to residents. Prospect’s model was relatively unique in that it provided care directly to c.25% of its residents. This meant that in these cases, Prospect was able to manage the

<sup>4</sup> Regulator of Social Housing, ‘Guidance: A guide to regulation of registered providers’ May 2015, available at <https://www.gov.uk/government/publications/> accessed 10/08/2021

<sup>5</sup> Prospect, along with most other RPs in this sector were registered as Not-For-Profit. Some are additionally registered charities or CICs

<sup>6</sup> Regulator of Social Housing Becoming a registered provider Information for intending applicants May 2019 available at [Becoming\\_a\\_registered\\_provider.pdf](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/414441/becoming_a_registered_provider.pdf) ([publishing.service.gov.uk](https://www.publishing.service.gov.uk)) accessed 04/09/21

<sup>7</sup> <https://www.scie.org.uk/care-act-2014/assessment-and-eligibility/>

relationship with residents directly and have better control over the quality of care received.

In almost all cases, the support provided by Prospect was far in excess of what could be reasonably described as enhanced housing management, making it ineligible for Housing

Benefit. With no commissioned funding either, the only recourse was to levy a weekly charge to residents to cover the cost of their support. All of Prospect's residents were in receipt of Universal Credit and this charge consumed a significant amount of their weekly disposable income.

## 1.6 The needs of residents in exempt accommodation

Based on our own experiences of exempt accommodation, the support needs of residents vary greatly, in terms of both the type and level of support that is required. Residents were signposted to Prospect through several different referral agencies. As part of this, the referring

agency is meant to have identified the needs of the resident prior to referral and then sought to match them with the most appropriate provider. The extent to how successfully this is applied and followed through is questionable based on the referrals Prospect received.

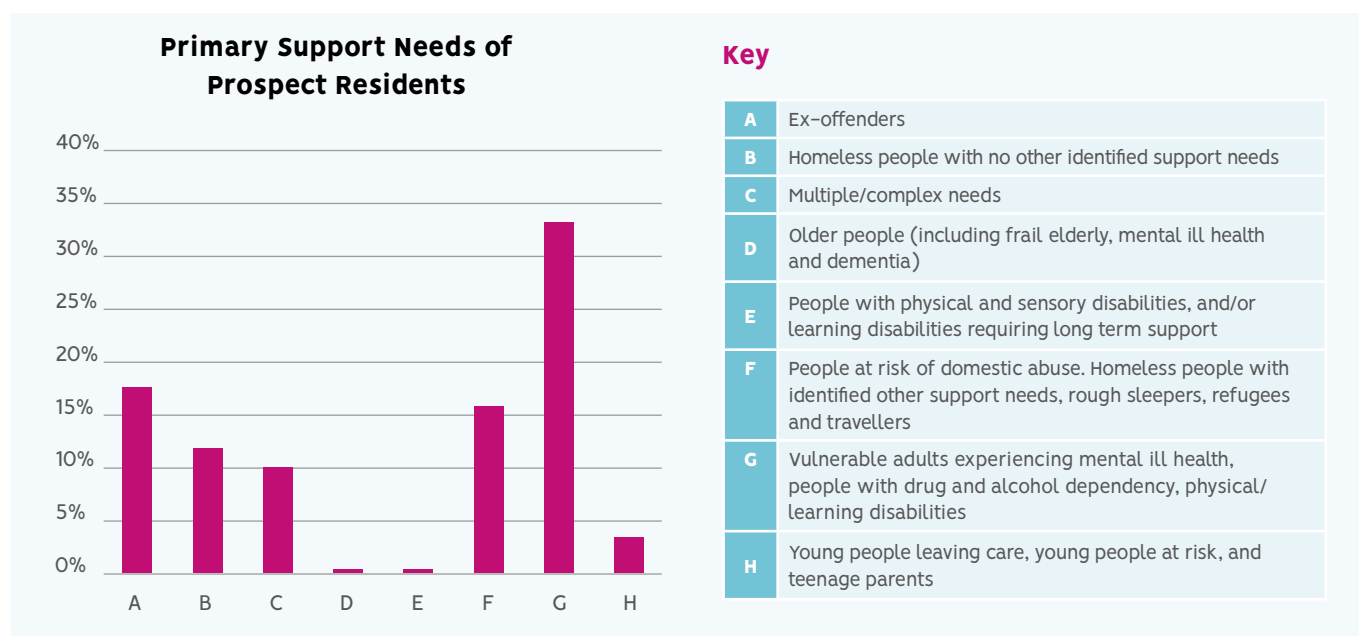


Figure 3 Primary Support Needs of Prospect Residents based on referral information

The graph above provides an overview of the support needs of residents referred to Prospect. Some trends in the needs of our residents are evident, which includes:

- **For many, exempt accommodation is not a short-term housing solution. 51% of residents had been with us for more than 12 months, with 16% living in our homes for three years or more.**
- **Those who lived with us the longest tended to be the residents with the highest needs. 30% of our residents had needs that could be described this way and had been a Prospect resident for over a year. This included**

**residents with mental health issues, disability or have a history of substance misuse.**

- **In terms of the length of stay, the critical cut off point seems to be two months into a resident's tenure.**
- **Many residents left us before that point, but did so because they found the accommodation and support arrangements unsuitable or unagreeable.**
- **Those that remain after two months were highly likely to stay in the accommodation for a period of 12 months or more.**



Primary	Less than 12 months	Between 1 year & 2	Between 2 & 3 years	More than 3 years	No data	Total
Ex-offenders	10%	3%	1%	0%	0%	15%
Homeless people with no other identified support needs	4%	3%	1%	1%	0%	9%
Multiple/complex needs	5%	1%	1%	0%	0%	8%
Older people (including frail elderly, mental ill health and dementia)	1%	0%	0%	0%	0%	1%
People at risk of domestic abuse. Homeless people with identified other support needs, rough sleepers, refugees, and travellers	7%	4%	1%	0%	0%	12%
Vulnerable adults experiencing mental ill health, people with drug and alcohol dependency, physical/ learning disabilities	21%	10%	4%	14%	2%	53%
Young people leaving care, young people at risk, and teenage parents	2%	1%	0%	0%	0%	3%
<b>Grand Total</b>	<b>49%</b>	<b>23%</b>	<b>8%</b>	<b>16%</b>	<b>3%</b>	<b>100%</b>

Figure 4 Length of Prospect Housing Limited average resident tenure 2021

## 1.7 Exempt accommodation in England

As part of this report, we have conducted some research to ascertain and understand usage of exempt accommodation by local authorities across England. Freedom of Information (FOI) requests relating to the use of exempt accommodation were issued to 123 local authorities, of which 97 responded and 85 provided at least some data.

It should be noted that data has not yet been supplied by Birmingham City Council. Birmingham is the largest local authority user of exempt accommodation in the country. We have used local intelligence from our engagement in the market to provide proxies for Birmingham and fill this gap, where appropriate.

Whilst many of those who responded were only able to provide partial data, our analysis of what was received highlights some interesting trends in the use of exempt accommodation across the 85 authorities:

- **At least c.106,000 people are thought to be living in exempt accommodation nationally.** This is based on FOI data provided illustrating that 38,000 people were living in exempt accommodation plus an estimate of a further 46,000 for those authorities who were unable to be precise and anecdotal knowledge of a further c.22,000 living in such housing in Birmingham.
- **We estimate that at least £816m has been spent on exempt accommodation in the last financial year alone.** This is based on the responses received and a conservative estimate for those who were unable to provide exact figures.
- **Spend on exempt accommodation (and presumably demand) has continued to rise.** Based on responses from 52 authorities, the spend on exempt accommodation has risen by over £110m between 2018–19 and 2020–21.
- **There is significant variation in costs between authorities.** The costs of providing a bedspace in exempt accommodation vary widely across the country, from £1,100 to £13,900. The average cost is £6973 pa. Figure 5 provides a scatter diagram of annual spend for those authorities that provided data. A likely explanation for this is the regional variation in housing costs. However, local authorities are not required to track this data, so some inaccuracies may also be inherent within it.

- **Data held by authorities is incomplete and therefore effectively measuring demand and impact is difficult.** 28 of the authorities that responded to the request do not hold data on how much they spend on exempt accommodation and the number of people living in it. Of those that did respond, many only hold limited data before 2020/21.
- **Most local authorities are not resourced to support the exempt accommodation sector.** Almost all the local authorities that responded to the request for data indicated that they had no processes in place to assess providers of exempt accommodation or the suitability of accommodation provided. Only four indicated that they have specific processes in place

to assess exempt claims and just three has dedicated resource in place for this purpose. It should be noted that DWP does not have any requirement for local authorities to undertake assessments or have specific processes for exempt accommodation, however.

- **Despite what appears to be increasing demand and spend, exempt accommodation does not form part of most authorities housing strategy.** Just two authorities make mention of the proactive usage of exempt accommodation to support the needs of its residents. For the most part, the growth of Exempt Accommodation appears to be being driven by providers expansion and not the housing strategy of the Local Authority.

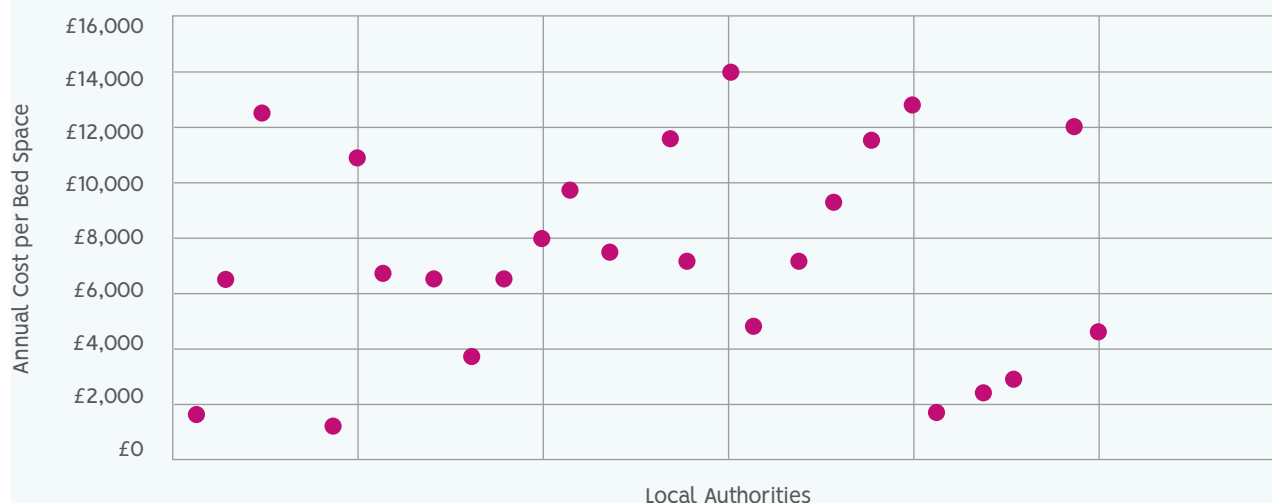


Figure 5 Annual cost per bedspace reported in response to FOI request July 2021

## 1.8 A focus on exempt accommodation in Birmingham

Birmingham was the main local authority area in which Prospect worked. 95% of the housing leased by Prospect was within the city's boundaries. Additionally, Birmingham is the local authority using the largest amount of lease based exempt accommodation in the country. At the time of writing, Birmingham is estimated to have had 20,000 units of non-commissioned exempt accommodation in use in the last year. Many of the issues surrounding exempt accommodation are shared by those authorities active in its provision. However, the scale of the sector in Birmingham means that these issues are more apparent.

Birmingham has a disproportionate number of people presenting as homeless. The origins of

those people are not recorded. It is therefore unclear whether this is caused by large numbers of people arriving in the city for the first time or not. However, Prospect's experience with its clients highlights that a significant minority had originated outside of Birmingham, having been drawn there for several reasons, including:

- **Friends already in the city;**
- **The opportunity for a clean break or to escape abuse; and/or**
- **The attraction of cheaper accommodation advertised through social media and similar.**

Anecdotally, we have also been told that in some cases, applicants have been encouraged to come to Birmingham when presenting as homeless to other local authorities. In some cases, we have even been told that authorities have also paid for travel to Birmingham.

Regardless of its source, there is increased demand for exempt accommodation in the city as a result. This is in turn driving landlords to seek and purchase accommodation for this purpose. Over the last three years, the number of units of exempt accommodation has grown by 6,000 or 42%. This growth has been focused on areas of the city where low-cost family homes can be easily converted into housing of multiple occupation (HMO) or similar by landlords.

This demand is also reflected in the rents achieved for houses which have been converted to exempt accommodation. A converted unit offering five rooms in August 2021 was being offered at £1,690pcm on a two-year lease basis. For comparison, a similarly sized three-bedroom house in a similar location attracted £890pcm on a six-month letting.<sup>8</sup> This vastly overpriced rent for converted units was one of the pressures on Prospect's business plan.

For reference, it should be noted that there are potentially many other RPs operating a lease based model like Prospect's in the city. Seventy-two RPs are known to be in receipt of exempt funding following a FOI request to Birmingham City Council. Prospect is aware of at least 11 whose operational model is like that used by Prospect and there may be others.



<sup>8</sup> Data sourced from Rightmove, Property 104556200, [https://www.rightmove.co.uk/properties/104556200#/?channel=RES\\_LET](https://www.rightmove.co.uk/properties/104556200#/?channel=RES_LET) accessed 10/08/2021

## Section 2

# The challenges emerging from the lease based exempt accommodation model – the Prospect experience

The use of lease based accommodation in the social housing sector is generally not problematic and ordinarily, is successfully applied. However, its use in providing exempt accommodation is very challenging for several reasons. In this next section, we consider some of the key challenges Prospect faced and set out some of our views on how they might be addressed for others in the future.

### 2.1 The initial referral for non-commissioned, leased based, exempt funded accommodation

#### Our key recommendations are:

- RPs should take more responsibility for ensuring that the support needs of residents are understood and that an appropriate risk assessment and support plan is in place.
- Local authorities should look to take control of the referral process of those seeking exempt accommodation, fully assessing their needs.
- RSH considers how the introduction of proposed Consumer Standards can reinforce the expectation that RPs have effective mechanisms in place to assess resident's needs.
- Discussions with social media providers to be taken forward about limiting the use of their platforms to bypass appropriate assessment routes for leased based exempt accommodation.

Residents face issues from the moment that they enter the system as their needs are not assessed closely enough. This has led to Prospect housing people in inappropriate accommodation, often without the right support to meet their needs. Some residents referred to us had little support need other than being homeless at point of presentation. Conversely, there were a significant number of our residents whose needs far exceed the definition of “minimal support” set out in the previous section. As to whether those residents are receiving an appropriate level of support is entirely dependent upon the skills and experience of the support worker. *Figure 6* set out the source of all referrals to Prospect during 2021.

Referral Routes	Count of Property Ref
No data	33%
Other	23%
Advice Hubs	14%
Local Authority	12%
Prisons	6%
Probation	6%
Voluntary Sector	2%
Substance Abuse Service	1%
Mental Health Service	1%
Health/Hospital	1%
Refugee/Migration Centre	1%
Self	0%
Police	0%
<b>Grand Total</b>	<b>100%</b>

*Figure 6 Prospect Housing Limited 2021 Resident referral routes*



The issues around referrals are driven by a mixture of two factors. Firstly, the lack of a standardised and consistent referral process means that referral agencies are often driven by availability of supply rather than resident need. Secondly, by landlords and providers who are primarily interested in filling empty bed spaces quickly with little or no consideration given to the support needs of residents. From our conversations with other providers, their experiences of the referral process are very similar to ours. It is therefore highly probable that the situation we faced in terms of the suitability of accommodation and support arrangements for residents is replicated across other providers in Birmingham and beyond.

On the first of these points, there is currently no expectation on a local authority to manage the referrals process for exempt accommodation. As a result, very few have any standardised process of referral and assessment for those that apply for, or have needs suitable to, exempt accommodation. There is also not widespread policing of approach, which means that referrals are also made via unsanctioned routes (as *Figure 6* demonstrates). Having officially recognised and standardised referral processes in place would also help to eliminate this in the future. To make leased based exempt accommodation work more effectively in the future, we feel there is an important role local authorities could play in this and generally assessing need, making sure residents are directed to an appropriate provider.

On a similar theme, we would like to see RPs better triage the needs of those entering the system, making sure that an appropriate risk assessment is carried out on them when they are housed. We are of the view that where there is a failure to do this, RPs could potentially be breaching both the RSH's Consumer and Governance standards. If there is broader agreement that this is the case, RSH could consider intervention in situations where it becomes clear that providers are not taking their responsibilities in this area seriously enough.

The practices of some Managing Agents around referrals and lettings also require closer scrutiny.

With the motivation of some Landlords being more about filling empty void spaces, we have witnessed several instances where residents' needs have not been considered sufficiently, and their wellbeing is put at risk. For example, we are aware of residents recovering from substance misuse being housed in a property where other residents were still active drug users.

We are aware of unscrupulous practices conducted by both Landlords/Managing Agents and more worryingly, some of our RP peers. We know for example that some have used social media to offer void properties with little or no consideration over the support needs of those that they are housing. Likewise, we are also aware of a practice where referrals received by an RP are not triaged or assessed comprehensively, with the referral going to the Managing Agent offering the highest bid instead.

The illicit use of social media to let exempt accommodation is a particular issue. To give a typical example, a search conducted in August 2021 on two well-known social media platforms in areas of Birmingham returned over 100 examples each of accommodation being offered at incredibly low weekly rents or free<sup>9</sup>. In all these listings, there is no mention that the housing is exempt accommodation or that a need for support is necessary, which is a clear pre-requisite for providing such accommodation. We would like to see social media platforms work with RPs and ban listings such as these which are being used to offer exempt accommodation to those that do not need it. During our review, we also came across a number of "sex for rent" adverts as well, which this practice would help to eliminate.

As it stands currently, Local Authorities do not have the power to prevent a provider from setting up in their city and for its residents to access exempt funding through Housing Benefit. Therefore, a combination of a better needs assessment process, linked with enhanced national guidance to Housing Benefit teams will give local authorities levers to gain better control of the provision in its area.

<sup>9</sup> Sourced from Example 1 and [https://www.rightmove.co.uk/properties/101938508#/?channel=RES\\_LET](https://www.rightmove.co.uk/properties/101938508#/?channel=RES_LET)



## 2.2 Compliance with the Rent Standard and the interaction with Housing Benefit

### Our key recommendations are:

- Lease based exempt accommodation providers to ensure that they are being compliant with their obligations under the Landlord and Tenant Act, the Rent Standard, and Housing Benefit regulations.
- Homes England to consider how grant funding could be used to support the construction of purpose-built supported accommodation for homeless people with care needs.
- A focus on ensuring that future provision is needs driven, reducing demand and in turn cooling an overheated property market, making lease based accommodation affordable to exempt accommodation providers.

The Rent Standard is one of three economic standards that RSH expects all RPs to comply with. It details how registered providers set and increase rents for all their social housing in line with government policy. Prior to the introduction of the Standard in April 2020, social housing rents were set and managed through the Welfare Reform and Work Act 2016.

The main source of income for Prospect (and all other RPs operating in this part of the sector) is Housing Benefit. Housing Benefit includes two component elements; the rent chargeable for the property and the cost of any associated services directly linked to the property (service charges). In line with the expectations set out in the Rent Standard, the amount of rent that can be charged to a resident (and therefore claimed through Housing Benefit) is based on a calculation of formula rent. The calculation uses property values from 1999 to calculate an initial rent which is then uplifted by a formula to reach the rent chargeable in the current year.

One of Prospect's main viability issues was that the rent that could be charged under this formula is significantly lower than the cost of the properties that were being leased from landlords. At the time, the average formula rent across our stock was £69.98 per week per room, whilst the average rent being paid to landlords through leases was £80.46. This represented a shortfall of £11 per week, per room or the equivalent of £1m per annum. It also assumed 100% lettings with no allowance for void costs, meaning the true shortfall was much higher.

We initially thought that there may have been an error in the calculation of formula rents on our properties causing this problem. We approached a valuer to look at a small sample of the properties we leased to ascertain if formula rent valuations were appropriate. Following analysis and review, the valuer concluded that they were reasonable and a little high in some cases. The issue could not therefore be alleviated through revaluation.

The demand for exempt accommodation is extremely high across Birmingham. The HMO rental market in the city is vastly overvalued, partly because of the number of exempt-sector RPs operating in it as we set out in the first section. This over-heated market limited any room for manoeuvre that Prospect had to try and address this shortfall by attempting to renegotiate rents or seek alternative properties. Market conditions meant that landlords would have been able to demand even higher rents as time went on which would have actually worsened Prospect's position.

Prospect's viability issues were exacerbated by obligations under the Landlord and Tenant Act (1995) (and applied through Housing Benefit regulations), requiring all property related costs to be absorbed within the rent element payable. This included all property maintenance and repair costs. It only served to increase the shortfall between income and expenditure and meant that the amount of rent available to service lease costs was only c. £40–45 per week once other costs were taken into account. It should also be noted that this does not consider the additional shortfalls arising from the costs of delivery of care and its exemption from service charging we describe in 2.3.

As a result, the rents being charged by Prospect could not comply with the Rent Standard and Housing Benefit regulations, whilst also maintaining a viable business plan. This is not only unique to Prospect. Recent Regulatory notices on other exempt accommodation providers nationwide highlight non-compliance with the Standard as being a key viability concern.

In addition to being non-compliant, this situation does beg the question of whether a lease based model can ever be viable in the current circumstances, particularly in an overheated market such as Birmingham. With no flexibility over rent setting and excessive costs of securing accommodation, it is almost impossible to secure accommodation for the intended uses. Once the need to cover property related charges within rent are taken into consideration, on top of care and

support costs being unrecoverable from Housing Benefit, running such a business on simply a break-even basis is unachievable.

Ultimately, the overheated housing market is a combination of high levels of demand, and a little available social housing. Therefore, the most sustainable option that is explored throughout this report is to transform the market by ensuring that only residents with a true need are housed within this accommodation, thus reducing the total properties needed and with it the profitability of leasing such accommodation. Additionally, this could be an area for Homes England to target in future housing rounds, supporting the construction of purpose-built supported accommodation in areas where there is likely to be an enduring need for this type of accommodation.

## 2.3 Support of residents – Quality of care provision and funding

### Our key recommendations are:

- A political conversation takes place at a national level to consider what care should be provided to homeless vulnerable people, and how it should be funded.
- Leased based, exempt accommodation providers must take greater responsibility for the quality of care provided to their residents. They must own the relationship with the resident.
- Leased based, exempt accommodation providers should ensure that effective policies and practices are in place and being followed (with suitable monitoring) by whomever is delivering support.

Effective delivery of support interventions can literally be life changing to those receiving them. However, our experience of support delivery is wildly inconsistent. For every resident telling us how their support worker held their hands into the early hours waiting for ambulances to arrive, there are two residents telling us they don't even know the name of their support worker.

Prospect delivered a mixed model of care delivery. We delivered care directly to c.25% of our residents whilst the remainder was delivered by our managing agents.

The internal support team was the strongest performing in the organisation. Generally, it

delivered what we feel was highly effective support to residents. There were of course some exceptions, and like many support providers, there were occasions when things went wrong. However, we feel the team managed risk well and service delivery was strong.

The level of care provided by many of our Managing Agents was poorer and outcomes more difficult to track. Despite Prospect promoting the use of standardised forms, processes and reporting metrics, they were often ignored or left in complete, with no sanction for failing to adhere to them. It should be noted that this was not the case across the piece, however. A substance misuse service

and a service to support ex-offenders, where the support and housing management was delivered by our managing agents in both instances, delivered exceptional outcomes for residents. These two services were amongst the best examples of support within the Prospect portfolio.

For our part, our operating model did not give us sufficient oversight of practices employed by our Managing Agents. It also meant that the risk profile of the residents we were housing was not properly assessed and understood by us. This situation had been allowed to develop over several years through a combination of poor practices. For example, the contracts put in place with Managing Agents often lacked any data sharing obligations which would have compelled them to provide us with a clearer understanding of those being housed and their needs. Until the latter part of the organisation's history, we also did not dedicate the necessary resource to monitor performance and audit the practice of our Managing Agents effectively either.

Another serious issue was the level of care required by some of our residents and how this relates to funding. In our experience, the needs of many residents far exceeded what could be considered minimal support. *Figure 7* sets out the assessed care needs of residents (where assessment were made). Including both models of delivery, 70% of our residents have been assessed as needing at least two hours of support per week. The level of care required is much higher for those with acute needs such as long-term disabilities or substance abuse issues. As *Figure 7* demonstrates, almost 10% of residents required at least six hours of care per week. The regulations around exempt accommodation allow for "more than minimal support". However, even within the most generous interpretation of that term, Prospect was providing care well in excess of what should have been expected to those residents with high needs.

Resident support categories	0 to 2 hours	2 to 6 hours	6 to 9 hours	9+ hours	Hours only support	Total
Vulnerable adults experiencing mental ill health, people with drug and alcohol dependency, physical/learning disabilities that are below the threshold of care.	8%	22%	4%	2%	1%	36%
Ex-offenders	6%	12%	0%	0%	0%	19%
People at risk of domestic abuse. Homeless people with identified other support needs, rough sleepers, refugees and travellers	7%	10%	0%	0%	0%	17%
Homeless people with no other identified other support need	2%	8%	1%	0%	0%	13%
Multiple/complex needs	1%	10%	0%	0%	0%	11%
Young people leaving care, young people at risk and teenage parents	3%	0%	0%	0%	0%	3%
People with physical and sensory disabilities and/or learning disabilities requiring long term support	0%	0%	0%	0%	0%	0%
Older people (including frail elderly, mental ill health and dementia)	0%	0%	0%	0%	0%	0%
<b>Grand Total</b>	<b>27%</b>	<b>65%</b>	<b>5%</b>	<b>2%</b>	<b>1%</b>	<b>100%</b>

*Figure 7 Resident support needs*

This presented Prospect with a serious funding issue. Housing Benefit regulations are very clear that the costs of care and support are not considered eligible as part of service charges. Additionally,

there is no local authority (or other) commissioned care funding to compensate where additional care is being provided above the expectations within exempt accommodation funding.

To plug the gap, our financial model assumed that residents could be charged £15 per week to provide support to them, in addition to a further £5 towards utility bills. Both obligations are set out in the license agreement that residents sign up to. This assumption is unrealistic. Almost all our residents are in receipt of Universal Credit, receiving £61.27 per week if they are under 25, or £77.34 if they are over £25. Paying this £20 weekly charge would consume a significant amount of their already meagre income and takes many to the level of destitution, potentially leading to them being trapped in what was designed to be a short-term housing solution. As might be expected, Prospect only achieved an average of 41% recovery of support fees from residents.

In the round, this means that the current funding regime cannot work in the context of providing care and support within exempt accommodation. Housing Benefit regulations prevent the true costs of the care being delivered from being met, and even where a charge is levied against residents and it is successfully collected, it is insufficient to make up the shortfall. Prospect was therefore making a substantial loss on the support it provided. This was even before factoring in the additional costs of staff training and supervision.

To mitigate shortfalls, it's commonly acknowledged in the sector that even legitimate Managing Agents and RPs, make this work by either:

- **Artificially increasing the cost of service charge lines in order to fund the level of support required by their residents. There is therefore potential for this to be abused by disreputable RPs, who have the opportunity to artificially increase the cost of service charge lines in order to enhance their own profits or;**
- **Redirecting part of the administrative income away from funding compliance and audit activities which would have kept the RP and its residents safe, to meet the shortfall in support income.**

There are many individuals in exempt accommodation whose needs clearly exceed the level of support that exempt accommodation should provide. In essence, the care of those with high needs which should be being provided under social care funding has inadvertently been passed on to the Housing Benefit Bill. It is our view that there needs to be a national level conversation to discuss how funding for care in lease based exempt accommodation is approached in the future and how those with complex needs are prevented from ending up in unsuitable accommodation.

## 2.4 Security of tenure and opportunities for residents to access independent living

### Our key recommendations are:

- A political conversation takes place at a national level to consider what care should be provided to homeless vulnerable people, and how it should be funded.
- Leased based, exempt accommodation providers must take greater responsibility for the quality of care provided to their residents. They must own the relationship with the resident.
- Leased based, exempt accommodation providers should ensure that effective policies and practices are in place and being followed (with suitable monitoring) by whomever is delivering support.

Common practice in leased based exempt accommodation is to let bed spaces under a license to occupy rather than a tenancy. Residents could therefore be asked to move rooms or be evicted at very short notice for any reason.

Additionally, the licenses used by Prospect (and others operating in this space) are very restrictive, preventing overnight guests and barring children from entering properties. This offers very little stability to what are often quite vulnerable

individuals. This is reflected in the views expressed by our residents relating to their homes and their tenancy status.

Best practice across all social housing is to offer the most secure form of tenure, particularly to those with the greatest vulnerabilities. We think that this best practice is not being applied to those living in lease based exempt accommodation as it stands. It is understood that this situation arose because of concerns over the nature of people being housed and an assumption that they may partake in and exhibit undesirable behaviour. The use of the license therefore gives landlords the ability to act quickly should this be the case. However, we are of the view that this risk could be managed in different ways, allowing a more secure tenure to be offered in the right circumstances.

As we have also demonstrated, exempt accommodation (which is temporary by design) is also becoming a longer term home for some residents. Based on feedback and our understanding of the local housing market, there are a number of reasons why this is the case:

- **A lack of single person social housing being available to house those looking to exit exempt accommodation;**
- **Little good quality PRS accommodation, where landlords are prepared to accept those moving on from exempt accommodation;**
- **The high cost of exempt accommodation, which is unaffordable without benefit and prevents residents from accessing paid employment;**
- **Resident who have spent a significant period in exempt accommodation (up to 20 years) and who now feel unable to contemplate moving to an independent home.**

Our experience shows that these factors contribute towards turning lease based exempt accommodation into a “poverty trap” for some of those housed within it. A cycle of deprivation seems evident in that a lack of options around move on accommodation (particularly not being able to get a deposit, or references to enter private rented accommodation) prevents them from exiting lease based exempt accommodation. At the same time, prolonging their time in exempt accommodation prevents them from accessing paid employment because the costs of the accommodation cannot be sustained without benefit. This then makes them feel trapped, which can exacerbate other mental health or substance misuse issues. In turn, this makes it even more difficult for our residents to hold down a tenancy and further limits their housing options.

Our view is that more needs to be done to provide stability to those living in exempt accommodation. To achieve this, we feel that:

- **In the first instance, lease based exempt accommodation providers should consider granting assured shorthold tenancies to residents in their accommodation.**
- **Lease based exempt accommodation providers and associated stakeholders work collectively to provide residents with the skills, confidence, and opportunity to get back into independent living.**
- **Local authorities should recognise the need to provide those in exempt accommodation with a permanent home, offering them greater priority within allocations policies for social housing.**
- **Local authorities should also consider the use of discretionary Housing Benefit to help residents break free of the poverty trap that exempt accommodation causes. This may be via extra payments to allow residents to find paid employment for example.**



## 2.5 Operational control within the lease based model

### Our key recommendations are:

- In all circumstances, lease based exempt accommodation providers must take full responsibility for owning the relationship with residents.
- Lease based exempt accommodation providers must take greater responsibility for delivery of good quality accommodation and associated support.
- Where this cannot be achieved, more robust contracts, policies and procedures with appropriate oversight arrangements need to be put in place to manage third parties.
- Lease based exempt accommodation providers to consider how extended supply chains can be more closely managed and ensure that all obligations of landlords and Managing Agents are met.

Lease based accommodation is widely used across the social housing sector by many mainly traditional RPs without any issue. Where leased housing is involved, traditional providers tend to partner with institutional investors or providers with strong commercial agreements with effective reward and conflict resolution mechanisms built into them. The approach to leasing taken by Prospect was not as robust. It presented a number of issues which prevented it from being able to exert appropriate control over many aspects of its operations for which it had ultimate responsibility.

Amongst the most significant of these was the lack of control over the relationship with our residents. Except for the 25% of residents whom we supported directly, that relationship was owned by the various Managing Agents we engaged. It became apparent through our recent consultation exercise; residents were unaware of how the relationship between Prospect and the various Managing Agents worked. Many were only used to dealing with staff from the Managing Agents and had little if no previous interaction with Prospect, and had no indication of how the relationship between Prospect and the Managing Agents worked.

There is an assumption within the relevant Regulatory Standard that an RP will own the relationship with its residents. Clearly in this case, it was difficult for us to manage this, particularly given the poor management information and metrics we received from many of our Managing Agents. Without this information, Prospect's Board were unable to verify if Regulatory Standards were being met. This would be an even greater challenge for some of our peers who have all their

support services delivered by Managing Agents, with no visibility over what the needs of their residents are. In our experience, without directly holding the relationship with residents, we feel it is very challenging for any RP to ensure that relevant RSH consumer standards are being applied and that risk is being well managed.

There were also challenges over ensuring property related health and safety and Decent Homes compliance within the stock. These compliance activities were being managed at a distance by our Managing Agents, with Prospect periodically undertaking quality assurance inspections. In addition, there was insufficient and appropriately skilled resource internally (alongside inadequate assurance processes) to ensure Managing Agents were managing their responsibilities adequately. This was rectified after the new management team were brought in.

In our case, and with many of our peers, the large number of contractual arrangements in place made ensuring compliance even more problematic. Prospect ultimately had individual leasing arrangements with over 300 landlords through its 20 Managing Agents. Across those landlords, there was a mixed understanding of their obligations relating to the properties they owned. This, combined with certain areas of compliance not requiring a register of licensed suppliers (FRAs for example), made it very difficult to gain assurance that compliance obligations were being both undertaken and/or delivered to an acceptable standard. We have noted that one RP has attempted to address this issue by mandating that all Managing Agents must use suppliers they

have approved where any building certification is necessary. Anecdotally, we understand that this has increased the RPs control from working with a very limited number of suppliers who form part of the RPs broader company structure. Conversely, it has increased the cost of each certificate as a result.

Similar challenges exist in ensuring that all the 300 or so landlords are cognisant of, and have responded to, changes in legislative and other requirements around supported housing. One such example of this has been the changes introduced through the national statement of expectations for supported housing introduced in October 2020.

At the root of the control issues Prospect experienced was the poor management of contracts and property leases that have been put in place. Many would not stand up to legal challenge and contain several gaps in terms of what they are meant to cover. In many cases, the contracts have been amended by well-meaning amateurs without referral to legal advice. The contracts also contain few, if any, mechanisms to address poor performance on the part of the other party, short of terminating the contract entirely. The situation has been compounded by undocumented practice and custom which built up within commercial relationships since the leases were put in place.

## 2.6 Oversight and governance

### Our key recommendations are:

- Local authorities to consider taking a greater oversight role in relevant areas to ensure exempt accommodation providers are operating robustly and appropriately.
- Lease based exempt accommodation provider Boards to also review approaches to how assurance is provided, making sure that they are fit for purpose and sufficient for the business's purposes.
- Lease based exempt accommodation providers to have independent assessment of skills and competencies of Board members and ensure that best practice guidelines are being followed.
- RSH and other regulatory bodies to consider increasing their focus on providers in our sector to eliminate poor practice, particularly in Birmingham.
- The proposed enhancement of RSH powers set out in the Government's white paper to be introduced at the earliest possible juncture, particularly around consumer standards.

Regulatory oversight for Prospect resides with RSH. However, RSH has adopted the principles of co-regulation. In practice, this meant that Prospect's Board had the most significant role in ensuring effective oversight of the organisation and its activities, as well as compliance with relevant legislation (both legally and practically).

In more traditional RPs, Boards are routinely presented with performance data on key issues such as health and safety and Decent Homes standards on a periodic basis. The Board is then able to question and interrogate that data to seek assurance over performance and highlight areas of concern. Additionally, Boards are also able to commission internal audit, and/or external health and safety specialists to verify and validate the veracity of the information being received.

As has been outlined elsewhere in this report, Prospect's model did not allow for such information to be routinely shared and scrutinised by its Board. Information was generally unforthcoming from many of the Managing Agents who managed our homes, or where it was supplied, some of the quality was not high. Additionally, some Managing Agents actively frustrated Prospect from obtaining a true picture of performance by, for example, preventing visits to residents and failing to grant access to properties after requests had been made. It is important to highlight that at least two of our Managing Agents were very focused on ensuring both the compliance and quality of the homes that they provided. However, they were the exception.

In these circumstances, the assurance given to the Board over key areas of operations such as property related health and safety compliance was far from satisfactory. It should be noted that in the last 12 months of the organisation operating, this improved significantly. The improvement followed an investment in both systems and additional resource to ensure that safety certificates were valid and provided to the organisation in a timely fashion.

In addition to these challenges, the organisation did not have robust governance processes and internal capabilities to manage the organisation effectively. This meant assurance over internal processes and procedures given to the Board was also insufficient. For example, the Board were not made aware that invalid Housing Benefit claims were being made by the organisation. This failing was only identified in 2020 following review (after internal audit was put in place) and overpayments of £1.26m uncovered. These have since been recovered and repaid to Birmingham City Council.

Ultimately, it was these failings which resulted in RSH downgrading Prospect in May 2020 (following an in-depth assessment undertaken in 2019). In its judgement, RSH commented that:

*“The regulator does not have assurance that Prospect has effective systems in place to give it sufficient oversight of the arrangements it has entered into with multiple third parties, who deliver landlord services on its behalf, and to whom on-going payments are made.*

*We lack assurance that its financial controls and risk management process are adequate while the under-pinning information systems do not provide accurate and timely information to the board.*

*A lack of effective board oversight in these areas is a fundamental failure of governance and operational control. The regulator has therefore concluded that Prospect is unable to demonstrate that it meets the governance element of the Governance and Financial Viability Standard.”<sup>10</sup>*

Following the RSH downgrade, a new independent Chair was appointed alongside an interim Chief Executive and other senior staff to rectify the issues uncovered. A remedial action plan was developed and instigated.

Despite these interventions, the issues inherent within Prospect would lead RSH to downgrade the organisation for a second time following a voluntary reporting of other matters. This resulted in RSH making statutory appointments to the Board, some of whom are still providing guidance and oversight to Prospect.

What is clear is that the issues Prospect faced in terms of governance, oversight and leadership and not unique. A large number of other Regulatory Judgements and Notices have been issued to our peers operating in the Birmingham area. The notices provide some insight into the poor practices and questionable behaviour of some of those organisations. In many cases, we believe some of these RPs are unscrupulously seeking loopholes in legislation and regulation to boost income and profit. We discuss these in more detail in later sections of this report.

Prospect’s experience clearly identifies the key role a Board must play in oversight, assurance and the overall wellbeing of an organisation if it is to be successful. Whilst the RSH has the ultimate role in oversight and ensuring compliance with the Standards, its co-regulatory model places a strong emphasis on the role of an RPs Board. For this arrangement to work, the Board has to have a broad range of skills and competencies to ensure effective oversight, particularly in the case of complicated business models such as Prospect’s. The Board also must take its responsibilities seriously and play an active role to ensure the business is run competently.

<sup>10</sup> <https://www.gov.uk/government/publications/regulatory-judgement-prospect-housing-limited/current-regulatory-judgement-prospect-housing-limited-15-may-2020>

## 2.7 Conflict of Interests

### Our key recommendations are:

- Where local authority registration processes are in place, those lease based exempt accommodation providers applying for registration be required to provide a conflict-of-interest register.
- Additional guidance for lease based exempt accommodation providers to be included as part of the NHF code of governance.
- An expectation for lease based exempt accommodation providers to sign up to the code as part of registration with the NHF.
- Consideration of other measures to strengthen and improve Board appointments and subsequent conduct, including a “fit and proper” person test.

Our experience of the operating in the exempt accommodation market in Birmingham is that is extremely close knit. Upon her appointment to the role in March 2020, Prospect’s Interim Chief Executive was greeted by a provider who stated “Welcome to the fam’, we all look after each other in this city”. The closed nature of this community has allowed those running organisations similar to Prospect to undertake rogue and questionable practices and allowed a large number of conflicts of interest to develop. A review of interests at Companies Houses illustrates how interconnected the market is.

There are a range of examples evident in the exempt accommodation sector that highlight a range of conflicts of interest. We are aware for example, of organisations (including Prospect in the past) letting property at exempt rents which are owned either by Directors, their family or other people with a significant controlling stake in businesses. Additionally, we experienced other conflicts within Prospect including purchase of services from providers who were owned by Directors or “other connected parties”.

We believe that practices like these are commonplace across exempt providers operating in the city. We have come to view these conflicts as having played a significant part in the many ultimate failure of Prospect and the issues described in this paper. Of particular concern

is these contravene both the Governance and Financial Viability Standard and general company law. Company law requires all directors to manage potential conflicts of interests to ensure that they act in the best interests of the company. The RSH’s Standard states “Registered providers shall ensure that any arrangements they enter into do not inappropriately advance the interests of third parties, or are arrangements which the regulator could reasonably assume were for such purposes.”

The most common code of governance adopted by RPs is the NHF Code of Governance. This already requires a high degree of awareness, and transparent management of conflicts of interest. We also note the specific guidance and policy on Exempt Providers which was recently issued. However, this still relies on RPs to self-regulate and there are seemingly few sanctions for failing to do so. We believe there is an opportunity to address some of the practices we have witnessed through amendments to the code including:

- **Specific guidance in the code for lease based exempt accommodation providers which address potential conflicts of interest such as those above.**
- **Strong encouragement from RSH for all providers wishing to offer exempt accommodation to sign up to the NHF code as part of registration processes.**



- **Exempt providers to be asked to provide a conflict-of-interest schedule to the Regulator as part of in-depth assessments and stability checks.**
- **Where local authorities require registration of exempt properties, those seeking registration be compelled to set out any potential conflicts as part of the process.**

We also think that there is an opportunity to consider other measures that could help reduce conflicts of interest in the future. Some ideas that we think would improve the quality of appointments to Boards in both the exempt accommodation and wider social housing sector include:

- **Adopting an approach to executive appointments like that in place for the NHS and as set out in CQC regulations. Here, Director level appointments must pass a “fit and proper person” test, placing a duty on NHS providers to establish if potential conflicts exist.**
- **Explicitly extending the Nolan principles into exempt accommodation providers (as set out in earlier iterations of the NHF Code of Governance) so that Boards of such providers are required to assess themselves against adopted principles and behaviours.**
- **An extension of RSH’s ability to remove Board members from Boards where impropriety is proven to have taken place, or where they were non-executive members for other RPs that have failed.**
- **The potential for principles around conflicts of interest and the conduct of Board members to be included as part of the developing thinking around consumer standards set out in the Government white paper.**





## Section 3

### Other practices and emerging trends of concern in the exempt accommodation sector

Outside of the issues that became apparent in Prospect's operational model, we are also aware of number of other trends that are causes for concern in the lease based exempt accommodation sector. These trends are allowing a minority within the sector to continue to exploit gaps in funding regimes and regulation, whilst failing to improve accommodation and services for the very vulnerable which the sector serves. We therefore feel measures need to be taken to prevent this from happening to both protect residents and prevent further reputational damage to the vast majority of providers who are making a difference in peoples' lives every day.

#### 3.1 Evasion of Regulatory Oversight

##### **Our key recommendations are:**

- Government considers introducing a minor change to Housing Benefit legislation to prevent housing benefit being paid on exempt accommodation which is not social housing. This will close the loophole that allows some providers to reduce their regulatory scrutiny.
- Local authorities to also explore the potential to introduce requirements for exempt accommodation to be social housing to qualify for Housing Benefit for the same purpose.

Many new providers entering the exempt accommodation sector in Birmingham are adopting an approach which evades full scrutiny by RSH whilst still enabling them to take advantage of an exempt Housing Benefit claim.

The approach sees an RP classify only a small percentage of its overall portfolio as social housing, classifying the remainder as private rented accommodation. Despite this difference in classification, there is no obvious differentiation between the provision of services for each type of accommodation. Whilst all RPs are subject to the regulatory requirement to comply with the Regulatory Standards, the RSH actively polices this

for RPs with 1,000 units or more of social housing only. Only RPs of that scale will be proactively inspected periodically and awarded a Regulatory grading.

Taking such an approach limits the scrutiny a provider will be subject to from RSH. For providers of less than 1,000 units, the RSH is reliant on self-disclosure of noncompliance or third-party referrals of malpractice (usually whistle blowers). Even where this is the case, the RSH is limited to the extent to which it can intervene, being only able to act if the nature of the non-compliance creates a serious risk of harm or detriment. This can also only be applied to those residents in

designated social housing, meaning those in what has been classified as private rented stock have no such recourse.

Despite this, as the provider is classed as an RP, it can operate all its units as exempt accommodation regardless of whether it is private rented or social housing. This makes the units eligible for enhanced Housing Benefit payment within current regulations.

We think that this approach is now being applied by providers responsible for over 65% of lease based exempt accommodation in Birmingham. We are not aware of this practice being adopted elsewhere at this point. However, it could easily be exploited in other areas of the country.

We believe that this could be addressed very simply through some minor changes to definitions in the relevant legislation. The definition of exempt accommodation could be redrafted to ensure that it applied only to RPs who are providing exempt accommodation which is classified as social housing. This simple drafting amendment (in bold) would be as follows:

*(b) provided by a non-metropolitan county council in England within the meaning of section 1 of the Local Government Act 1972, a Housing Association (**when providing social housing**), a registered charity or*

*voluntary organisation where that body or a person acting on its behalf provides the claimant with care, support or supervision;*

Housing Benefit Regulations have annual parliamentary time for the Statutory Instrument that sets rates for Housing Benefit and Universal Credit to be approved. The 2020 Statutory Instrument<sup>10</sup> was laid before parliament in December 2020. Assuming a similar timeframe for 2021, it is feasible that this small addition of words could be included in the next annual refresh of the regulations.

Additionally, there is scope for local authorities to make any exempt Housing Benefit claim dependent on the accommodation being classified as social housing. Whilst it remains an option, we believe it would be less easy to enact as it would be difficult for local authorities to gain assurance that properties were designated social housing, even if the local authority has a registration process. As there is no explicit exclusion of the use of private rented homes for exempt accommodation, any local authority applying additional requirements may also find themselves open to judicial review.

## 3.2 Usage of CICs in providing exempt accommodation

### Our key recommendations are:

- Local authorities to introduce additional checks within Housing Benefit processes where applications for exempt accommodation funding are received on homes managed by CICs.
- Engagement between RSH and the Regulator of Community Interest Companies ahead of any decision to register a CIC set up for the purposes of providing lease based exempt accommodation.

We have become aware that a number of our former Managing Agents are considering forming and registering a Community Interest Company (CIC). In doing so, the CIC would allow this group to offer services directly to Birmingham City Council,

bypassing their need to work with an RP to provide exempt accommodation. A similar trend is also apparent in the Freedom of Information data we have received from local authorities on exempt accommodation provision across the country.

<sup>10</sup> 2020 No. 1519 The Rent Officers (Housing Benefit and Universal Credit Functions) (Modification) Order 2020

This presents us with a number of concerns:

- **This would remove residents from social housing, and the protections offered by the sector.**
- **Regulation would pass to the Office of Community Interest Companies which is poorly resourced. The organisation has a staff of six and its regulation is limited to “light touch regulation of CICs, with the minimum of interference”. The Regulatory regime will therefore be much less intensive or forensic than that undertaken by RSH.**
- **It would also create issues for local authorities as Housing Benefit claims paid to charities or CICs are only eligible for a subsidy of 60% from DWP, rather than 100% where RPs are the landlord.**

If this practice is to become more widespread, we believe that Office of the Regulator of Community Interest Companies and the RSH will need to liaise more closely. In our opinion, the RSH should look to engage regularly with Regulator of Community Interest Companies to discuss applications to set up CICs for lease based exempt accommodation purposes. This will ensure that the Regulator of Community Interest Companies is sighted on any emerging issues ahead of any assessment it undertakes from groups establishing CICs for this purpose.

We also think that the additional checks should be introduced to the housing benefit process by local authorities in the assessment of claims for exempt accommodation operated by CICs. This would provide them with some control over who is providing exempt accommodation and the volume that they provide.

### 3.3 Criminality, Sharp Practice and Maladministration

#### Our key recommendations are:

- Lease based exempt accommodation providers to do more to ensure that no criminal practices are evident in the operations of third parties with which they are engaged.
- All relevant stakeholders (including Police and Local Authorities) to explore working more closely to identify and address examples of such behaviour as quickly as possible.

Birmingham City Council’s report to Cabinet on Exempt Accommodation in April 2021 highlights serious concerns of potential criminality and sharp practice within exempt providers. The report describes **“a concerning prevalence of housing providers linked to organised Crime Groups (OCGs) which in turn exacerbates the vulnerability of their tenants”**.<sup>11</sup>

As outlined earlier, Prospect has experience of such sharp practice and maladministration in the form of the £1.2m overpayment of Housing Benefit to Managing Agents. Prospect is not alone in this, however. Inside Housing reported in 2021 that another exempt provider, New Roots, has seen £1.4m of Housing Benefit paid out to Managing Agents incorrectly.

Criminality has also been evident around the operations of exempt providers in Birmingham. An example is the recent closure awarded in court at Saif Lodge, in Sandon Road, Birmingham. This building houses around 20 vulnerable people. A notice to close immediately was served by police on the premises, on Wednesday April 21st 2021 followed by a court hearing before Birmingham magistrates the same day. This asked for the closure to be validated under Section 80 of the Anti-social Behaviour, Crime and Policing Act 2014. To secure the order the police had to prove that a person has engaged, or is likely to engage, in disorderly, offensive or criminal behaviour on the premises; or that the use of the premises has resulted, or is likely to result, in serious nuisance to members of the public; or that there has been, or is

<sup>11</sup> Chaundry, Birmingham City Council, 2021. ‘Supported Housing Oversight Pilots 2020/2021’, retrieved from <https://birmingham.cmis.uk.com/birmingham>

likely to be, disorder near those premises associated with the use of those premises, and that the order is necessary to prevent the behaviour, nuisance or disorder from continuing, recurring or occurring.

In November 2020, Inside Housing published details of Birmingham City Council's report. It referred to the "concerning prevalence of housing providers linked to organised crime groups with national or international links to drugs, exploitation, county lines and modern slavery within Exempt Accommodation".

Birmingham City Council and West Midlands Police would refer to these concerns when going on to submit a joint bid to secure a share of a £6m fund from the Ministry of Housing, Communities and Local Government (MHCLG). The fund was launched to try and improve the quality of Exempt Accommodation provision across the country and tackle examples of poor practice.

From Prospect's own experience, it is highly important that the ways are found to disrupt and end practices which allow criminals and unscrupulous individuals to take advantage of both lease based exempt accommodation providers and their residents. Within lease based models, the provider must maintain great oversight and vigilance over those it engages to manage accommodation and deliver services. Where there is evidence of malpractice or criminal activity, lease based exempt accommodation providers must take swift action, with the support of other agencies such as the Police, to ensure it is stamped out. We believe that with a more pro-active stance, those using the exempt accommodation sector in this way will be dissuaded from engaging with it in the future.

### 3.4 Damage to the reputation of the sector

#### Our key recommendations are:

- An open and honest conversation with mainstream RP sector with a view to offering support to address the issues of exempt providers, protecting the reputation of the wider sector.

The issues of the exempt accommodation sector are becoming increasingly public following several relatively high-profile downgrades. This has generated increased interest from both the wider housing sector and mainstream press. Exempt accommodation has also been discussed in parliament. This report, and the possibility of some of the changes suggested in it being enacted, will serve to raise the profile of the issues further.

There is a risk that the issues seen within exempt accommodation could adversely impact upon the way that the social housing sector on the whole is perceived. This is particularly pertinent for other RPs who deliver supported accommodation, whether funded through exempt funding or not.

We believe that the wider social housing sector must have an open and honest discussion about the issues with exempt accommodation. As part of this, we believe everyone in the sector can play

a part in addressing the issues inherent within exempt accommodation RPs. This would include mainstream RPs offering:

- **Support, guidance and mentoring in how RPs should be run and managed to lease based exempt accommodation providers;**
- **Sector leaders agreeing to offer their skills by sitting on the Boards of lease based exempt accommodation providers;**
- **Supporting the needs of our residents in the future and potentially offering accommodation, particularly if lease based exempt accommodation providers become distressed or exit the market.**

### 3.5 Concentrations of exempt accommodation in locations and impacts on the wider community

#### Our key recommendations are:

- Introduction of a Local Authority led licensing scheme for exempt accommodation, like that used on HMOs, to prevent an over saturation of accommodation in particular areas.
- Greater care to be taken by lease based exempt accommodation providers in allocating rooms in HMOs to ensure a better mix of needs and limit the potential for anti-social behaviour.

The market conditions that have led to the boom in exempt accommodation has resulted in a number of neighbourhoods in Birmingham being dominated by such housing. In these neighbourhoods, it is not uncommon for over half of the properties on some roads to be comprised solely of exempt accommodation. Many of these properties have been converted from family homes and the quality of those conversions is generally low (whilst acknowledging there are notable exceptions including those already noted in this report). Most would not meet the standards required for an HMO in terms of space or safety features.

The effect this concentration has is quite stark. Firstly, there is disproportionate and unsustainable demand on public services from within them because of the concentration of poverty and support needs of residents. In instances where anti-social behaviour takes place, there is also often a breakdown of relations with neighbours.

The combination of these factors has tended to lead to a broader stigmatisation of residents in need of this type of accommodation. This is then exacerbated by high levels of coverage in both traditional and social media, sensationalising reports of ASB and other events that take place in the lives of our residents. The area of concern here is that this stigma further marginalises vulnerable residents within their communities and reduces their chances of them becoming more independent even further.

Generally, our view is that the use of lease based exempt accommodation does not lead to an inevitable drain on public resources or cause problems for the wider community. In a great number of instances, the homes directly supported by Prospect were incredibly well integrated into

the community. Research has also shown that the best outcomes for residents are delivered when they feel part of the community around them.

The clear issue here is the effective free for all in terms of converting homes for the purposes of lease based exempt accommodation, leading to the concentrations we have already described. With little restriction, the financial benefits of converting cheap family accommodation into lease based exempt accommodation to drive better yields over private rented usage are obvious.

As already noted, exempt accommodation is free from the types of licensing and planning requirements and restrictions that exist. The reason that the density of HMOs is much more tightly policed by relevant local authority teams is for the very purpose of preventing the concentration issues being caused by the current location of exempt accommodation described above.

In our view, we believe that a similar licensing and planning regime should be applied to lease based exempt accommodation by local authorities. Not only will this ensure that properties will need to meet a minimum standard for the benefit of residents, but it will also prevent over concentrations of such housing in areas and avoid the issues outlined. An added benefit is that the need to meet certain standards within the accommodation will also dissuade rogue landlords from entering the market in the first place.

At the same time, we would also recommend that lease based exempt accommodation providers give very careful consideration to residents being placed in their accommodation. Managing the mix of residents carefully within exempt accommodation will better control anti-social



behaviour, reducing the potential impact on the wider neighbourhood. As part of this however, and as we have noted elsewhere, lease based exempt

accommodation providers need to have a better understanding of the needs of residents before allocating them accommodation.

### 3.6 Exempt providers becoming too big to fail

#### Our key recommendations are:

- Closer monitoring of the transfer of housing and residents between exempt based providers by RSH and Local Authorities as exempt providers exit the market or fail.
- Consideration given to developing contingency plans by RSH and Local Authorities in case of the failure or exit of larger exempt providers.

Prospect is already almost wound down, and other exempt accommodation providers are considering their future given the challenges of operating in this sector. As this happens, it will create the possibility for other providers to expand the scale of their operations to accommodate the evident and increasing demand for lease based exempt accommodation. This has the potential to concentrate more and more accommodation in the hands of fewer and fewer providers.

Should this come to pass and one of these newly enlarged providers then also fail or decide that they no wish to provide services, it is likely to have serious repercussions. Many residents may find themselves homeless as other providers will not have the scale or capacity to offer homes to all those required to move on. In turn, local authorities will also be faced with the challenge of helping residents find new homes. Given the low amount of resource and lack of dedicated teams assigned to exempt accommodations, they could struggle to meet the demand this would create.

With the being the case, we are of the view that:

- **RSH and local authorities should put in place mechanisms to monitor the movement of stock between lease based exempt accommodation providers as some exit the market. This will allow both to have an accurate picture of the stock holding of individual RPs and the potential fallout should one or more cease operations.**
- **In tandem with this, both RSH and local authorities should have a generalised contingency plan in the event of an unplanned closure. At the centre of this should be arrangements to make sure that residents are offered alternative accommodation quickly and that they continue to receive support where it is required.**

## Section 4

# Recommendations for securing the future of lease based exempt accommodation

As we have demonstrated, there is a demand for exempt accommodation across the country which is continuing to rise. We have also detailed the myriad of issues which have hampered Prospect and its dedicated staff from being able to meet the needs of those that lease based exempt accommodation houses.

We still believe that there is a place for accommodation of this nature based on both the demand and the continuing focus and dedication of many in the sector to meeting resident's needs. However, to provide it with a sustainable future,

there are several wider factors and systemic changes that need to be considered and addressed. In this final section of the report, we reflect on what we believe these challenges are and how they might be overcome.

### 4.1 Financing exempt accommodation

#### Our key recommendations are:

- Consideration be given by key stakeholders (including DWP and LUCH) to develop and support a new, sustainable funding regime for lease based exempt accommodation which reflects the true cost of providing the accommodation.
- Changes be made to ensure that all housing costs are paid for through Housing Benefit and related support is paid through social care funding.

At the heart of many of the issues faced by providers of lease based exempt accommodation is an unsustainable financial model. This seems to be the case regardless of the quality of the service delivered or who is providing that service. Anecdotally, we are aware that larger, more mainstream RPs that operate exempt accommodation are having to cross subsidise the costs of providing exempt accommodation from their wider businesses to make them sustainable.

From our experiences, exempt accommodation provision in Birmingham is failing to provide good value to the public purse or positive outcomes for residents in many cases based on the current funding streams. Our view is that there is an inherent irony; there is enough money available

within the systems, but the way it is administered renders the lease based model unviable. A more effective use of this funding in the future, which will need to be enabled by Housing Benefit regulations, could rectify this.

The underlying accommodation needs of our residents are no different to most single people, reflected in the fact that the accommodation that they are housed in of a similar standard to a regular HMO. There is however a great incurrence of costs as a result of housing this cohort through a more regular need to replace fixtures and fittings because of a more regular turnover of residents, and the need for more intensive housing management.

Therefore, there is a need to create a funding system where the rent charged is in line with the actual market cost of leases, service charges are transparent and appropriate funding is allocated to pay for the support and care costs. We would advocate for transparent funding streams where Housing Benefit pays for the housing costs, and where social care funding pays for the costs of the support.

In addition to supporting better outcomes for residents, we also believe that this will dissuade less principled providers to enter the market. The ability to make vast profits will be removed because of a comprehensive assessment of needs and only those truly fitting the requirements of exempt accommodation will be able to access it. It will allow remaining providers in the market to focus on providing exceptional services to those that need it, whilst operating a more viable business.

We are aware that a similar solution was outlined in 2018. However, this was discounted by the wider mainstream RP market because of the additional pressures it would place local authorities under to manage commissioned funding at a time when their own resources were already stretched. The concern is that exempt accommodation would not remain ring fenced and be used as part of a pooled resource to meet wider needs.

As we have outlined, we estimate that more than £500m a year is being spent by authorities on exempt accommodation, and the likelihood is that this is closer to £1bn. There is a risk that recent negative publicity following downgrades of providers could drive government to believe that the sector is not working as a whole and see the removal of exempt funding as a quick and easy saving to the public purse. We believe that the time may now be right for the sector to reconsider its position and the approach outlined.

## 4.2 Accountability and oversight as a driver for change

### Our key recommendations are:

- Change to Housing Benefit guidance given to assessors requiring the quality of accommodation, and whether residents' needs are being met, to be considered before a claim is paid.
- Each local authority to consider how exempt accommodation should be used within housing strategies, including a minimum standard required to qualify for exempt Housing Benefit in their area.
- Transitionary funding to be made available to local authorities to support them to enhance their oversight role.

Our research has shown that most local authorities do not consider how lease based exempt accommodation is used at a strategic level in their areas, or have in place specific resource, policies and procedures to administer its usage. With this being the case, we believe that any attempt by a single authority to crack down on poor quality provision will lead providers to migrate to other adjacent areas of the country which have less stringent regulations. To an extent, this is already becoming evident from our experiences and research.

We think that the primary way to combat this would be a change to Housing Benefit guidance given to assessors from the DWP. This change would

see an emphasis on the quality of accommodation and meeting residents' needs before Housing Benefit is paid at exempt levels. In practice, we think that this would take the form of an accompanying compliance statement from lease based exempt accommodation providers. The statement would need to demonstrate that all statutory requirements for the accommodation are met and set out some clear standards over the service which residents will receive. The latter of these could be based on the national expectations for supported housing.

We believe that this making this change would be quick to introduce as it does not require any changes to legislation. It would have a positive impact in a number of ways including:

- **Support to those high-quality providers attempting to improve standards in the sector by preventing landlords with substandard accommodation simply transferring it to another lease based exempt accommodation provider.**
- **If applied consistently, it would inevitably drive out poor quality accommodation because of landlords either having to improve their property to continue to provide exempt accommodation or choosing to dispose of their units.**
- **A consistent application, with guidance from DWP, would set out a base line over standards and therefore protect local authorities from judicial review.**

Alongside this, Prospect believe that there needs to be a co-ordinated effort amongst local

authorities to improve standards in lease based exempt accommodation. Each local authority should consider how it wants to use exempt accommodation to meet homelessness in its area and the standards that accommodation needs to meet. We would want this to translate into a set of quality criteria for accommodation and support which each local authority develops. It would then apply this to all exempt accommodation Housing Benefit applications before awarding funding. This would back up the Housing Benefit assessor guidance changes we proposed in the previous section.

To ensure the success of these suggested changes, we also believe that local authorities need to be provided with transitional funding to put in place enforcement teams for an initial period. The resource would function in a similar manner to HMO licensing teams, physically inspecting properties and auditing approaches to support provision to ensure they meet standards. Over time, the activity can then be reduced and subsumed into the wider Housing Benefit enforcement and HMO licensing functions as the approach becomes embedded.

### 4.3 A focus on the operating model

#### Our key recommendations are:

- The feasibility of the “lifecycle” model, developed as an alternative to Prospect’s operating model, be piloted.
- All relevant stakeholders including RSH, DWP and local authorities consider supporting a small number of lease based exempt accommodation providers to launch a pilot.

Many of the recommendations identified in this report focus on systemic changes to the way funding, oversight or other system-wide issues either operate or are applied in our sector. However, at the same time, consideration needs to be given to the operational model applied by lease based exempt accommodation providers given some of the wider questions our experience and research have posed.

As we have demonstrated earlier in this report, whilst designed to be temporary in nature, exempt accommodation is often not a short term housing solution for residents. The approach that Prospect

applied failed to recognise this. Often, no structure is put around residents to support them into permanent, independent accommodation. We think there is scope for applying a different approach that addresses this and ensures that people are not trapped by the very accommodation that is meant to be supporting them into independent living.

We have developed what we have termed as a “lifecycle” operational model. It is our belief that such an approach would have served the needs of our residents in a more complete manner and ensured that our resources were targeted at those in greatest need.

The model would begin with homeless people referred to us initially entering an intensive six to eight week assessment phase in hostel style accommodation provided by the lease based exempt accommodation provider. Support staff would work closely with residents during that period and it would be used to develop an understanding of needs and wherever possible, support residents straight into permanent accommodation. This stage would be analogous to the discharge to assess model evident, and in practice, in the NHS. Our belief is that this would be best funded from as SSH given the enhanced resourcing requirements that would be needed.

Where support needs are identified that would render permanent accommodation inappropriate straight away, residents would enter a second phase of assessment in the initial 6–8 weeks. Here, the lease based exempt accommodation provider would work closely with local authorities to conduct a full Care Act needs assessment so that the resident's needs are fully mapped and recorded.

Those residents with a clear support need would be moved into appropriate housing by the lease based exempt accommodation provider. This move would be accompanied by a thorough risk and needs analysis to ensure that a placement into independent accommodation would be successful. A clear progression plan with appropriate support measures would then be defined from that assessment. This would include an agreed timeline for the resident to move into a permanent home.

The lease based exempt accommodation could also play a role in permanently housing both those that had come through the initial phase straight into permanent accommodation and those with support needs have successfully completed their progression plan. As we have pointed out, there is a short supply of move accommodation available. By taking a more pro-active stance through either building or acquiring its own mainstream social housing, lease based exempt accommodation providers could continue the relationship with residents into independent accommodation and ensure some continuity for the resident. As we have noted elsewhere, Homes England may want to consider making grant available to lease based exempt accommodation providers to build accommodation that meets the needs of this group of residents.

Lease based accommodation could also play a role in providing independent accommodation if lease based exempt accommodation providers are unable to build or secure their own stock. However, for that to be effective, the other issues with the lease based model would need to be addressed as we have set out elsewhere in this report.

The crucial element of this alternative model is that it ensures that the RP owns and maintains the relationship with residents throughout the time they need housing with support (and potentially beyond). As we have commented on elsewhere, we think that this was lacking in the case of Prospect because of the complicated arrangements in place with Managing Agents and is still the case with some exempt providers.

This model had been considered as an alternative to Prospect's closure. However, several factors led us to believe that it would be unsustainable and unviable, including the strength of the HMO market in Birmingham, the potential behaviour of Managing Agents and landlords, and uncertainty around contingent liabilities. The impact of Prospect and others leaving the market, and enforcement action undertaken by both Birmingham City Council and RSH, have changed the landscape somewhat since then. We believe there is scope for a pilot of the model to be developed involving key stakeholders to test its feasibility further.



## 4.4 Greater ownership of the relationship with residents

### Our key recommendations are:

- Lease based exempt accommodation providers to maintain control of the relationship with residents, ensuring that all customer touch points are managed by them.
- Operational and commercial arrangements to be shaped around this in the future to make sure this is the case.

A consistent theme throughout this report is that most lease based exempt accommodation providers must do more to own their relationship with residents. We think many providers (including those that operate in a similar way to Prospect did) need to reconsider and re-evaluate their interaction with residents to provide them with better outcomes. Our view is that the most effective way of providing services and achieving the right outcomes for residents through a lease based model is for the provider to retain responsibility for all resident facing processes. Operational and commercial arrangements in place also need to reflect this. They should include:

#### • Referral

- The lease based exempt accommodation provider must be the ones making the decision as to whether the accommodation and the service that they are able to offer is suitable for the resident.

#### • Needs assessment

- The lease based exempt accommodation provider must retain the responsibility (along with the Local Authority where appropriate) for undertaking the needs assessment.
- The lease based exempt accommodation provider must then conduct thorough risk assessments as to any risks that might be presented to the resident by the accommodation and its existing residents, and visa versa.

#### • Outcome planning

- At the need analysis stage, the lease based exempt accommodation provider must set a clear plan to aid resident into permanent accommodation and agree outcomes with them.

- Clear measures should also be put in place to monitor progress against desired outcomes.
- From the start of the process there should be a focus on identifying the destination for the resident upon leaving lease based exempt accommodation. This should include understanding any barriers that might prevent that from happening.

#### • Outcome management

- The lease based exempt accommodation provider must ensure that appropriate support is in place to enable the resident to achieve their desired outcomes. Where partners are used in the process, the RP must be clear on what they are delivering and monitor the effectiveness.
- Regardless of whoever is delivering support, the RP must undertake periodic reviews of both the quality of the support being provided and its effectiveness in delivering required outcomes.

#### • Exiting the property

- The lease based exempt accommodation provider should be actively involved in supporting the move on of residents into independent accommodation.
- Where no other option exists, pursuing evictions. This is the outcomes all lease based exempt accommodation providers should be aiming to avoid. Where it must be deployed, every case should be reviewed so the lessons can be learned and built into earlier stages of the process.

## 4.5 A renewed focus on governance

### Our key recommendations are:

- Boards of lease based exempt providers to regularly review skills compliment of their Board to ensure they meet the need of the organisation, up-skilling existing or recruiting new members where skills gaps are evident.
- Regular reviews of the performance of the Board and its members, including a formal annual appraisal.
- Lease based exempt providers Boards to review their assurance processes to make sure that they are robust, and expectations fully articulated to organisational management teams.

Also central to many of themes arising from Prospect's experience is the need for a greater focus on stronger governance in the future. Our understanding is that governance arrangements in a small number of other lease based exempt accommodation providers operating within the exempt accommodation sector mirror those once evident in Prospect. Without appropriate structures and arrangements in place within a lease based exempt accommodation provider, the co-regulatory model cannot be effectively delivered. This is even more fundamental given the additional risks and complexities which are inherent in the lease based model.

Appointed members need to be acutely aware of the various responsibilities, obligations and expectations placed on them when they take up their position. Fundamentally, the two most important aspects are the responsibilities of Board and their members to RSH under the co-regulatory regime and the Companies Act as legal non-executive Directors of the organisation. There are a range of others however, including:

- **Health and safety obligations;**
- **Commercial obligations to other organisations in the supply chain;**
- **Financial accounting regulations;**
- **Responsibilities around accounting for the use of public funding.**

For a Board to provide effective oversight over a lease based exempt accommodation provider, it's members must be able to demonstrate skills, expertise and experience which cover its range of operations. This was not always the case

with Prospect. Boards of lease based exempt accommodation providers need to take an honest, regular appraisal as to whether this is the case. Where it is not, efforts should be made to develop existing members to fill those gaps or new members with requisite skills be recruited. Boards should also be monitoring their own performance, both collectively and individually, on a regular and on-going basis. This will include a formal review or appraisal of both annually.

Any recruitment process for new members to Boards must be fair, open, and transparent with diversity of characteristics and thought being actively sought to offer new challenge and ways of thinking. Given Prospect's experience, identifying and appropriately managing any conflicts of interest that arise from any appointment is also highly important. As we have set out in previous section, such conflicts can pose challenging questions of Board members as a minimum.

There needs to be sufficient distance between the appointed Executive Officers and members of the Board. As part of this, the Board needs to clearly define the skills that it seeks from Executive Officers as part of a recruitment process and once appointed, set the objectives and targets of that person to deliver the organisational mission and vision. The Board should not attempt to take on the roles and responsibilities of the Executive Officer, focusing instead on the oversight role that is the preserve of members.

Poor behaviour on the part of either Board members or appointed officers must be challenged and addressed when it occurs. The conduct of both individual members and senior officers has

a substantial impact on Board's ability to operate cohesively. It cannot allow individual's actions to distract it and prevent it from working effectively.

Boards must consider and set out expectations over how assurance over the organisation's activities will be provided. This needs to be fully articulated and documented to the management team.

Consideration also needs to be given to areas in which internal validation is insufficient and independent verification is necessary. For example, this might include high risk areas such as asset health and safety compliance. Finally, best practice assurance models should be adopted, such as the three lines of defence risk model.

## 4.6 Summary table of key asks

Category	Ask	Non Compliant RP's	RSH	Local Authority	DWP	MHCLG	NHF	Wider Sector
Resident	Local Authorities to take ownership of the referral process							
	Inadequate risk assessment should be considered a failure of Consumer Standards							
	RP to take responsibility for triage & risk assessment							
	RPs to take a more active role in the delivery of support							
	Expectation for RPs to offer more secure tenancy options							
	Support plans focussed on progression towards independence and employment							
	RP's must own the relationship with residents							
	RPs to take more care in managing the mix of residents within a property							
Funding	Resolve the flawed funding models							
	Serious consideration at a policy level as to how support should be funded							
	Transitional funding to enable the sector "to get its house in order"							
	Stop Exploitation of the funding through Social Media adverts							
Governance	Ensure best practice governance is being adhered to							
	The role of Managing Agents to be well defined with clear governance							
	Development of guidance to sit alongside NHF Code of Governance							
	Ensure conflicts of Interest are properly managed							
	Ensure that only fit and proper directors are permitted to join Boards							
	Identify complaint and viable future operating models							
Oversight	Enhancement of RSH powers in line with the white paper							
	Enhanced role for Local Authorities in providing oversight							
	Acknowledgment of the potential in the model for exploitation and criminality.							
	Ensure local accountability for the quality and type of provision							
	Close the "Exempt funding loophole"							
	Urgent amendment to Housing Benefit guidance to allow Local Authorities to apply enhanced checks in this part of the sector							
	HMO licencing to be introduced for all (HMO) Exempt Accommodation.							
	Checks to ensure that there is sight of growth of RPs between SDR reports							
	Co-ordinated response to systemic non-compliance of RP's in this part of the sector							
	Engagement with the CIC Regulator to prevent a new loophole from opening							
Sector	Local Authorities to urgently put in place additional checks on CIC's							
	Wider Sector to step up to support the resolution of this issue							
Sector	RP's to measure and publicly report upon their impact							

Figure 8 Summary table of key tasks

## Section 5

### Resident stories

All names have been changed to protect resident confidentiality. Images are stock photography.



#### 5.1 Alan's Story

Alan is 47, he is originally from Newcastle. He began using "rocks" and "crack" when he was 13, because all of his mates were doing it. Alan quickly became dependent, he also quickly ran up a number of prosecutions for theft, burglary and shop lifting. In time Alan introduced his two younger brothers into this lifestyle, who also became addicted.

Alan describes even at the height of his addiction the pain he felt watching his mother walk into prison to come to visit him. He told me about the day his mother had to visit him and his youngest brother in prison to tell them that their middle brother had died of an overdose. Alan immediately went back to his cell "to score".

Alan is currently eight months clean, and is slowly reducing his dependency on, this is the second time he has been on this journey of recovery, last time he made it to four months, and therefore he knows the fragility of his current position and values how far he has come every day.

The key turning point for him this time, has been the intensive support he has received, in the service he is living in. He has gone through a 12-week programme to support him into abstinence.

Alan lives in a house with four other guys, who are all on a recovery journey, he is the one who has been clean the longest and as such he feels that he has a responsibility not just to himself but to the others in the house who are taking strength from his success. He attends group sessions and meets with either his sponsor or members of support staff most days. When he was feeling as though he may falter, he put himself back on the original 12-week programme to help him keep his focus.

He visits his parents and his younger brother (who has been in recovery for over 10 years and is settled with a wife and children), once a month. Whilst he loves seeing them, he knows that the temptations of his previous life would be too much, and on each visit he reflects on which of his old school friends have now died. Birmingham is now home, and he looks forward to moving into independent living, he has started volunteering for a substance misuse charity and is hoping in time to get a job in the sector. As I was leaving the service, he took my hand and told me **"make no mistake – this place and these people have saved my life"**.



## 5.2 Sunil's Story

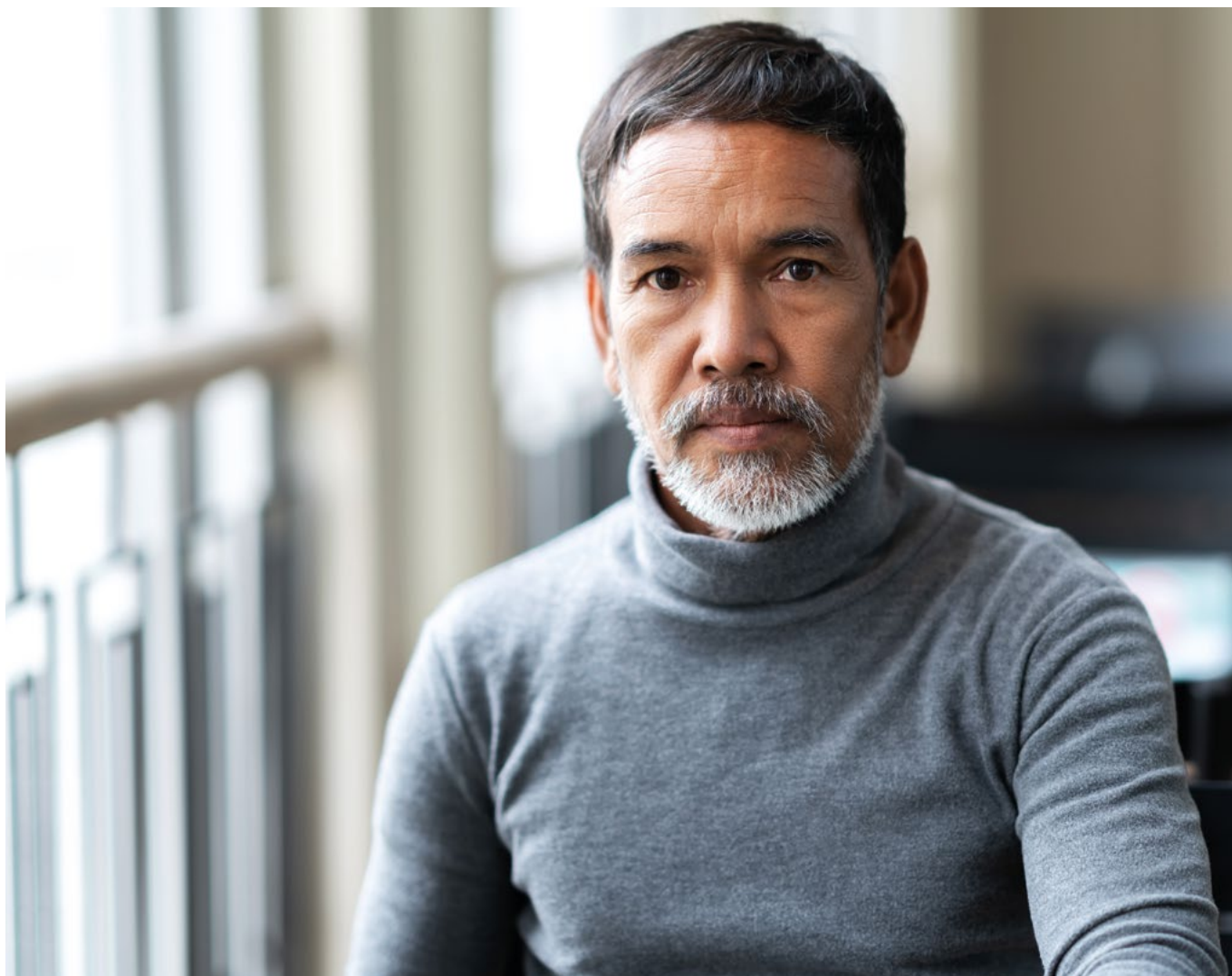
Sunil and his brother had been living in Exempt Accommodation since they left care. When Prospect took over, we became Sunil's 15th support worker. His notes suggested that he was violent and abusive to support workers and that he didn't engage in support.

For the first 12 weeks of support Sunil would arrive at his support session move the chair to the furthest point away from his support worker, put a flick knife down on the table and spend the session playing Candy Crush. Different approaches were taken to seek engagement, and despite his outward lack of interest, the support worker turned up consistently to build trust and stability.

Having seen that Sunil's phone home screen was a montage of sports cars, the support worker bought to the session a magazine on the same subject. The ice was finally broken and Sunil's ambitions for his own house and his own car shone.

From this kernel, we were able to build a support plan based on supporting Sunil into training, and worked with him to be ready to move on to independent accommodation.

Following the training Sunil was able to secure an entry level job in IT, however, he was on the verge of turning it down as he couldn't afford to pay his rent for the property if he was in employment. His support worker was able to work with another Landlord who also had PRS HMO accommodation, which she was able to convince the Landlord to rent to Sunil on a trial basis. Sunil has not yet secured his supercar, but he is successfully holding down his tenancy and his job, and is currently undertaking further training in the hope of gaining promotion.





### 5.3 Jayne's Story

Jayne and her partner came to us in February 2016. Jayne and her partner were living in the woods with her cat for several weeks as she had lost her home and children through a mental breakdown.

When the support worker first met Jayne, she couldn't speak with crying. She had no confidence or self-esteem and was on medication for her depression and anxiety. Even leaving the house was a challenge.

Jayne then had four children, one with a disability. The children had been taken into care which had caused so much trauma to Jayne as she believed she was a good mom and loved her children dearly.

Once Jayne started to gain the support worker's trust and share what she had been through, she was encouraged to reconnect with the social workers and sort the letter box contact. This required a lot of trust, as Jayne hadn't heard from her children in 12 months and saw the social workers as people who had failed to support her.

We helped her anxiety with frequent acupuncture, carried out by a trained Prospect support worker.

Following months of liaison with social services, Jayne and her partner received letters and photos of their children. Prospect's support worker took them both for a contact visit with their son, which still continues.

Jayne since has had another child, and thanks to the own growth and the support of Prospect's team, worked with social services to attend parenting courses with a shared ambition of allowing Jayne to keep her baby. The couple completed this successfully, with Jayne invited to help others on the course.

Prospect's accommodation is not suitable for children, so Jayne and her partner moved into their own flat. Prospect supported them to get a grant for furniture and applied to baby bank for baby equipment.

In April 2019, Eva was born and under the watch of social services for 12-months. Jayne and her partner were discharged from social services last year and live very happily in their flat. They have proved their worth to keep their daughter and now have contact with all their children.

### 5.4 Alison's Story

Alison came to Prospect Housing to escape a domestic violent relationship. At first she found it very difficult to socialise within the shared property. To deal with her trauma, she misused alcohol. She had been ostracized from her five adult children and had little contact with her mother.

Alison would stay in her room, and not socialise with others at the property. Alison would not leave the house on her own and would always use a taxi to take her to the local shops. Despite our encouragement, she was unable at this time to seek support for her drinking.

But over time Alison became more confident with the continuity of the support she received from many of the support staff. She re-connected with her children and grandchildren.

Taking small steps, Prospect's team encouraged Alison to be more sociable. The team took her out weekly to do her shopping and also to the local park, café and GP appointments. She started to make friends with the other residents.

After supporting Alison for several months, her mental health improved, and she drank less and less. She was eventually moved into a small annex flat where she thrived even more, eventually giving up all alcohol. She became a keen gardener and kept the very large garden full of colour.

Alison has since moved to her own independent flat with a local Housing Association. She attends local community groups and activities and has a group of supportive friends.

From the quiet, distressed survivor who first came to us, Alison is now surrounded by her community and family and is enjoying living independently.

## 5.5 John's Story

In 2019 when John moved into a Prospect property, his mental health had deteriorated and he had attempted suicide. After being discharged from hospital, we supported John to firstly register with a local GP. This step allowed him access to free medication and a referral for specialist support. Prospect's support worker hard to build trust, attending appointments with John at his request.

John continued with his medication and engaged fully with the mental support help available. He has since stopped his medication entirely and has found a loving relationship. He recently thanked Prospect's support worker for her help, stating he wouldn't have got this far without support.



## 5.6 Marek's Story

Markek is an older Polish man, who spoke very little English when he was placed in one of Prospect's properties. Despite the efforts of his social worker, initially phone calls and translated text messages went unanswered.

After some persistence, a face-to-face meeting was set up where it became clear that Marek was not receiving benefits he was entitled to. He had received no funds to support himself in 18 months.

Off his own back, he had found some casual cash in hand work, but this was infrequent. The support worker made a claim for Universal Credit, and after attending with Marek at local Job Centre we were able to get him his first DWP payment in over 20 months.

Marek attended all his support sessions and with the use of Google Translate the support team were able to complete all his support needs including helping him enrol at an ESOL course. He now attends twice a week which is helping his English language skills. He has been confirmed as having an indefinite right to remain and have access to public funding.

Marek has since moved into an over-55s scheme. To help him settle, his support worker set up Direct Debits for his bills and helped him with a grant towards household items.

## Thank you

We would like to thank the following people for taking the time to speak with us about the report, many of whom reviewed early copies, making helpful suggestions to improve the overall end document:

<b>Glenn Allum</b>	Campbell Tickell
<b>Paul Bayley</b>	NHF
<b>Jonathan Cox</b>	Anthony Collins Solicitors
<b>Steve Douglas</b>	St Mungos
<b>Matthew Downie</b>	Crisis
<b>Bob Granville</b>	
<b>Michelle Hallmark</b>	Creative Bridge
<b>Ashley Horsey</b>	Commonweal
<b>Councillor Hussain</b>	Birmingham City Council
<b>Victoria Jardine</b>	Anthony Collins Solicitors
<b>Preet Kaur Gill MP</b>	
<b>Julie McKay</b>	
<b>Simon Nunn</b>	NHF
<b>Gera Patel</b>	Campbell Tickell
<b>Jess Phillips MP</b>	
<b>Sue Ramsden</b>	NHF
<b>RSH</b>	
<b>Jon Sparkes</b>	Crisis
<b>Jean Templeton</b>	St Basils
<b>Councillor Thompson</b>	Birmingham City Council
<b>Nicola Winn</b>	Creative Bridge







**t:** 0121 444 7408

**e:** [victoriamcdermott@prospecthousing.net](mailto:victoriamcdermott@prospecthousing.net)