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Greater London Authority

Legal guidance note on the appropriation of General Fund land to the Housing Revenue Account

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1. Introduction

This Guidance Note has been prepared on the instruction of the Greater London Authority (**GLA**). The purpose is to set out as clearly as possible the rules which apply to the appropriation of General Fund land to the Housing Revenue Account (**HRA**). It is hoped that this will help London Boroughs make decisions on potential sites for affordable housing, free of legal uncertainties.

There are indications that the rules are seen as difficult to interpret, in relation to both the circumstances in which appropriations can be made and the 'price' the HRA must pay.

We have set out the rules in sufficient detail to allow readers to understand the statutory basis for this guidance, but we have also added a few examples to show how the legal rules can work in practice. There are of course important accounting practices which need to be followed, but while we have made some legal observations on these we urge readers to obtain their own accountancy advice.

Our aim here is to provide a legal framework within which finance and audit colleagues, both in-house and external, can set their advice. Some of the current difficulties seem to us to derive from the absence of general guidance.[1] A case by case approach has not helped consistency or confidence.

It is for this reason that the GLA hopes that this Guidance Note, supported by accountants' input, will build 'custom and practice' – and that the resulting confidence will facilitate the use of General Fund land for affordable housing.

2. Summary

- Appropriations should be considered on a site-by-site basis
- The HRA 'pays' for the land through an increase in the HRA Capital Financing Requirement (CFR)
- The General Fund benefits from a corresponding decrease in its CFR
- The CFR adjustments should be based on the market value for the land – but taking account of the intended use for social or other sub market housing
- The Council has discretion whether to appropriate land on this basis or sell it on the open market
- But aside from the obvious housing benefits from an increased supply of affordable homes there may well be financial benefits and /or mitigations too (depending on current debt management arrangements):
    - Lower temporary accommodation costs
    - A revenue return and/or benefit rather than a capital receipt
    - HRA contributions to any above-market interest rate debt

[1] There is a MHCLG website link to current HRA determinations and so on, but (as noted below) the 2006-7 HRA Manual has not been updated.

- No Minimum Revenue Provision on the debt 'transferred' to the HRA
- No transaction costs

- Councils are encouraged to use this analysis to agree on a 'pipeline' process for appropriations to help with planning a programme of HRA new build schemes.

3. Appropriation to the HRA

The general appropriation power is section 122(1) of the Local Government Act 1972 **(the 1972 Act**). This states that councils (including London Boroughs) "may appropriate for any purpose for which the council are authorised by this or any other enactment to acquire land by agreement any land which belongs to the council and is no longer required for the purpose for which it is held immediately before the appropriation …"

Appropriation to the HRA is specifically dealt with in section 19(1) of the Housing Act 1985 (**the 1985 Act**):

"A local housing authority may appropriate for the purposes of this Part [2 - *dealing with the provision of housing accommodation*] any land for the time being vested in them or at their disposal and the authority have the same powers in relation to land so appropriated as they have in relation to land acquired for the purposes of this part".

These two powers are central to this Guidance Note and the provisions need to be 'unpacked'. A number of points are worth highlighting:

- There is no need for consent.[2] In other words, it is a decision for the Council alone (acting or resolving within its usual legal constraints).

- Both powers cover (real) property of any kind – i.e. with buildings and not just "land' in the ordinary sense: Schedule 1, Interpretation Act 1978.

- There is no reference in section 19(1) to the land no longer being required for its current purpose, as appears in section 122(1).

- The resulting powers in respect of the land appropriated to the HRA as set out in section 19(1) are wide ranging – by virtue of section 17 of the 1985 Act they include the erection of houses and the provision of facilities in connection with housing accommodation.

The relationship between the two powers is not obvious. On the face of it section 19(1) constitutes a free-standing power and there is no express link to section 122 which would be expected if section 19(1) were to be read as subject to any contrary or additional provisions in section 122. This is why we have elsewhere highlighted the potential benefit to be derived from the absence of any reference in section 19(1) to the land no longer being for required for its present purpose.

On the other hand the MHCLG's website rehearsal of HRA rules indicates that they regard section 19(1) as representing the application of section 122 to the HRA.

[2] Note however the requirement for consent under sections 12 and (for London alone) 15 of the 1985 Act. Neither instance seems to merit rehearsing in the context of this Guidance Note. Readers should also appreciate that appropriations out of the HRA require consent if any houses are included: section 19(2).

4. Appropriation for planning purposes

Most councils are familiar with this. The appropriation of land for planning purposes under section 122 of the 1972 Act provides a means of over-riding the interests of third parties, thus entitling them to compensation rather than (potentially) thwarting redevelopment.[3]

A detailed exposition of this power is beyond the scope of this Guidance Note but we believe (supported by counsel's opinion) that a council can appropriate for planning purposes and then, straightaway, appropriate 'on' for HRA purposes.

A 'clean' title could of course be of significant value for the development process.

It is worth noting that appropriation for planning does not itself change the accounting treatment. In this case the land will remain in the General Fund until it is appropriated to the HRA.

5. The 'price' to be paid for appropriated land

It will be appreciated that price is the wrong concept. Appropriation does not involve a sale and purchase. No transfer of title takes place. The land simply "moves" from one Council account to another - or rather it is accounted for in a statutorily ring-fenced account (the HRA) within the overall account (the General Fund).

This means that the appropriation results in an accounting adjustment, not a payment.

The rules governing the HRA are set out in Part 4 of the Local Government and Housing Act 1989 (**the 1989 Act)**. Under Section 74(1) local housing authorities must follow "proper practices", which are defined in Section 66(4) as those mandated by statute and (to the extent consistent) generally recognised (accounting) codes or guidance.

The starting point is Section 75 of the 1989 Act, which requires that HRAs must be kept in accordance with Schedule 4. This describes, in Part 3 (Special Cases), that on an appropriation into (or out of) the HRA adjustments to the council's revenue accounts must be made in accordance with any direction by the Secretary of State.

The Secretary of State's power to make directions is set out in Section 78, but the only current Directions - The Housing Revenue Account (Accounting Practices) Directions 2016 (**the 2016 Directions**) – simply describe the information to be disclosed in notes to the HRA; they do not make specific provision for appropriations.[4]

Instead local housing authorities need to account for appropriations as debits (or credits) as set out in Part 2 (and Part 1) of Schedule 4. The relevant item is item 8, i.e. "Sums to be determined by [the] Secretary of State".

The Item 8 Credit and Item 8 Debit (General) Determination from 1 April 2017 (**the Item 8 Determination**) was (last) amended in 2018. The amendment inserted a Schedule dealing with the calculation of the HRA Capital Financing Requirement (**HRA CFR**), based on the wording used for

[3] Section 122(1) by itself does not do so – "the appropriation of land by a council by virtue of this subsection shall be subject to the rights of other persons in, over or in respect of the land concerned".
[4] There are simply various references to values of land etc. being calculated in accordance with proper practices.

the now-removed debt cap.[5] The wording now serves to determine the HRA debt held by the council.

The overall Capital Financing Requirement (**CFR**) is described in The Prudential Code for Capital Finance in Local Authorities (**the Prudential Code**), which makes the CFR a prudential indicator for the purposes of debt management. In summary the CFR "will reflect the authority's underlying need to finance capital expenditure by borrowing or other long-term liability arrangements" (para. 52). The Code describes the CFR at para. 79 and explains that the CFR is to be taken from the authority's balance sheet (see also para. 54).

The calculation of the HRA CFR in the Item 8 Determination uses a formula which determines the closing CFR for one financial year and the opening CFR for the next.

Each year there is added to the opening HRA CFR "the certified value of any interest in housing land which commenced or recommenced to be accounted for in the Housing Revenue Account during the current financial year for a reason other than acquisition by the local authority".

The only defined term is "housing land" and that simply refers to the duty to keep a HRA under Section 74 of the 1989 Act.

There is therefore no statutory guidance on "certified value". On the face of it this means simply market value; and it is relevant to note that in the last version of the official HRA Manual, issued in 2006-7 (i.e. under the HRA Subsidy system, before Self financing), the section dealing with the calculation of the HRA CFR referred to "the certified market value of any property transferred to the HRA from the authority's General Fund …" (emphasis added).

The 2006-7 wording may or may not derive from the HRA Subsidy system, but in the absence of more recent guidance (whether from MHCLG or CIPFA) "value" should simply be given its ordinary meaning.

There should of course already be a balance sheet value for the land but the basis for that value and its current validity should be checked. The Code of Practice on Local Authority Accounting in the UK (**the Accounting Code**) **–** which sets out proper practices for the purpose of section 21 of the Local Government Act 2003 (**the 2003 Act**) - does not deal with appropriations (see **Section 6** below) and a choice needs to be made between the valuation methods described at section 4.1.

We hesitate as lawyers to do so but we suggest that it is more helpful to treat to-be-appropriated land as "surplus" rather than "operational" assets (as those terms are defined and explained in the Accounting Code).

It is true that land appropriated from the General Fund into the HRA rather than vice versa may not in fact be subject to the requirement that it is no longer required for its present purpose (see our comment on the statutory uncertainty in **Section 3** above); but "surplus" is simply defined as "not being used to deliver services" (4.1.2.2). Certainly the other valuation methods for current (including non-operational) assets – existing use value or depreciated replacement cost - do not seem to reflect the reality of appropriation.[6] If this is right then the balance sheet value should be based on "fair value", i.e. "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants …" (4.1.2.11).

[5] See the Limits on Indebtedness Determination 2012 (as amended in 2013), revoked in 2018

[6] Note that 'existing use value-social housing' (EUV-SH) applies to dwellings in the HRA (4.1.2.4) – so would not be applicable even if the dwellings were developed in the General Fund before appropriation.

We would therefore encourage the council to ask the district valuer or other professional adviser to confirm that the land's balance sheet value meets that test.

This would usually involve the valuer taking account of the land's state and condition, any legal or other encumbrances attaching to it and the use restrictions applying to it – which links of course with when and thus where the development costs are to fall – in the General Fund or (more likely perhaps) the HRA.

Here of course there is no market purchaser; but there is no obvious reason why at least the condition of the land and the legal encumbrances should not be reflected straightforwardly in the valuation.

More difficult is the use restriction – which may simply involve conventional affordable housing but could include extra care and other accommodation. It is tempting to 'read across' to the rules which apply to the disposal of General Fund land, under Section 123 of the 1972 Act which requires, at least for the purposes of the General Consent, that so-called voluntary conditions be ignored. The reason is evidently that the local authorities should not be able to benefit from the £2m threshold for the General Consent if they have decided to impose conditions on the sale which bring the value below that figure.

But appropriations, in our view, are different. It is one thing for MHCLG to restrict the disposal of local authority assets and another for councils to require the HRA to 'over' pay. A purchaser in the market would not ignore use restrictions. It seems right therefore for the certified value to reflect the fact that the land will be used in accordance with HRA ring fence rules. Generally this mean that rents will be at social rent levels (as set out in the Rent Standard now applicable to local housing authorities) but there may be other rent levels.

Such an approach would seem logical from a legal point of view, in that it reflects the capacity of the HRA to bear the cost of the land from the revenue it generates.

We do however recognise that there are practical issues here. The appropriation is not part of a contractually 'fixed' transaction. The assumption seems to be that the HRA CFR adjustment is a one-off calculation (though the reference to "interest" in the HRA CFR Schedule perhaps hints at flexibility). If that is the 'rule' then a view needs to be taken about the future use of the land when the appropriation is made. In other words, what are the business-planned numbers of units and rent levels? These may change, of course, but all this is not akin to a 'deal' with a housing association or developer. The delivery of the new build programme is within the corporate control of the Council (subject to the ring fence requirements) and for the present at least most councils have not been stress-testing the significant constraints applying to rents they can charge and the tenancies they can grant.

It is worth bearing in mind that the decision to appropriate is a voluntary one. Aside from the important initial decision whether to appropriate for planning purposes (see **Section 4** above), the Council has three options – to retain the land in the General Fund, to appropriate it to the HRA or to dispose of it. The decision to appropriate to the HRA is a decision to benefit, as a housing authority, from its use within the HRA and not (for example) take a capital receipt. If the value is lower than it might otherwise have been then that reflects a permissible and (very likely) a statutorily 'reasonable' choice by Members to make for political and policy reasons.

The Prudential Code (para. 79) points out that the CFR can be a negative figure. It is often said – not entirely facetiously – that subsidised housing requires subsidy. Councils may or may not be willing to appropriate land with a CFR 'dowry' but the fact that the land may be transferred at no or negative cost supports the valuation approach we are suggesting here.

The way this overall approach and different elements within it can work in practice is illustrated in the examples set out in **Section** 7 below

6. The debt management consequences

We have emphasised that we are providing legal guidance but we believe that the current difficulties with some proposed appropriations may derive not just from the 'price' to be allocated to the HRA but also the debt management consequences of that 'payment'.

As we have already emphasised, the HRA does not in fact make a payment at all. All that happens is an accounting adjustment, transferring the certified value of the land from the General Fund to the HRA. And the only other requirement – based on the Accounting Code – is that the overall CFR is taken or calculated from the council's balance sheet – noting that while there is no formal requirement for there to be a separate HRA balance sheet the 2016 Directions require the balance sheet value of HRA land etc. to be disclosed in notes to the account.

The purpose of this Section is to rehearse why we believe it is possible for council accountants and auditors to approach the valuation issue on the basis of our legal analysis in **Section 5** above and not feel constrained simply to follow and apportion current balance sheet valuations.

We do however also consider that there is a case for treating HRA debt differently and we have set out our ideas in an **Appendix**.

There is no guidance on this adjustment in the Code of Practice on Local Authority Accounting. The following undated FAQ appears on CIPFA's Technical Enquiry Service's website. Interestingly it encourages the transaction-by-transaction approach we are advocating here:

"What are the accounting arrangements for the appropriation of assets between the HRA and General Fund?

The Code of Practice on Local Authority Accounting in the United Kingdom (the Code) and the Code of Practice on Local Authority Accounting in the United Kingdom Guidance Notes for Practitioners (Code Guidance Notes) do not provide any specific guidance on the appropriation of assets between the HRA and the General Fund because such transactions are specific to the authority. Local authorities would need to seek appropriate legal and other professional advice on any appropriations that they are considering and any resultant impact on the capital financing requirement. …. The accounting for this type of transaction would be an issue for individual accountants' professional judgement following the decisions of the authority. We suggest also that any appropriations are discussed with the external auditor."

In the absence of such guidance it is worth revisiting the last official HRA Manual (2006-7), even though it was drawn up to apply to the now-dismantled Subsidy system and in particular deal with the allocation of debt charges between the General Fund and the HRA.

In the section setting out the calculation of the opening HRA CFR (see 7.1.6) an explanatory note was attached to the addition of the certified market value of any property transferred to the HRA from the General Fund during the previous financial year:

"Property transferred in this way is treated exactly as if the authority had acquired the property from a third party using money borrowed in reliance on a credit arrangement …"

The mid year HRA CFR (see sections 7.1.7-8) was calculated effectively on the same basis and it was used in the calculation of

- If positive, the HRA's contribution to debt interest costs; or
- If negative, the HRA's share of investment income; and
- The Consolidated Rate of Interest (**CRI**)

Chapter 11 dealt with appropriations and transfers into or out of the HRA. It explained at section 11.4 that when appropriations take place "adjustments need to be made to the … HRA CFR … in order to ensure that any remaining capital charges attributable to the appropriated or transferred property are satisfactorily reflected in the HRA." It then described what this meant for appropriations first out of and then into the HRA:

" … if property in the HRA is appropriated for purposes other than the provision of housing under Part II of the Housing Act 1985, and therefore ceases to be in the HRA but instead is accounted for in the General Fund, the HRA benefits from the assumed capital receipt (which will be set at the proportion of the certified market value of the property which would have been pooled, had the property actually been disposed of), as though it had actually been disposed of. This also means that the HRA will make a lower contribution to the authority's overall capital charges (by way of a reduced Item 8 debit). There will of course be other consequences for the authority's HRA in terms of, for example, rental income and expenditure on maintenance and management of any dwellings transferred out of the HRA. Similarly, if property is transferred into the HRA (e.g. because it has been appropriated for the purposes of Part II of the Housing Act 1985 or because of a section 74(1)(f) direction), the certified value is added to the HRA CFR, the HRA's contribution to capital charges through the Item 8 debit will increase, and there will be consequences for the authority's rental income, management and maintenance expenditure."

Notwithstanding the references to the HRA Subsidy arrangements and in the absence of post 2012 guidance, we believe this 2006-7 Manual guidance still has relevance. It will be noted in particular that "certified market value" was equated to a capital receipt.

This seems to support the approach we have suggested in **Section 5** above and certainly does not support the introduction of artificial (section 123) valuation assumptions. There is also the point that as result of an appropriation the HRA would contribute more (or less) to the authority's overall capital charges.

It is widely acknowledged that the HRA CFR is a measure of debt; and it was used to impose the debt cap in 2012. And increasing the HRA CFR on an appropriation simply increases that debt total; but since the debt cap has been removed the key question is not whether the extra debt is permitted but simply what the additional revenue cost is.

Under current accounting practice however that question is academic. The CFR, calculated in accordance with the rules described in this and the preceding Section, essentially determines that revenue cost, subject 'only' to such additional (i.e. debt management) factors as:

- One debt pool or two

- The mix of PWLB and commercial debt

- The use of reserves instead of borrowing.[7]

This debt management discretion may be appropriate and desirable; but if the exercise of it is thought to present difficulties for the release of housing land then another approach may be worth considering. We have rehearsed points to support a special case for HRA debt in the **Appendix** to this Note.

7. Examples

We have been asked to indicate how our guidance would apply to different scenarios. Please note that we confine ourselves to the way our "certified value" analysis would apply. Every scenario will involve other legal issues, especially legal powers and consents. These are not covered here and require specific legal advice. Please also appreciate that the examples overlap – an overall certified value will need to take account of all factors.

- *Legal title problems* – if a council decides to 'cleanse' the title by first appropriating the land for planning purposes then the certified value will increase to reflect a clean rather than an encumbered site

- *Prior development in the General Fund* – if the appropriated 'land' includes or constitutes new dwellings then the certified value will reflect that added value, based on the intended (social rent?) use, bearing in mind the need to form what we believe is a one-off view on 'intention'

- *Mixed tenure development* - the certified value of the site should reflect the intended 'mix' (usually social rented homes, but possibly also categories exempt from or out-with the Rent Standard) – accepting that the mix could change after the (assumed) one-off CFR adjustment is made

- *Appropriating income-generating properties* – in principle the certified value will be the net present value of the income stream, recognising the depressive effect of the HRA ring fence; but usually the income generation (for example, from commercial premises) will not be 'carried over' into the HRA for vires reasons

8. The decision to appropriate

We believe it would be useful to suggest briefly how decisions to appropriate housing sites to the HRA could be made.

Given that the Council has a discretion whether to appropriate land or not, the process will often be – at base - a negotiation. There will certainly need to be an agreement, at both member and officer level.

If our analysis in this Guidance Note is accepted, the starting point is agreeing the market value for the land – taking account of the intended use.

That may be the end of the negotiation – if the political and policy decision to appropriate has already been made, subject only to agreement on the 'price' and the consequent CFR impact.

[7] We assume that the complicating factors of debt premia and breakage costs do not often need to be addressed?

But an informed decision may well require that the alternative options are explained – in particular what capital receipt is the Council foregoing. Or there may be a real debate about whether appropriation or sale is the right approach.

In those circumstances the discussions between finance and housing colleagues will focus on the benefits arising from the appropriation and whether these can be quantified or not.

Much will obviously turn on the weight attached to the Council itself increasing the supply of affordable homes for its residents; but there may well be financial benefits and /or mitigations too (depending on current debt management arrangements):

- Lower temporary accommodation costs – thus reducing pressure on the General Fund costs
- A <u>revenue</u> return and/or benefit (derived from the CFR adjustment) – thus probably relieving the General Fund's most acute pressures - rather than a capital receipt
- HRA contributions to any above-market interest rate debt – the General Fund will lose this above-normal cost
- No Minimum Revenue Provision on the debt 'transferred' to the HRA – the General Fund will be charged less to account for the cost of the council's debt.
- No transaction costs – no third party is involved in an appropriation, thus avoiding professional fees and the other costs.

Councils may want to agree a process of this kind in order to facilitate a supply of sites – a pipeline, so to speak – for an agreed programme of HRA new build schemes.

9. Disposal to SPV

We have been asked to compare appropriation with a disposal to a special purpose vehicle (**SPV**), here assumed for the sake of simplicity (and because it is the usual alternative or adjunct to new build within the HRA) to be a wholly owned local housing company (**LHC**). The important difference is that whereas appropriation involves only a transfer from one account to another, a disposal to a LHC is a transfer of title.

Disposals from the General Fund, even to wholly owned entities, are subject to section 123 of the 1972 Act (which we referred to in **Section 5** above). Conventional "best consideration" rules apply, rather than the certified value requirements discussed in this guidance.

On the assumption that the LHC will rent accommodation there may be a need for specific consent under section 25 of the Local Government Act 1988. (The General Consents may not assist.)

Net receipts arising from the disposal can be used for either General Fund or HRA purposes – the council has discretion.

Many LHCs have been established and readers will be aware of the various legal and financial (including tax) issues which arise.

10. Government proposals

The consultation on the use of RTB receipts in August 2018 included a suggestion for 'zero cost' appropriations of undeveloped or no-longer-used land from the General Fund to the HRA for housing purposes. Presumably this would be effected by a direction under para. 5(1) in Part 3 of Schedule 4 to the 1989 Act (referred to in **Section 5** above).

There has been no formal Government response yet to the results of this consultation. This Guidance Note could perhaps be used to contribute to discussions with MHCLG. In any event the proposal indicates that specific directions may be available.

11. Conclusion

We hope that this Guidance Note, especially its discussion of certified value, will help London Boroughs in the appropriation of land for housing from the General Fund to the HRA.

We also hope it will start a debate about the way such appropriations are considered and effected. The aim is to explain why councils may have more flexibility than they currently believe and that if they want to release land for housing they can do so without adding difficult-to-bear costs on the HRA.

12. Further information

Please contact Ian Doolittle, Tonia Secker, Scott Dorling, Rob Beiley or Paul McDermott if you would like to discuss how the firm can help you. They can also supply you with the firm's Unofficial HRA Manual.

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13. Disclaimer

This Guidance Note has been prepared for the Greater London Authority in accordance with our instructions from it. It is to be shared with London Boroughs but while the Guidance Note has been prepared in good faith to be of assistance to them it will be appreciated that we do not owe them and why we do not accept a duty of care to them or to any other party. We reiterate that this Note is based on our legal analysis; it does not constitute accountancy or financial advice.

Trowers & Hamlins LLP (re. IGD)

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Appendix

This Appendix asks whether the debt 'transferred' with land appropriated to the HRA should be based on a simple apportionment.

The wording in the 2006-7 HRA Manual suggests that only real and relevant debt costs should be imposed on the HRA through an increased HRA CFR.

It is true that in the examples of appropriations out and into the HRA the Manual refers merely to the HRA's lower or higher "contribution to the authority's (overall) capital charges"[8], but the introductory statement in section 11.4 explains that the adjustments to the HRA CFR "need to be made … in order to ensure that <u>any remaining</u> capital charges <u>attributable to</u> the <u>appropriated or transferred property</u> are satisfactorily reflected in the HRA" (our emphasis).

We acknowledge that the approach currently adopted – effectively 'spreading' the CFR across a council's assets - is based on straightforward pragmatism; and if councils failed to 'pass on' responsibility for that debt when appropriating land to the HRA this would leave the General Fund with (some) debt previously 'supported' by an asset which has been 'lost' to the HRA.

It is also the case that the HRA CFR adjustment adds to the 2012 Self-financing debt settlement - and therefore on the assumption that this involved a country-wide 'reallocation' of overall debt the continuation of that approach seems logical. But the allocation was based on each HRA's ability to 'service' that debt, based on assumed income and expenditure, and its application to subsequent appropriations or transfers of land, without reference to future income and expenditure for that site, deserves to be re-examined.

There are other points which can be made in favour of a differentiated approach:

- The treatment of debt in the HRA already differs from that in the General Fund. The duty to make MRP does not extend to cover debt on HRA assets: see the statutory Guidance on MRP issued in 2012 (para. 44).

- Authorities may borrow for their aggregated requirements but they necessarily repay or otherwise manage that debt on a loan-by-loan basis. Some loans could be and in some cases are for HRA rather than General Fund purposes – and vice versa. This may explain why, in the case of partial (or whole?) housing stock transfers, we believe it was possible to calculate the level of required Government over-hanging debt grant on the basis of specified and not overall debt.

- Councils do not borrow on the basis of asset cover or other conventional measures. They borrow on the strength of their statutory 'covenant'. (Indeed they are prohibited from charging their property to secure borrowing by virtue of section 13 of the 2003 Act.) They do not therefore <u>have</u> to link interest support to assets. Instead they need to make sure that within the General Fund (and not necessarily also in the HRA[9]) they have or will have the resources to service and repay their borrowing. Intuitively at least, it would be surprising, especially or even in London Boroughs, if HRA CFR support was essential.

- It is important to ensure that HRA support for council debt complies with the requirements of the ring fence. The only permitted basis for debiting the HRA for overall capital charges is Item 8; and this means that the HRA CFR (certified value) and the overall CFR (balance sheet value) 'rules'

[8] The description of the mid year HRA CFR is also vague, referring simply to the "contribution to debt interest costs".

[9] This is partly a ring fence point but goes deeper than that – it challenges the assumption that the CFR, or at least the way it is currently calculated, is the right basis on which to 'spread' debt costs between the two accounts.

must be followed. That may be sufficient, but the exercise of discretion in respect of debt management creates at least the possibility of non-compliance with the 1989 Act.

There is a wider question – whether debt should be a surrogate for value; but this beyond this and indeed any legal brief.

For now we simply hope there can be a debate on the narrower issues set out in this Appendix. Whether that leads to changes to the way the current discretion is exercised (whether as to substance or just consistency and transparency) is for local government colleagues to decide.