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6. Grant Recovery - GR

6.1 Grant Recovery - Overview

Purpose

6.1.1 In defined circumstances, capital grant is subject to recovery by the GLA; this chapter sets out grant recovery requirements for Registered Providers. Please note, there has been a change to previous arrangements in that the GLA's Recovery of Capital Grants and Recycled Capital Grant Fund General Determination 2015 makes provision for the recycling of grant by all classes of Registered Provider regardless of whether they are non-profit or profit making providers. Where Registered Providers are referred to in the chapter, this should be read as referring to all Registered Providers that are developing with capital grant inside London, unless otherwise stated. Local authority Registered Providers should also refer to their 2015-18 Grant Agreements for specific details of their recovery and recycling procedures.

Disposal Proceeds Fund

6.1.2 Under the Housing and Regeneration Act 2008, the responsibility for the administration and policy making for the Disposal Proceeds Fund rests with the social housing regulator. The regulator has published updated requirements and guidance on operation of the Disposal Proceeds Fund and providers should view these on the [link](#). Any queries not resolved by reading the requirements and guidance documents may be directed to the referrals and regulatory enquiries team on 0300 1234 500 (select option 3), mail@homesandcommunities.co.uk

6.1.3 This chapter sets out:

- The legislative framework for grant recovery.
- The "Relevant Events" which trigger grant recovery.
- The circumstances under which recoverable grant must be repaid to the GLA, or where recoverable grant can be recycled.
- How to calculate the amount of recoverable grant, including when property is sold.
- How the grant is apportioned to each property within schemes developed with grant.
- The grant recovery process, highlighting the difference between repayment and recycling through a Recycled Capital Grant Fund (RCGF).
- The Permitted Uses of the Recycled Capital Grant Fund (RCGF).
- The requirements for accounting, reporting and audit.

- 6.1.4 These procedures apply to Capital Grants provided by both the GLA (and predecessor bodies) and local authorities. They apply equally to historic grant, paid as Housing Association Grant or Social Housing Grant, and Social Housing Assistance (SHA) currently paid under section 19(6) of the Housing and Regeneration Act 2008; this may not apply if grant was paid under contractual arrangements which prescribe different arrangements, i.e. subject to clauses in a Grant Agreement or Framework Delivery Agreement. The different types of funding listed here are referred to collectively in the Recovery Determination and this Guide as “Capital Grant” or just “grant”.
- 6.1.5 Properties developed by organisations with the assistance of Social Housing Grant under s27A of the 1996 Housing Act, which as part of their Grant Agreement were/are subsequently transferred to Registered Providers that were formerly Registered Social Landlords, are to be treated as funded under s18 of that Act and will therefore be subject to these procedures following transfer.
- 6.1.6 Where this chapter refers to recycled grant it refers only to funds from the RCGF and not the Disposals Proceeds Fund. When referring to recovered grant this includes notional interest added to a RCGF balance which can then be spent like grant.
- 6.1.7 Registered providers should refer to the HCA’s arrangements for the recycling arrangements for grant generated outside Greater London.

Context

- 6.1.8 Legislation requires the GLA to determine and/or specify principles regarding grant recovery. The main legislative requirements are as follows.
- S32, Housing and Regeneration Act 2008
 - S27, Housing Act 1996
 - S52, Housing Act 1988
 - Supplemented by Statutory Instrument 2010/862.
- 6.1.9 The GLA’s current principles governing Grant Recovery following the sale of property (and other defined Relevant Events) are set out in The Recovery of Capital Grants and Recovery of Capital Grant Fund (Greater London) General Determination 2015.
- 6.1.10 Whilst dated 2006, SI 2010/862, referred to above extends the provision of this Determination to grant made under s19 of the Housing Regeneration Act 2008.
- 6.1.11 Follow the link to see the [Recovery Determination](#)

Conversions

6.1.12 As part of the 2011-15 Affordable Homes programme, the Building the Pipeline and the Mayor's housing Covenant 2015-18 Programmes, Registered Providers are able to use the concept of 'conversions' to aid additional supply of affordable housing. In certain conversion scenarios and as agreed with the GLA as part of a Registered Provider's programme offer for any of these programmes, grant may not be subject to recovery provided it generates financial capacity to deliver new supply. Conversion includes:

- On re-let, existing Social Rent to Affordable Rent.
- Committed National Affordable Housing Programme Social Rent on completion post April 2011 to Affordable Rent.
- Social Rent to shared ownership.
- Intermediate Rent to shared ownership.

Further details of conversion scenarios can be found in the AHP frameworks.

6.1.13 Normally, in the above circumstances, RPs would be required to consider whether there may have been a relevant event – such as a 'change of use' or 'disposal' and if so whether grant is due to be recycled via the RCGF. However, where conversion has been agreed as part of the RP's Delivery Agreement this may not lead to grant recovery; RPs should check the terms of their Agreements.

6.1.14 RPs should note any use of recovered grant requires specific GLA approval either through bidding as part of the Mayors affordable housing programmes or by a written request to an area manager. The recovered grant should not be committed until approval is confirmed.

6.2 Relevant Events

General

- 6.2.1 This section sets out the procedures that must be followed by all Registered Providers when a Relevant Event occurs in connection with grant funded land or property; the definition of property is in the Determination. Grant is recoverable when a Relevant Event occurs. Typically this is the sale of a rented property, or a shared owner staircasing, but can also be the failure to complete the development of a scheme, a change in use of a completed scheme, the sale of undeveloped land or property and other specified situations.
- 6.2.2 When this Guide uses the general term “Recoverable”, or “Recovery” it refers to the fact that an obligation arises on the RP to repay the defined amount of grant, when the Relevant Event occurs. This obligation can be discharged by literally repaying the grant, or by crediting the sum to the RP’s Recycled Capital Grant Fund (RCGF), if the RP is allowed to do so under these requirements.
- So, the term "Recoverable" simply looks at when this obligation arises and the amount of grant recoverable. It does not look at the procedural requirements governing how recycled grant can be used. These are set out in section 6.5.
- 6.2.3 The term "Relevant Event" comes from The Recovery of Capital Grants and Recycled Capital Grant Fund General Determination 2015, and must be read in this section to mean relevant events as defined in that Determination. The term does not refer to milestones, or other "relevant events" described in other guidance or contract arrangements.
- 6.2.4 Depending upon which Relevant Event has triggered grant recovery, RPs will either be required to repay grant to the GLA, or will be able to choose from the following options: repay the grant to the GLA, or recycle it through their Recycled Capital Grants Fund to spend on permitted uses (see section 6.5).
- 6.2.5 It should be noted RPs who do not participate in the Mayor’s funding programmes may lose their ability to operate a RCGF and the Mayor may require any balance in a fund to be repaid immediately this occurs.

The Relevant Events

- 6.2.6 The Relevant Events are defined at clause (8) of the [Recovery Determination](#) .
- 6.2.7 When a Relevant Event occurs to land or property funded from the RCGF, the principles within the Recovery Determination (and detailed in this Guide), apply equally to the recovery and repayment or re-use of

that recycled grant, as if it had been funded with new Social Housing Assistance.

- 6.2.8 When a Relevant Event occurs, RPs must check if it is one which requires them to repay the grant directly to the GLA, or whether they have the option of crediting the grant to their RCGF. Details are in the Determination, but, in summary, relevant events 8(a) to 8(i) are repayment events with the remainder being recycling events.
- 6.2.9 For Relevant Event 8(f) – see the Recovery Determination - the GLA will make a judgement as to whether the error is of sufficient size to warrant repayment; this will normally include any sum greater than £500.

Repayment & Recycling Timetables

- 6.2.10 When a Relevant Event occurs and recoverable grant is to be paid to the GLA, written notification must be sent to the GLA within 14 days of:
- The GLA notifying the RP in writing that one of the Relevant Events (a) to (f) in clause 8 of the Recovery Determination has occurred (for Repayment within the context of programme management see the immediately following paragraph) or
 - The date of completion when a property is disposed of by sale or transfer or
 - The date when demolition started, where a capital receipt is received or
 - The date when the property ceased to be used for a purpose eligible for Capital Grant, or when it ceases to be used for Supported Housing when its use is to change to general needs or
 - The receipt of compensation by the RP where a property is disposed of under a Compulsory Purchase Order or
 - The date the dwelling is sold by a former tenant who received a discount and all or part of a discount is repayable (applicable to Right to Buy sales).

The GLA will then raise an invoice, stating the terms and schedule for payment. RPs should not forward a payment in advance of receiving an invoice.

- 6.2.11 Should the repayment of recoverable grant place RPs in financial difficulty, they must advise the GLA of the reasons and resultant impact in full detail. The GLA may decide to defer the repayment to a future date, or accept payment by agreed instalments, or in exceptional circumstances write off part or all of the repayment.
- 6.2.12 Where RPs fail to meet a scheme milestone by the date specified, re-forecasting is not accepted and an acceptable replacement scheme is not available, the GLA will require repayment of grant already paid

under clause 8(b) of the Recovery Determination (scheme cancellation). In this case, the GLA will issue the RP with an invoice for the amount to be recovered.

- 6.2.13 Where there is an option to recycle and RPs opt to credit recoverable grant to their RCGF (as detailed in this chapter), the effective date of the credit is the date of the Relevant Event. For details on the administration of the fund, please see section 6.5

Interest Chargeable on Delayed Notification or Repayment

- 6.2.14 Where RPs are required to notify the GLA of a Relevant Event and that notification is not received by the appropriate deadline, as set out in paragraph 6.2.10, the GLA will normally add interest to the amount of Capital Grant recovered. For the period between the deadline (i.e. the 15th day following the Relevant Event) and the date of receipt of the notification, RPs should contact their area manager who will be able to advise on the rate of interest that will apply and interest will accrue daily, with six monthly compounding from the start date for payment.
- 6.2.15 For the purposes of charging interest following delayed notification, the date of the Relevant Event will be determined by the GLA, on the basis of clause 8 of the Recovery Determination. For events (a), (d) and (e) this will normally be the date of the missed milestone or the milestone on which delivery was non-compliant. For events (b), (c) and (f) this will normally be the date at which RPs notify the GLA of the Relevant Event.
- 6.2.16 Interest will not be charged if the GLA has been informed in writing of a likely delay and has agreed in writing that the circumstances do not justify the charging of interest for a particular period. Where supporting documentation is not available, RPs can avoid interest by paying the whole of the recovered grant to the GLA.
- 6.2.17 The GLA will charge additional interest if the invoice for repayment of grant, or interest due to late notification, is not paid within the timescales specified in the invoice. RPs should contact their area manager who will be able to advise on the rate of interest that will apply and interest will accrue daily.

Payment of Interest Only

- 6.2.18 As per the Programme Management guidance in section 2 of this AHCFG, RPs are required to notify the GLA as soon as they become aware that a forecast payment milestone will not be achieved and reforecast the milestone as appropriate. Where a reforecast is not undertaken or discussed with the GLA and the payment milestone is not actually achieved, payment of “interest only” may be due as per the following paragraph.

- 6.2.19 Where grant is claimed and paid following a payment milestone and the GLA later discovers that the payment milestone was not actually achieved or took place later than forecast, this is a relevant event for grant recovery purposes. However, depending on the circumstances, the GLA may decide it will not recover grant, in which case it will normally require payment of interest on the amount of that grant paid. Grant will be deemed as having been claimed in advance of the appropriate payment milestone being achieved – see Programme Management guidance in section 2 which defines how the various payment milestones can be achieved.
- 6.2.20 In such cases, “interest only” will be due from the 15th day following the date of the Relevant Event (the original payment milestone) and continue to be charged until the payment milestone is achieved or a re-forecast milestone is achieved.
- 6.2.21 The GLA will calculate the amount of "interest only" to be paid and invoice the RP accordingly. RPs should not make a payment in advance of this invoice.

6.3 Calculation of Recoverable Grant

General

6.3.1 This section sets out the basis for RPs when calculating recoverable grant following one of the Relevant Events set out in the [Recovery Determination](#). For details of how to apportion grant to a property in order to calculate the amount of grant that is recoverable, please see section 6.4.

Please note that for schemes developed under the 2011-15 AHP, grant liability for recovery is always calculated according to the Total Grant Required or funding requested rather than the Agreed Payment Rate (APR).

6.3.2 Where appropriate, RPs are required to calculate the Net Sales Receipt from property sold and ascertain whether this is sufficient to cover the grant recovery liability – taking into account the GLA’s Eligible Deductions. Full details are provided in the following paragraphs.

6.3.3 If the net receipt is greater than the recoverable grant, then the RP must either repay or recycle the full amount of recoverable grant as directed below.

6.3.4 If the net receipt is less than the recoverable grant, then RPs may need to defer recovery of the balance, or, in circumstances described in the following paragraphs, RPs may write off the shortfall with the prior permission of the GLA.

6.3.5 The term “recovery” is an umbrella term covering two different processes – repayment to the GLA and recycling via a Recycled Capital Grant Fund (RCGF). RPs should note that the recycling option is only available for Relevant Events set out in clause 8 of the Recovery Determination (j) to (q).

6.3.6 The Relevant Events detailed in clause 8(a) to (f) of the Recovery Determination cover grant paid in error or in excess of requirements. They also cover circumstances where a RP does not act in accordance with the Grant Agreement or contract, the Recovery Determination, Funding Conditions, this Guide or other published requirements. Following these Relevant Events the GLA will require the recovery of grant or excess grant (calculated by comparison of the amount advanced with the amount needed) in full, without deductions or allowances for the RP’s costs, and, where appropriate, with interest.

6.3.7 The Relevant Events detailed in clause 8(g) to (q) of the Recovery Determination cover disposals, change and cessation of use and other circumstances. Following these Relevant Events the GLA will make certain allowances, in particular for:

- Costs, fees and expenses incurred by the RP in direct relation to the Relevant Event;

- The deferral or reduction of grant recovered where Net Sales Receipts are less than the amount of grant that is, in theory, recoverable; and
- Deemed loan debt.

6.3.8 RPs are required to keep a written record of grant recovery calculations for audit purposes. Supporting documentation should be kept together with the written record of the calculation.

Deemed Loan Debt

6.3.9 For a definition of deemed loan debt, please see the **Glossary**.

6.3.10 For rental schemes RPs must apportion deemed loan debt in the same way as they apportion grant. Please refer to section 6.4 for further information.

6.3.11 For shared ownership schemes approved on or after 1 April 1993, deemed loan debt is apportioned according to the market values of the dwellings at practical completion of the scheme.

6.3.12 For shared ownership schemes approved before that date, the deemed loan debt calculations take into account the percentage of equity initially sold.

Relevant Events requiring repayment

6.3.13 Relevant Event (a)

When, during the progress of a project approved for Capital Grant, an instalment of Capital Grant was claimed or paid in anticipation of a Milestone, and that Milestone either does not take place or takes place later than anticipated.

If a milestone is never achieved, the GLA will normally require repayment of the entire grant paid without eligible deductions, plus any interest due as set out in paragraphs 6.2.14 to 6.2.17. (Interest Chargeable on Delayed Notification or Repayment). Repayment will normally be sought via a 'reclaim' activated within the GLA's Investment Management System (IMS).

If a milestone is achieved later than anticipated, and the GLA has agreed to re-forecasting, whilst grant may not be required to be repaid, interest may be charged on any grant paid in advance of need as per Interest Chargeable on Delayed Notification or Repayment

6.3.14 Relevant Event (b)

When, after an instalment of Capital Grant has been advanced upon a project approved for Capital Grant, the GLA or a local authority cancels the approval, or approves the project on revised terms which involve a reduced entitlement to Capital Grant.

Where an approval is cancelled, the GLA will normally require repayment of all grant paid for the scheme without eligible deductions, plus any interest due as per Interest Chargeable on Delayed Notification or Repayment.

Where an approval is revised, the GLA will normally require repayment of any grant paid out in excess of the revised amount, plus any interest due as per Interest Chargeable on Delayed Notification or Repayment

6.3.15 Relevant Event (c)

Discovery, upon an intermediate or final review of the costs of a project approved for Capital Grant, that an instalment or payment on account of Capital Grant had been greater than eventually required.

Where an approval is revised, the GLA will normally require repayment of any excess grant paid; that is the difference between the amount of grant paid and the revised approval plus any interest due as per Interest Chargeable on Delayed Notification or Repayment.

6.3.16 Relevant Event (d)

Failure to use Capital Grant for the purpose for which it was paid

The GLA will normally require repayment of all grant without eligible deductions, plus any interest due as per Interest Chargeable on Delayed Notification or Repayment.

6.3.17 Relevant Event (e)

Failure to comply with any condition attached to the making of Capital Grant, including failure to complete a project.

The GLA will normally require repayment of all grant without eligible deductions, plus any interest due as per Interest Chargeable on Delayed Notification or Repayment.

6.3.18 Relevant Event (f)

Discovery that the Secretary of State or the GLA has received incorrect information or made an error in connection with the calculation of Capital Grant payable or recoverable.

Depending on the circumstances of individual cases, the GLA will normally require repayment of grant in whole or in part without eligible deductions, plus any interest due as per Interest Chargeable on Delayed Notification or Repayment.

If the GLA requires repayment of grant in part, the amount of grant to be repaid will be calculated according to the particular facts relating to the property or scheme in question.

6.3.19 Relevant Event (g)

Disposal of Capital Grant funded land acquired for the development of Social Housing, or designated for a further phase or phases of Social Housing, when the development or further phase or phases was, or were, not completed at the time of disposal.

Selling land that has been acquired with the aid of grant before the development has either begun or been completed requires grant to be repaid in full.

The gross sales receipt for the land sold should not be less than the valuation provided to the RP by an Independent RICS accredited Qualified Valuer.

Eligible deductions can be made from the gross sale receipt as follows:

- Reasonable valuation fees and expenses;
- Reasonable legal fees and expenses; and
- Reasonable marketing costs.

Grant paid should be recovered from the net sales receipts. That is the gross sales receipt less eligible deductions as above.

Where the net sales receipt of the land/scheme being sold is not sufficient to enable all recoverable grant to be repaid: please see section **6.3.4** above.

Where only part of the land or scheme is sold, grant should be should be apportioned as required in section **6.4.10**

Spare Land

The sale of "Spare Land", whether sold prior to or after development, is not treated as a disposal and not deemed a Relevant Event, therefore no grant is recoverable. 'Spare' land includes:

- Part of a garden or general landscaping;
- Plots of land for electricity sub-stations or similar utilities;
- Land swaps to regularise boundaries; and
- Rights of way, access, or easements.

Spare land excludes any area of land designated at project approval for any future phase or phases of development.

If RPs are in any doubt about whether land can be classified as spare they should approach the GLA.

6.3.20 Relevant Event (h)

Redemption of the outstanding indebtedness on a Property owned by a co-ownership (equity sharing) housing society and funded by Capital Grant.

The GLA will normally require repayment of all grant, without eligible deductions, plus any interest due as per Interest Chargeable on Delayed Notification or Repayment.

6.3.21 Relevant Event (i)

De-registration of a Registered Social Landlord by the Regulator of Social Housing, under section 118 or 119 of the Housing and Regeneration Act 2008.

When a RP seeks to de-register from the social housing Regulator, all grant previously paid to the RP is required to be repaid, including credits in the RP's Recycled Capital Grant Fund. RPs are required to inform the GLA immediately of their deregistration application. RPs operating inside and outside London will need to inform both the GLA and the HCA so funders can check whether there are any incomplete schemes which may need to be taken into account. Where a RP holds stock both inside and outside Greater London, they will have to repay grant to the GLA for the former and the HCA for the latter. This is also the case where a RP holds recycled funds generated from both inside and outside London.

The GLA is aware that the act of de-registration does not necessarily mean the de-registering RP intends to dispose of its grant funded stock. The GLA will anticipate that there might not be any immediate sales receipt from which to recover grant vested in those properties. Where RPs are able to demonstrate to the GLA's satisfaction that immediate repayment of grant would result in financial hardship, the GLA may consider agreeing deferment of repayment to a later date or repayment by instalments – please see section **6.2.11**.

Unless, by the agreement of the GLA, exceptional circumstances exist, the GLA will expect any sums in RPs' RCGFs to be repaid immediately and will arrange for RPs to be invoiced accordingly. Where RPs have already entered into a written commitment to spend sums in their RCGF, they should provide full details to the GLA. The GLA will consider each case on its own merits and determine whether planned and committed spend can proceed.

Relevant Events for which recycling is an option

6.3.22 Relevant Event (j)

*A change of use of land or Property to one which would not qualify in principle for Social Housing Assistance (at the time of the change of use), or change to a use which might receive a significantly lower grant (for example a change from supported to general needs housing). The relevant event date will be the date of the change of use. **Change to non grant eligible use***

A change of use will be a Relevant Event if the RP changes the use of the property to one which does not qualify for grant (at the time of the change of use). The Relevant Event date will be the date of the change of use.

Recoverable grant should be calculated as if the property is to be sold outright.

As RPs will not actually receive any sales receipts, the calculation must be based on notional figures. In order to determine the notional gross sales receipt, RPs are required to obtain a valuation of the property from an independent RICS accredited qualified valuer on the assumptions of:

- Vacant possession; and
- Existing use

Eligible deductions are the same as for open sale i.e.

- The deemed loan debt;
- Reasonable valuation fees and expenses; and
- Reasonable legal fees and expenses of the disposal.

RPs may not deduct any administration allowance.

Grant will not normally be recoverable where the primary need of an elderly resident changes from housing to nursing care and it is intended that the next letting will be to someone in housing need.

Where there is any doubt about the future use of the property, RPs should consult the GLA in advance.

Temporary change of use with permission

In exceptional circumstances, the GLA may agree a temporary change of use, without recovery, to one not qualifying in principle for grant.

RPs must discuss proposals with the GLA who will consider individual cases on their own merit taking into account:

- The level of demand for the existing use of the land or property.
- The likelihood that it could be returned to Social Housing within 12 months.
- Factors which make it difficult or undesirable to dispose of the land or property.
- Whether the temporary use offers a housing or regeneration function. and
- Whether the temporary use falls within the permitted purposes of a RP.

The GLA's agreement to a temporary change of use to one which is non grant eligible will last for 12 months. The agreement will be subject to review and only in truly exceptional circumstances renewed.

Change of use to one requiring significantly less grant

Where RPs wish to change the use of property to one which would have required significantly less grant, then an element of the original grant is required to be repaid or recycled via the RPs' Recycled Capital Grant Fund.

Please note that this includes instances where Feed in Tariff (FIT) is claimed in respect of renewable energy generators which have also received grant funding. RPs will have the option to recycle the grant in these circumstances, but this will need to be agreed with the GLA on a case by case basis.

Conversion from Social Rent to Affordable Rent

Conversions of Social Rent units to Affordable Rent units as part of a 2011-15 Affordable Housing Programme offer are not a Relevant Event for grant recovery purposes. Please see the entry on conversions at **6.1.12**

Change from Supported Housing

It is not necessary to treat a change of use from supported housing to general needs housing as a "notional sale". There are no gross sales receipts (real or notional) nor eligible deductions. Instead, RPs must credit 12% of all grant paid in respect of the supported Housing units (net of any grant previously recovered) to their RCGF, subject to the exceptions set out immediately below.

If RPs are providing a replacement supported housing service in units that form part of its general needs stock then grant recovery may be waived at the discretion of the GLA. However the GLA reserves the right to recover grant in the future, if those replacement units cease to be used for supported housing purposes without further replacement units being made available.

Where a change of use from supported housing to general needs housing triggers grant recovery, repayment or recycling of grant may be deferred until a future Relevant Event at the discretion of the GLA.

In considering a request to defer grant recovery, the GLA will take into account:

- Any changes in revenue sources and amounts.
- The future needs of the current client group.
- Changes in methods of supplying support, e.g. floating support.
- Other potential client groups. and
- The nature, type and condition of the building, currently and in future.

A change of Supported Housing client group does not constitute a Relevant Event and grant is not recoverable.

Change of use from Temporary Social Housing, Temporary Market Rent Housing, Short Life and 'HAMA PLUS'

Where the RP's (short-term) legal interest in the property has run its course, grant is deemed to have achieved its social policy aim and is no longer recoverable.

For these products, grant recovery rules are the same as for leased property funded through the 2011-15 AHP. Where a lease is sold before it expires or there is a change of use to one which is not grant eligible then grant is recoverable on a pro rata basis. The exceptions to this category are properties funded on a lease and repair basis as part of the GLA's Empty Homes programmes or the Building the Pipeline programme (Lease and Repair schemes) where the GLA will reclaim grant if the use ceases prior to the lease being fulfilled.

Change of use to property where the landlord is participating in the High Income Social Tenant policy

It is up to each individual RP if they choose to operate the high income social tenant policy. Where an RP chooses to apply this policy in London the GLA expects that it will only be applied to households with incomes in excess of the First Steps maximum limits (currently £71,000 for most households and £85,000 for households in family-sized homes).

Where a property is exempted from rent policy requirements as a result of being let to a social household with an income of at least £71,000 a year, in line with the Government's policy on rents for social tenants with high incomes and a market rent is to be charged permanently, this will trigger recycling or recovery of grant for grant funded General needs properties, as a change of use to one which would not qualify for grant.

Where a change of use is proposed for grant funded General needs properties to market rent and is time limited solely to the household currently in occupation which has an income of at least £71,000 a year, the GLA can agree to defer the recovery of grant. Such requests as this are covered in the Determination by a temporary change of use with permission; please see paragraph 21 of the Determination.

Please note, while the national policy refers to £60,000, the GLA will only agree to defer recovery of grant if this policy is being applied to households with incomes in excess of the First Steps maximum limits (currently £71,000 for most households and £85,000 for households in family-sized homes).

RPs wishing to apply this temporary change of use, will need to have permission confirmed in writing by the GLA to charge up to a market rent for a time limited period for high income tenants. The GLA will require:

- Individual property address details.

- Level of rent to be charged.
- RPs to maintain these details on their own systems, available to the GLA to inspect on request.
- Confirmation on an annual basis whether a market rent is being charged and the length of time this has been the case.
- Submission of an annual confirmation statement via the RCGF/IMS annual return, that the uplift in rent has been applied for the purpose of funding new supply as eligible for the application of RCGF for low cost rental and sale housing.

The GLA will review with the RP, where a market rent continues to be charged in the long-term, as to whether recycling or recovery is deemed to have been triggered.

6.3.23 Relevant Event (k)

Cessation of use of property or land funded by Capital Grant.

Where RPs have ceased to use land or property for six months, for example where property has been void, the GLA must be notified immediately.

Following notification to the GLA, RPs will have one month to produce proposals for either bringing the property back into use, its demolition, or its disposal.

These proposals must be discussed with the GLA and a course of action agreed. If RPs do not implement the agreed course of action within an agreed timetable, including any GLA agreed extension, the grant will be recovered in accordance with the change of use to non-grant eligible procedures at section **6.3.21** above.

Where RPs decide to cease using grant funded property, grant will be recovered in accordance with **6.3.21**.

6.3.24 Relevant Event (l)

Demolition of property or other buildings funded by Capital Grant

The GLA's approval must be obtained prior to demolition of a grant funded property.

If the property is to be demolished because it has reached the end of its useful life (considering such factors as age, location, physical condition and property type in the context of current needs or market conditions), the GLA will not normally recover grant at that time, but will consider deferring recovery until a subsequent relevant event occurs.

Where deferment is agreed, the liability to repay or recycle grant will arise at the next relevant event relating to the land on which the demolished property was located. The grant recovery policy and procedures in force at

that time will apply. In the meantime grant is treated as remaining or resting in the land.

Where grant is resting in the land it will not be included in any value for money assessments undertaken by the GLA when deciding whether or not to provide additional grant to redevelop the site. In other words, it will not make any future redevelopment scheme look artificially expensive in terms of subsidy requirements. However, both the 'dormant' and 'new' grant will be subject to future relevant events.

If a RPs demolishes property so that:

- The resultant vacant site remains in the RP's ownership.
- The site is to be used for non-income earning purposes (such as forming an open space or facilitating the realignment of roads). and
- A compensation payment is received by the RP

Grant will be recovered.

Where a compensation payment is received RPs may subtract the following eligible deductions from that payment:

- Any deemed loan debt. and
- Reasonable expenses incurred (excluding the costs of demolition).

If following the above eligible deductions the net payment is insufficient to enable full grant recovery, the shortfall must not be written off but must remain dormant in the land concerned until a future Relevant Event.

6.3.25 Relevant Event (m)

Disposal of Property or land funded by Capital Grant by a Registered Social Landlord, unless covered by an exception in the determination.

Outright Sale of Land and Buildings

An outright sale of rental property is:

- A sale on the open market.
- A negotiated private sale. Or
- An outright sale to a sitting tenant other than on Right to Buy/Right to Acquire/Social HomeBuy terms.

Outright sale excludes sales under Social HomeBuy, the Right To Acquire, the Right to Buy, and sales or transfers to other RPs.

The gross sale receipt must not be below a valid valuation by an Independent RICS Qualified Valuer.

From the gross sales receipt RPs may deduct the following eligible deductions to arrive at the net sale receipt:

- The Deemed loan debt.
- Reasonable valuation fees and expenses. and

- Reasonable legal fees and expenses relating to the disposal.

RPs may not deduct:

- Any administration allowance; and
- The cost of demolition if the site is sold after demolition.

If the net sales receipt is less than the attributable grant, the GLA may agree to the shortfall being written off by RPs. The prior consent of the GLA is required before this being actioned. This does not apply in circumstances where a lender has taken possession of a shared ownership property.

The following information should be included in the recovery of capital grant written calculation. Please note this is not an exhaustive list and the RP should add anything else it deems pertinent:

- RP details.
- Property/scheme details (e.g. address, ID number).
- Type of sale (e.g. open market sale, Right to Buy, voluntary sale on shared ownership terms etc.).
- Supporting documentation for any write-off of grant (e.g. invoices, valuation report or cost floor calculation for RTB).
- Sales proceeds (including valuation date, duration and amount, sales completion date, discount and cost floor for RTB, and actual sales receipt).
- Expenses (including legal fees, RTB sales allowance/costs of abortive sales where applicable, valuation fees).
- Deemed loan debt (please see **Glossary** for definition).
- Net sales receipt.
- Total grant liability (please note that for schemes developed under the 2011-15 AHP this will be based on Total Grant Required).
- Grant liability minus eligible deductions as per above. and
- Grant to be written off (if applicable).

Where grant is to be written off by RPs, supporting documentation should be attached to the written calculation to confirm the figures used in the calculation.

Supporting Documentation confirming the figures used in the calculation should include:

- A copy of the valuation;
- A copy of the valuer's invoice;
- A copy of the RP's (ex-RSL's) solicitor's invoice;
- Details of the loan debt attributable to the property, and how that amount of debt was attributed;

- Details of the amount of grant attributed to the property, and how that amount of grant was attributed; and
- Scheme allocation information.

Where as part of an RP's disposal consideration the provision of replacement property on a different site is included, the GLA may agree to waive recovery. In such circumstances, RPs must transfer the original grant liability to the replacement property and demonstrate this by means of recording a credit to and debit from the RCGF, supported by suitable documentary evidence in place of the written calculation.

Any subsequent Relevant Event connected with the replacement property would lead to grant recovery under the same requirements and procedures as if the property had originally received the grant.

Sale under Compulsory Purchase Orders

If a Property owned by an RP is sold under a Compulsory Purchase Order (CPO) (or where there is written evidence of the threat of a CPO), the amount of recoverable grant will be calculated in the normal way, **except**:

- The Gross Sales Receipts will be the **higher** of either:
- The receipt from the disposal **plus** any compensation received **plus** any interest received as part of the CPO; or
- The amount obtained by a qualified valuer acting on behalf of the RP in negotiation with the body exercising compulsory powers; and
- Eligible deductions will only include the RP's reasonable valuation and legal fees & costs, and an administrative allowance if the body exercising the CPO has not paid them as part of the CPO process.

The amount of interest to be included in the calculation of the gross sales received will be the interest paid by the acquiring body, less any tax on that interest that the RP may have to pay (if it is non-charitable), plus any tax relief grant that it may have received to offset the tax paid.

Disposal of 'spare' land in these circumstances is covered in paragraph **6.1.18**.

The amount of grant recovered will not normally be reduced in respect of any costs incurred by an RP in opposing a CPO.

Where a reduction in recoverable grant is sought, RPs must obtain the GLA's prior consent, which will only be given in exceptional situations.

If the net sales receipt is insufficient to enable the recovery of all grant attributable to the property or land, the amount of recoverable grant may, at the GLA's discretion, be reduced by the shortfall. RPs must discuss such cases with the GLA. However, if RPs make net surpluses upon the sale of other property or land within the same Compulsory Purchase Order, those surpluses must be used to offset the shortfall in whole or in part.

If a shortfall still remains, the amount of the shortfall may be written off by RPs. Where grant is to be written off, a written calculation must be supported by documentary evidence confirming the figures.

Shared Ownership Sales

Please see 6.3.11 for information on deemed loan debt for shared ownership schemes approved on or after 1 April 1993.

Shared Ownership: Voluntary sale of rented property

RPs should note that this section covers voluntary sales on property on a shared ownership basis with **no discount**. It should not be confused with Social HomeBuy (SHB), which is the voluntary sale of property outright or on a shared ownership basis with a discount funded by the GLA - please see the **Social HomeBuy** section in chapter 4.

The gross sale receipt of the share being sold must not be below a valid valuation by an independent RICS qualified valuer. RPs may deduct the following eligible deductions from the gross sale receipt:

- The deemed loan debt;
- Valuation expenses; and
- Legal expenses relating to the disposal.

But **no** administrative allowance. All grant attributable to the property is recoverable from this net sale receipt.

If the net sale receipt is insufficient to enable the full recovery of the attributable grant, then recovery of the shortfall must be deferred until the next sale of further shares (staircasing). Written calculations supported by documentary evidence of the figures used in relation to the deferment must be retained by RPs.

Sales on shared ownership terms of property included in an Estates Renewal Challenge Fund Programme will be subject to grant recovery, except when such sales **without** recovery were agreed as part of the ERCF delivery plan.

Shared Ownership: Sale of a Property Repurchased with RCGF

Property repurchased with contributions from an RP's RCGF and subsequently sold on shared ownership terms are subject to the same grant recovery requirements as if the property had been repurchased with new grant.

Shared ownership: Staircasing sales

The following paragraphs refer to property acquired or developed for sale on shared ownership terms, under the branding of such as Affordable Home Ownership or New Build HomeBuy.

The sale of the first share in property acquired or developed for sale on shared ownership terms is not a Relevant Event and grant recovery only arises when further shares are purchased (staircasing).

The gross sale receipt of the share must not be below the applicable percentage of a Valid Valuation by an Independent RICS Qualified Valuer and as detailed in the shared ownership lease. The valuation must be paid for by the prospective purchaser.

RPs may deduct the following eligible deductions from the gross sale receipt:

- The deemed loan debt attributable to the percentage of share being sold.
and
- The staircasing allowance

The net sale receipt is used to recover the grant attributable to the share purchased.

If having recovered grant attributable to the share being purchased there is still a balance of net sale receipt, then RPs must initially use this balance to repay previously deferred recoverable grant in this or other property within the same scheme – see immediately below.

If the net sales receipt is insufficient to enable the recovery of grant attributed to the share being sold RPs should recover grant in part and the shortfall should then be recovered when the sale of a further share of that dwelling occurs, or the sale of shares of any other shared ownership property within the same scheme.

Written calculations supported by documentary evidence of the figures used in relation to the calculations, deferment, tracking deferment and grant written off must be retained by RPs.

The following information should be included in the recovery of capital grant written calculation. Please note this is not an exhaustive list and the RP should add anything else it deems pertinent:

- RP details.
- Property/scheme details (e.g. address, ID number).
- Type of sale (e.g. conventional shared ownership, voluntary sale on shared ownership terms etc).
- Supporting documentation for any write-off of grant (e.g. invoices, valuation report, mortgagee's completion statement for repossessions).

- Sales proceeds (including valuation date, duration and value of whole property, sales completion date, discount and cost floor for Right to Buy, and actual sales receipt).
- Expenses (staircasing allowance as in the Shared Ownership section of Housing for Sale chapter);
- Deemed loan debt (please see **Glossary** for definition);
- Net sales receipt;
- Grant liability apportioned to the percentage share sold (please note that for schemes developed under the 2015-18 MHC programme this will be based on Total Grant Required or funding requested and not the agreed payment rate.
- Grant deferred from previous sales in the same scheme.
- Total grant liability.
- Grant liability net off eligible deductions (see above). and
- Grant to be deferred to next sale or written off (if final sale in scheme).

If, when the final property in a scheme is staircased to outright ownership (or the maximum percentage allowable for that scheme) the total net sales receipt is less than the grant recoverable, (that is recoverable grant from this staircasing plus any previously deferred recoverable grant) the final shortfall may be written off by the RP.

Shared Ownership: Repossessions

For an overview of repossessions, see Mortgage Default in the Shared Ownership section of the Housing for Sale chapter.

Repossession occurs where the leaseholder's mortgage company takes possession of the property, and then does one of three things. Either the mortgagee:

- Sells the lease to another purchaser;
- Staircases to a higher percentage (but not to 100% ownership) and sells the lease to another purchaser; or
- Staircases to 100% and then sells the property in the open market.

The mortgage company then uses the sale receipt to pay themselves the loan outstanding from the defaulting leaseholder and (in the second and third scenarios) will pay a sum to the RP as the staircasing premium. If there is any money left over after the loan has been paid off and the RP has been paid, the mortgage company passes it to the leaseholder.

From the RP's perspective, therefore, repossessions involving staircasing are theoretically the same as any other situation where someone staircases out, and the RP gets a capital receipt. However, the gross sale receipt that the RP receives from the mortgage company is not necessarily the value of the property multiplied by the RP's equity share.

The Mortgagee Protection Clause in the shared ownership lease allows the leaseholder's mortgagee to staircase at a lower price than that normally required. The amount to be paid for the outstanding share is the actual sale price of the property (not the equity percentage of a property valuation) less those sums due to the mortgagee, i.e. the sum of the mortgagee's reasonable and proper expenses incurred in:

- Exercising the right to purchase a new lease or the freehold.
- Exercising its powers of sale.
- The amount of principal due under the mortgage approved under Clause 34(15) (or equivalent) of the Lease;
- Up to 18 months unpaid interest;
- Advances to the RP to cover any sums such as rent and service charges due under the lease:
- Reasonable legal fees;
- Reasonable estate agent's fees;
- Reasonable valuation fees; and
- Other costs incurred in connection with the protection of the security or sale of the property.

The approach to calculating recoverable grant, including deferment and potential write off is the same as for any other shared ownership staircasing however:

- RPs may accept (for recovery purposes) the valuation by the mortgagee's valuer instead of one by an Independent RICS Qualified Valuer. and
- The gross sale receipt is the money received from the mortgagee, as stated in the mortgagee's statement of account.

RPs may deduct the following eligible deductions from the gross sale receipt:

- The deemed loan debt attributable to the percentage sold;
- The Staircasing Allowance (more on this in Shared Ownership section of Housing for Sale chapter).

Any shortfall on staircasing receipts remains a debt due to the RP by the defaulting leaseholder.

Where the leaseholder's mortgagee has used the Mortgagee Protection Clause in the shared ownership lease, and the RP has suffered a shortfall on staircasing receipts recoverable grant may be written off by the RP or deferred if the RP confirms in supporting documentation to the written calculation that they:

- Are in the process of obtaining legal advice, or have already obtained legal advice on prospect of recovering the money due from the leaseholder;

- Will take all necessary steps to recover the money due; and
- Undertake to credit all money received, less reasonable costs incurred, to the Recycled Capital Grant Fund, or pay the money to the GLA if applicable within fourteen days of receipt.

In deciding what action is reasonable to pursue the debt RPs should obtain written legal advice. A copy of the solicitor's advice must be kept with the written calculation for audit purposes.

If RPs take action as advised by their solicitor, and no receipts are generated, any expenses or abortive costs will **not** be allowed as eligible deductions **unless** the surpluses from shared ownership staircasing sales completed in the previous twelve months are insufficient to cover the costs.

Where RPs incur such a loss, they can deduct the costs incurred from a future grant recovery on a shared ownership sale or staircasing in that scheme.

If the amount for which the defaulting leaseholder is liable under the Mortgagee Protection Clause would have left the RP with a surplus after full grant recovery, then it is a matter for the RP to decide whether to seek to recover this amount when taking action to recover other monies due.

Where grant recovery is to be reduced or deferred, the supporting documentation should include an appropriate certification signed by the RP's authorised signatory together with a copy of the completion statement provided by the leaseholder's mortgagee and a copy of the mortgagee's explanation if the sale price is lower than the valuer's valuation.

Co-ownership equity sharing sales

When a co-ownership (equity sharing) society sells property to one of its members, the society should calculate the grant attributable to the property pro rata, based on the capital amounts of the purchasing members.

The GLA does not permit deferral or write off by the RP of the recoverable grant in this instance. In other words, the amount of grant recoverable is not reduced if the sales receipt is less than the grant recoverable. There are no eligible deductions for this product.

Where a case is handled solely by the co-ownership society, the recoverable grant must be repaid to the GLA.

Where a case is handled through an RP, that RP should credit its own RCGF with the recoverable grant.

Change of Ownership

For ex-RSLs, sales or transfers of grant funded property between RPs are not Relevant Events; grant recovery is therefore not triggered. Instead, the liability for grant passes to the recipient RPs as if they had originally received the grant themselves. Grant becomes recoverable from the recipient RP following any future Relevant Event. For RPs who have registered since 2010, profit-making RPs and Local Authorities, this applies only to grant given after the date of the new determination – 1 4 2015. Such organisations proposing to transfer/receive properties should contact the GLA for advice on how to proceed

Both the exporting and receiving RPs are required to keep adequate records of grant transferred to and from each other in respect of properties for future reference as this information will be required to be included in the annual RCGF End of Year Return.

Should a subsequent disposal take place where a profit making RP has received stock (regardless of whether funded with grant or not) from a non-profit making RP, then the Social Housing Regulator requires that the proceeds of the sale are placed in the DPF. Please see exemption (xii) under relevant event 8 (m) in the determination and refer to the Regulator's published DPF guidance for more details. For the avoidance of doubt, this also includes disposals either outright or in staircasing increments of shared ownership property transferred from non-profit making RPs to profit making RPs.

Right To Buy

In addition to the Right to Buy provisions for local authority and former local authority tenants, prior to 15th January 1989 certain housing association tenants with secure tenancies (not assured tenancies) also had the Right to Buy under the Housing Act 1985 Right to Buy provisions. Although anticipated to be extremely rare purchase under these provisions is still possible should any existing tenants still have secure tenancies.

The sale price must not be less than the Cost Floor (please see the **Glossary** for a definition of this term) unless the Cost Floor is greater than the Valid Valuation at the time of offer.

Where the Cost Floor is greater than the property's market valuation (without discount) the sale price should equal the valuation.

RPs may deduct the following eligible deductions from the gross sale receipt:

- The deemed loan debt.
- Reasonable valuation expenses.
- Reasonable legal expenses relating to the disposal.

- The Right To Buy (RTB) sales allowance. and
- Any previous abortive RTB sales expenses.

The cost of preparing Right to Buy 'notices' is covered by the Right to Buy sales administration allowance. However, the GLA may, upon request, also consider cases where an application is withdrawn before an offer notice has been served but after a considerable amount of work has been done. Supporting documentary evidence similar to that needed for completed sales will be required. Neither the Right to Buy sales allowance nor actual administrative expenses can be claimed in respect of abortive sales.

Reasonable expenses can also include deficits on Right to Buy service charges in respect of repairs.

Abortive Right to Buy sales: A copy of the completion notice or a signed statement by the tenant that he or she does not intend to proceed with the sale should be attached to the written calculation of recoverable grant as supporting evidence.

The net sales receipt must be used to recover grant attributable to the property in question. If the net sales receipt is insufficient to enable full recovery of the attributable grant (e.g. because a right to buy discount, which is ineligible for grant funding, has been paid), then the shortfall may be written off by the RP.

Where a RP has deducted expenses following abortive or deferred sales when calculating the net sales receipt, a schedule or similar evidence must be attached to the written calculation of recoverable grant demonstrating that surpluses from Right to Buy sales of grant funded property in the previous accounting period, and the current accounting period to date, are insufficient to cover these costs.

Further grant recovery may occur if the new 'owner' should dispose of the property within the discount repayment period and be required to repay all or part of their discount.

Grant recovery must not be deferred or written off by RPs to give discounts to sitting tenants greater than those provided for in Section 129 of the Housing Act 1985 and/or as subsequently amended.

6.3.26 Relevant Event (n)

A disposal of Property or land funded by Capital Grant that would give rise to a repayment of discount under section 155 of the Housing Act 1985

This is an historical Relevant Event, relating to the repayment of discounts repayable in a particular timeframe, which has now passed. It is not

anticipated that this situation will arise in the future, and so no example has been given.

6.3.27 Relevant Event (o)

A disposal of Property or land funded by Capital Grant that would give rise to a repayment of discount under sections 11 and 12 of the Housing Act 1996 as modified by section 179 of the Housing and Regeneration Act 2008.

This is a historical Relevant Event, relating to the repayment of discounts repayable in a particular timeframe, which has now passed. It is not anticipated that this situation will arise in the future, and so no example has been given.

6.3.28 Relevant Event (p)

A disposal of Property or land funded by Capital Grant that would give rise to the repayment of a payment made to a tenant as an incentive to vacate a Dwelling owned by a RP under the terms of the mortgage deed requiring repayment of the original payment.

This Relevant Event relates to Tenant Incentive Schemes (TIS). These schemes have a requirement that discounts received by tenants would need to be repaid if the property is disposed of within three five years of purchase. There is further TIS information in the Specialist Programmes chapter.

6.3.29 Relevant Event (q)

The redemption, or a disposal of Property or land funded by Capital Grant giving rise to the redemption, of an Equity Percentage Loan secured by an Equity Mortgage

Equity Loans paid under the former New Build Homebuy product which was available before April 2006

Under the pre 2006 New Build Homebuy product, grant recovery occurred in two main stages:

- Initial sales stage (recovery of grant paid in respect of development). and
- Subsequent disposal of the property (repayment of the loan amount).

As there have been no outstanding pre 2006 New Build Homebuy schemes for some time, the GLA does not anticipate that there are any initial sales left to complete. However, if, at the time of the original sale of property, the net sales receipt was insufficient to enable grant recovery then this may have been deferred until the owner sells on and is required to repay their 25% equity loan. In this case, the deferred grant would be recovered from the 25% of the value that is payable to the RP.

If, on repayment of the equity loan the receipt is insufficient to recover the 'loan' element of grant, plus any deferred 'development' grant the shortfall may be written off by the RP.

Equity loans paid by RPs or HomeBuy Agents under HomeBuy (i.e. products existing before the 2006-08 National Affordable Housing Programme), Expanded Open Market HomeBuy (EOMHB), and Government Loan Only (GLO).

An owner redeeming all or part of an equity loan, either voluntarily or when obliged to do so upon selling their property, is a Relevant Event (para 8(q) of the Determination).

Redemption of a pre-2006-08 National Affordable Housing Programme, HomeBuy Equity Loan – Rising Market

<p>Value of property at original sale = £180K Percentage of Value covered by Equity Loan = 25% Amount of grant = £45K Value of property at redemption = £250K Value of percentage covered by Equity Loan = £62.5K Amount of grant to be recovered = £45K</p>

Redemption of a pre-2006-08 National Affordable Housing Programme, HomeBuy Equity Loan – Falling Market

<p>Value of property at original sale = £180K Percentage of Value covered by Equity Loan = 25% Amount of grant = £45K Value of property at redemption = £150K Value of percentage covered by Equity Loan = £37.5K Amount of grant to be recovered = £37.5K</p>

Redemption of an EOMHB Equity Loan – Rising Market

<p>Value of property at original sale = £180K Percentage of value covered by grant funded Equity Loan = 12.5% Amount of grant = £22.5K Value of Property at redemption = £250K Value of percentage covered by grant funded Equity Loan = £31.25K Amount of grant to be recovered = £22.5K</p>
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Redemption of an EOMHB Equity Loan – Falling Market

<p>Value of property at original sale = £180K Percentage of value covered by grant funded Equity Loan = 12.5% Amount of grant = £22.5K Value of property at redemption = £150K Value of percentage covered by grant funded Equity Loan = £18.75K Amount of grant to be recovered = £18.75K</p>

Redemption of a GLO Equity Loan – Rising Market

<i>Value of property at original sale = £180K</i>
<i>Percentage of Value covered by Equity Loan = 17.5%</i>
<i>Amount of grant = £31.5K</i>
<i>Value of property at redemption = £250K</i>
<i>Value of percentage covered by Equity Loan = £43.75K</i>
<i>Amount of Grant to be recovered = £31.5K</i>

Redemption of a GLO Equity Loan – Falling Market

<i>Value of property at original sale = £180K</i>
<i>Percentage of Value covered by Equity Loan = 17.5%</i>
<i>Amount of grant = £31.5K</i>
<i>Value of property at redemption = £150K</i>
<i>Value of percentage covered by Equity Loan = £26.25K</i>
<i>Amount of Grant to be recovered = £26.25K</i>

The grant recoverable is the lower of:

- The grant attributable to the property (including any grant paid to cover the scheme on costs). or
- (Where property values have fallen) the amount attributable to the percentage of the open market value for which the equity loan accounts. If the funds redeemed after the first charge lender has recovered the outstanding mortgage monies are insufficient to cover the required amount, the shortfall will be written off by the RP.

If the loan is being redeemed voluntarily (or in other circumstances not involving the sale of the property, such as redemption of the main mortgage with no replacement senior lender), administrative costs associated with the redemption are not eligible deductions from the gross sales receipt. This is because there are no costs of sale, as there is no sale, only the redemption of the loan.

Equity loans paid by Equity Loan Providers under Open Market HomeBuy products from 1st April 2008 (other than under transitional arrangements in place up to 30 September 2008).

An owner redeeming all or part of an equity loan, either voluntarily or when obliged to do so under the terms of their equity loan agreement, is a Relevant Event (paragraph 8(q) of the Determination).

On receipt of the home owner's equity loan repayment the Equity Loan Provider will be required to process that receipt in accordance with the terms agreed with the GLA and the relevant clauses in their equity loan agreement.

Equity Loans paid under the Mortgage Rescue Scheme (Shared Equity product)

An owner redeeming all or part of a mortgage rescue equity loan, either voluntarily or when obliged to do so under the terms of their equity loan agreement, is a Relevant Event (para 8(q) of the Determination).

On receipt of the equity loan redemption payment, the equity loan provider will be required to process that receipt in accordance with the terms agreed with the GLA and the relevant clauses in its equity loan agreement.

Equity Loans paid through FirstBuy/HomeBuy Direct

An owner redeeming all or part of a FirstBuy/HomeBuy Direct equity loan provided by an RP developer, either voluntarily or when obliged to do so under the terms of their equity loan agreement, is not a Relevant Event under the Recovery Determination).

This is because, for these products, grant is paid directly to the homeowner (in the form of a loan) and equity loans are repaid direct to Post Sales HomeBuy Agent. The home owner's solicitor then repays 50% of the amount redeemed to the developing loan provider 50% to the GLA. The whole process is administered through contract, with the grant being sent to the developer and GLA via the home owner's solicitor on the day of completion, the process for which is managed by the Post Sales HomeBuy Agent. There is therefore no option to recycle recovered grant in respect of FirstBuy/HomeBuy Direct.

Equity Loans paid under the Mortgage Rescue Scheme (Shared equity product)

The Mortgage Rescue scheme is now closed and the following requirements apply to equity loan redemptions for property funded under this programme.

An owner redeeming all or part of a mortgage rescue equity loan, either voluntarily or when obliged to do so under the terms of their equity loan agreement, is a Relevant Event (para 8(q) of the Determination).

On receipt of the equity loan redemption payment calculated in accordance with Section 7 of the Mortgage rescue shared equity chapter, the RP will be required to ring fence 73% of this amount and either repay this to the GLA or place it in its RCGF. The remaining 27% is to be retained by the provider.

6.4 Grant Liability

Apportionment of Grant: Rented Properties

6.4.1 This section sets out the requirements for apportioning grant on a reasonable basis to individual properties where a relevant event does not affect the whole scheme. It also makes reference to apportionment of grant to and within schemes in respect of the 2011-2015 Affordable Housing Programme where grant is payable on an Agreed Payment Rate per unit basis but also subject to Total Grant Required as indicated in the offer. The agreed payment rate applies only to the 2011-15 AHP not to schemes delivered through more recent programmes such as Building the Pipeline and the MHC 2015-18

Acceptable methods of grant apportionment to individual properties are:

- Rents as charged on first letting.
- Floor area.
- Equal division where properties are similar in size.
- Rateable value where this has been used in previous disposals in the scheme.
- Any other method approved by the GLA in advance.

6.4.2 The total amount of grant paid in respect of a scheme and to be apportioned must include:

- Funding (including new grant and RCGF) received on the initial development.
- Grant paid to clear the loan on a scheme originally approved under S.41 of the Housing Associations Act 1985, and the works funded under later legislation.
- Grant paid for re-improvement, Major Repairs, and Minor Miscellaneous Works.
- Grant paid on any previous scheme on the site, which has been demolished whose recovery has been deferred (i.e. previous grant less any grant already recovered).
- Simple interest (i.e. interest arising for late payment of grant to the RP).

6.4.3 For schemes grant funded under the 2011-2015 Affordable Homes Programme (AHP) the grant amount used must be the amount of grant indicated on IMS as being 'the Total Grant Required', not the Agreed Payment Rate that would have actually been paid.

Apportionment of Grant: Shared Ownership Properties

6.4.4 For shared ownership schemes approved on or after 1 April 1993, grant is apportioned according to the market values of the dwellings at practical completion of the scheme.

6.4.5 For shared ownership schemes approved before that date, the grant calculations take into account the percentage of equity initially sold - see deemed loan debt in the **Glossary**.

6.4.6 For shared ownership schemes grant funded under the 2011-2015 AHP, it must be the Total Grant Required as entered on IMS and not the Agreed Payment Rate that is used.

Shared ownership staircasing sales

6.4.7 A shared owner may 'staircase' by purchasing a further share, or shares, of the dwelling. The grant attributable to the staircased share will be the appropriate percentage of all the grant attributable to the property, including that grant paid on interest arising after the relevant date. It will also include any recoverable grant deferred from previous staircasing within the same scheme. The following is a worked example.

A 25% share of a dwelling was initially purchased and the total grant attributable to the unsold equity (75%) in the property was £21,000. The shared owner buys a further 25% of the property. This is one third of the equity owned by the RP (25% out of 75%). The grant attributable to that staircasing is therefore one third of the grant paid (£21,000) i.e. £7,000. Recovery of £2,143 had been deferred from a previous staircasing of a different dwelling in the same scheme. The total grant recoverable is therefore $£7,000 + £2,143 = £9,143$

If the net sale receipt of this current staircasing is £8,250 then £8,250 of grant is recovered and the balance of £893 (£9,143 - £8,250) is deferred to the next staircasing within this scheme.

In respect of 2011-2015 Affordable Homes Programme funded schemes it must be the Total Grant Required that is attributable to the property and not the APR per unit.

Initial Sales of existing rented stock into shared ownership

6.4.8 A dwelling forming part of an RP's existing rented stock may be sold voluntarily on shared ownership terms. The grant attributable to the initial share sold will be the entire grant attributable to the dwelling as defined above (including that grant relating to interest arising after the Relevant Date).

Leasehold Schemes for the Elderly (LSE)

6.4.9 In all cases RPs should refer back to the procedures under which these schemes were developed for the special features relating to sale and grant recovery. The special features are summarised below.

- For LSE schemes where the units were sold outright at a discounted sale price, the grant funded discount is not recoverable.
- For LSE shared ownership schemes, the recoverable grant is the total grant paid less 25% (or the specified percentage) of the cost of providing that dwelling at final cost stage. For these dwellings, grant will never be

recovered in full unless the whole dwelling is disposed of, in which case the procedures for outright sale will apply. Below is an example.

25% of a dwelling was initially purchased, with grant attributable to the remaining 75% of the dwelling of £21,000.
If the shared owner then buys the maximum shares allowed, that is a further 50% of the dwelling, (ie two thirds of the remaining shares) the grant attributable to that staircasing is two thirds of £21,000 = £14,000.

Apportioning Grant on Land

6.4.10 When a RP sells the land or buildings that make up an entire scheme, no apportionment of grant is necessary, as the recoverable grant will be the entirety of the grant paid, or for 2011-15 AHP funded schemes, the entirety of the grant indicated on IMS as the total grant required.

However, RPs may sell land that is a part of a grant-funded scheme under the following scenarios:

- Scenario 1. "Spare" Land that is part of a completed development.
- Scenario 2. Land swap or sale, using land from a completed development, to enable site assembly undertaken either by the RP or another body.
- Scenario 3. Land and / or part-completed properties sold or swapped prior to completion of the development.

It is necessary to apportion grant to cater for these scenarios.

6.4.11 Spare Land – Scenario 1:

Grant will not be recovered when RPs dispose of 'spare' land associated with a scheme. 'Spare' Land includes:

- Part of a garden or general landscaping;
- Plots of land for electricity sub-stations or similar utilities;
- Land swaps to regularise boundaries; and
- Rights of way, access, or easements.

Spare Land excludes any area of land designated at scheme approval for any future phase or phases). If in doubt about whether land is spare, consult the GLA .

6.4.12 Land Swaps & Sales (completed developments) – Scenario 2:

As the scheme has been completed, the grant should have already been apportioned between the properties. There will therefore be no grant apportioned to the parts of the scheme that are landscaping, roads etc. The disposal by sale or barter of this land is a Relevant Event, but the attributed grant to be recovered is £NIL.

6.4.13 Land Swaps & Sales (partially completed developments or before building work starts) (Scenarios 3 & 4):

If, after disposing of part of the site, or some of the partially completed dwellings, RPs are still able to deliver the number of units housing the agreed number of people, and comply with all other Funding Conditions, then the grant can be apportioned to the properties, rather than being apportioned between land and properties. There will therefore be no grant attributed to land (as opposed to properties) and although a Relevant Event will have occurred, the amount of grant to be recovered is £NIL.

If, after disposing of part of the site or some of the partially completed dwellings, RPs are unable to deliver the required number of units etc, they must seek confirmation from the GLA as to whether or not the GLA is willing to continue to fund the scheme. The GLA may be willing to allow a (reduced) scheme to proceed at lower level of grant; and will consider whether the provider may be able to deliver the balance of units elsewhere. The first scheme would be cancelled and a new scheme funded if it meets the criteria in place at that time for new schemes.

Where the GLA cannot agree criteria as per the above paragraph the scheme may be cancelled. This would be a Relevant Event, triggering recovery (by immediate repayment) of all grant paid on the scheme, or Total Grant Required as indicated on IMS for 2011-15 AHP funded schemes.

If the grant payable for the new scheme is less than already had been paid for the cancelled scheme, the difference will be recoverable.

6.5 GR - Recycled Capital Grant Fund Administration

General

- 6.5.1 This section sets out how the Recycled Capital Grant Fund (RCGF) must be administered, including crediting to the fund, its use and management. The following arrangements apply to all recycled capital grant generated in Greater London and these requirements are applicable to all classes of RP that operate a RCGF. Local authority RPs should also refer to their contractual terms which require LAs to be able to account for and report separately on the operation of their RCGF.
- 6.5.2 The principles governing grant recovery are set out in the Recovery Determination. These principles include the establishment and use of the RCGF.
- 6.5.3 Recycled grant held in a RCGF may be spent (recycled) by RPs on permanent uses outlined in section 6.6. RPs must seek the formal permission of the GLA before committing any RCGF spend.
- 6.5.4 Not all Relevant Events referred to in the Recovery Determination allow an option to recycle grant. For some of them, the GLA will require grant to be repaid – please refer to **section 6.2** for more details.
- 6.5.5 Recoverable grant arising from Key Worker Living or Starter Homes Initiative programmes is no longer ring fenced for that purpose and can be recycled by RPs on GLA priorities, subject to express GLA approval. RPs internal records must record the originating LA area in which the credit to the RCGF was generated.

Process for Crediting the Recycled Capital Grant Fund

- 6.5.6 Following those Relevant Events that do not require repayment of grant (see **section 6.2**) RPs have the option of repaying the recoverable Capital Grant to the GLA, or instead crediting it to a RCGF.
- 6.5.7 Each RP must weigh up any advantage of being able to recycle grant against the cost of setting up and administering a RCGF including the likelihood of a usable balance being built up in the fund and spent within three years.
- 6.5.8 Where RPs choose to maintain a RCGF they will be required to calculate the amount of recoverable grant to be credited to the fund as per **section 6.3**. For each relevant event, RPs must complete, and retain, written documentation showing the calculation of the recoverable grant. This amount must be credited to the RCGF with effect from the date of the relevant event. The written documentation must also show whether any of the recoverable grant is to be deferred or written off by the RP in accordance with details provided in **section 6.3**, or elsewhere in this chapter.

- 6.5.9 Where a Relevant Event occurs for a property produced with funds from the RCGF, a recovery calculation must be made in the same manner as if it had been funded with new capital grant and either credited to the RCGF or paid to the GLA in accordance with the requirements and procedures applicable at that time.
- 6.5.10 Each year, RPs must calculate and credit notional interest to their fund – as detailed further below in this section. This notional interest becomes part of the RCGF and may only be spent, with GLA approval, on permitted uses outlined in **section 6.6**
- 6.5.11 Where a property is disposed to tenants under **Social HomeBuy** or **Right To Acquire** procedures, the proceeds must be credited to the Disposal Proceeds Fund (DPF), not the RCGF. DPF is the remit of the Regulator (HCA); please see the [HCA's website](#) for further information on DPF.
- 6.5.12 Where credits arise from Relevant Events relating to Affordable Rent property, these credits should be 'ring fenced' within RPs' RCGF to be spent on the further supply of Affordable Rent properties – see **section 6.2**.

Administering the Recycled Capital Grant Fund

- 6.5.13 In allowing RPs to maintain and administer a RCGF, the GLA expects the fund to be robustly managed. Credits to the fund must be closely monitored, spend planned, and the fund regularly reviewed to guard against large sums of uncommitted amounts accumulating. RPs that are subject to an new supply agreement should expect that their review meetings will in part be used to monitor RCGF spend. Whilst the GLA acknowledges that it will be desirable to allow useable amounts to accrue, this must be balanced against being able to spend those amounts within the prescribed time scale of 3 years – see below for further information.

6.5.14 Circumstances Leading to Repayment of Grant Held in an RCGF

Under certain circumstances the GLA will require repayment in total or in part of any current balance in the RCGF. These circumstances are:

- a) The GLA discovers that an RP has provided incorrect information or made a material error (defined as including any sum greater than £500) in the calculation of its RCGF.
- b) The GLA learns that an RP has not applied all or part of its RCGF to a permitted use within three years.
- c) The GLA discovers that an RP has failed to administer its RCGF according to the principles set out in the Recovery Determination and detailed in this Guide or has failed to report or supply information on the amounts of grant in its RCGF to timetables established by the GLA (as set out in this chapter of the AHCFG).

- d) The GLA discovers that an RP has applied its RCGF for purposes other than those in the Determination and detailed in this guide.
- e) The GLA decides that an RP's financial or management circumstances are such that grant held in an RCGF is at risk and/or the option of placing recovered grant into an RCGF in the future would put that grant at risk.
- f) The GLA decides that an RP is unlikely to be able to apply all or part of its RCGF to a permitted use within three years.
- g) The Regulator de-registers an RP under section 118 or 119 of the Housing and Regeneration Act 2008. However the GLA may consider allowing recovery to be deferred until a further Relevant Event occurs, using the definition of Relevant Events current at that future time.
- h) The RP coming under Regulatory supervision and the Regulator deciding that retention of RCGF monies by the RP would be inappropriate. The Regulator may change this decision at any time after the RP ceases to be a supervision case. The GLA will not return any previous RCGF balance or recovered grant that had been paid during the period of supervision to the GLA.
- i) Any other relevant provision arising under events 8 a) to i) from the determination.

6.5.15 For (a) and (b) the GLA will require repayment of the specific sum involved.

6.5.16 For (c) to (i) the GLA will require repayment of all or part of the current balance (and for (c) and (d) additionally any grant from the RCGF already spent by the RP using processes or for purposes which do not comply with those set out in the Recovery Determination and this guide.

6.5.17 The GLA may also direct that grant recoverable upon future Relevant Events is repaid to the GLA without the option for recycling for as long as the GLA considers appropriate.

6.5.18 In all cases notional interest that was added to the sum in the RCGF to be repaid will also be recovered.

6.5.19 In addition to the circumstances listed above, the GLA may withdraw an RP's option of maintaining an RCGF in accordance with the principles of the Determination at paragraph 17, if it considers that it would be appropriate to do so in the circumstances of a particular case.

6.5.20 Where repayment of monies previously credited to an RCGF is required, the GLA will issue an explanatory letter and invoice, including the payment schedule and terms.

Accounting Arrangements for the Recycled Capital Grant Fund

- 6.5.21 If wishing to recycle recoverable grant, RPs must maintain a designated fund within their accounts entitled 'Recycled Capital Grant Fund'. This fund must be kept entirely separate from the Disposal Proceeds Fund. There is no requirement to maintain a separate bank account for this fund.
- 6.5.22 The fund must be supported by a robust audit trail of relevant paperwork detailing individual amounts of:
- Recoverable grant credited to the fund.
 - Recoverable grant by local authority.
 - Notional interest added. and
 - Any withdrawals made.
- 6.5.23 RPs may be asked to produce evidence of the audit trail; the supporting documentary evidence must be retained for ten years.
- 6.5.24 Rules covering the disclosure of RCGF balances and transactions are contained within the [Regulator's Accounting Direction for Social Housing in England from April 2013](#) .

Expenditure from the RCGF

- 6.5.25 Properties developed or repaired with RCGF will be subject to the same regulatory requirements as those funded with new grant from the GLA.
- 6.5.26 Where properties funded through RCGF are defined as Social Housing under sections 68-70 of the Housing and Regeneration Act 2008, they will become or remain subject to the regulatory standards.
- 6.5.27 Withdrawals should be debited on the date of the Start on Site and/ or other payment milestones. Please note that these may differ depending on the scheme type and/or programme period.
- 6.5.28 Expenditure from the fund should be debited on a first in, first out basis.

RCGF levels

- 6.5.29 When developing property with RCGF the RP can choose how much RCGF to use up to a defined maximum amount. RCGF expenditure requires express GLA approval via GLA IMS, partly to for assessment of value for money, so the expectation is that RCGF will be below this maximum level.
- 6.5.30 The maximum amount of RCGF that can be used on the scheme is calculated as follows:
- Total capital costs of the scheme (i.e. the amount capitalised on the balance sheet) less
 - The sum of any sales receipts (if applicable) less
 - The Notional Loan Debt that the RP is able to support from the rental stream produced by the properties (if applicable) less

- Any other resources, including the RP's own.

Repurchased units

- 6.5.31 Where an RP opts to repurchase properties where 100% has been sold in accordance with the Requirements of 6.6.3 (and this offers value for money and fits with local investment priorities) this must be funded from their own resources and where necessary RCGF (subject to express GLA approval).
- 6.5.32 The RP will be able to make use of capitalised rental income from the newly created rental unit. The RP may therefore debit from its RCGF, subject to GLA approval, an amount up to the purchase price minus an amount equal to the capitalised rental income and plus an allowance for administrative expenses (use the staircasing sales allowance current on the date of completion of the repurchase).

Approval and accounting

- 6.5.33 The GLA's express approval is necessary for the use of the fund or the calculation of the amount to be withdrawn from the RCGF. The RP can choose whether to debit the full amount of RCGF to be used on the scheme at the first payment milestone (such as Start on Site), or to debit the amounts in a way which matches grant claims.

Addition of Notional Interest

- 6.5.34 At 31 March each year, RPs must add notional interest to their RCGF.
- 6.5.35 While the RCGF balance is £250,000 or less, the notional rate that the RP must use is that which an RP would obtain by placing the money in the high interest deposit account operated by its own clearing bank. Therefore an RP should keep a record of these rates available for its auditor.
- 6.5.36 While the RCGF balance is greater than £250,000, the notional rate is linked to the Bank of England's (BOE) base lending rate, as follows:

Size of RCGF Rate of notional interest calculations.

- £250,001 to £500,000 Base lending rate minus 75 basis points
- £500,001 to £750,000 Base lending rate minus 50 basis points
- £750,001 to £1,000,000 Base lending rate minus 25 basis points
- Over £1,000,000 Base lending rate

A floor of 0% is applicable to notional interest calculations. Therefore, if the BOE base rate is at such a level as to produce a nil or negative amount of notional interest, then no interest should be added for the relevant period.

- 6.5.37 RPs must calculate notional interest on a daily basis, to take account of varying balances, according to a 365 day year convention, that is:
- $\text{Balance} \times \text{rate} \times (\text{days for which this balance held}/365)$

- The base rate used in the calculation must be amended in line with clearing bank or BOE rate changes.
- 6.5.38 RPs who pay Corporation Tax on their RCGF interest earnings may deduct that tax from their RCGF balance at the standard corporation tax rate that applied at the time.
- 6.5.39 In the calculation, notional interest must be compounded at 31 March of each year. The RP must clearly identify whether RCGF credits are recovered grant or notional interest. However, when using RCG funds, the RP will simply be drawing against the balance on the account, and does not need to identify whether it is using money that was recovered grant or notional interest.
- 6.5.40 In calculating notional interest, the date the interest should be calculated from should be the date the recovered grant must be credited to the RCGF, i.e. the date of the Relevant Event.
- 6.5.41 Where one RP is transferring all or some of its RCGF balance to another RP (for details of the circumstances under which this is acceptable, please see section below), notional interest is added at the end of the year. The transferring organisation will calculate interest on the balance up to the date of the transfer debit; the receiving organisation from the date of the credit.
- 6.5.42 All such transfers must be recorded as withdrawals and inputs from/to the relevant RP's RCGF

Transferring Balances Between RPs

- 6.5.43 RPs may, in the circumstances defined below, transfer all or some of their RCGF to other RPs, where this helps create a usable balance and/or supports the quick and efficient use of RCGF to meet local priorities. This includes Flexible Tenure, under the terms defined in Grant Recovery 6.6.3 RPs will be required to seek GLA approval for such transfers.
- 6.5.44 Transfers may occur between RPs which are:
- Members of a group structure (although each member of the group must have its own RCGF).
 - Members of a Development Partnership or Consortium which is currently in receipt of grant.
- 6.5.45 Transfers may also occur subject to the GLA's prior agreement where these are:
- To another local association. and or,
 - To a similar type of association (e.g. a specialised housing provider).
- Recycling grant generated in Greater London must only be spent within Greater London.

- 6.5.46 The receiving organisation must ensure:
- It documents the transfer.
 - It receives notification of the date on which each sum being transferred was originally credited to the transferor's RCGF.
 - The date on which it credits its own RCGF is no more than one day after the date the sums are debited from the transferor's RCGF.
- 6.5.47 The donating organisation must debit the sum from its own RCGF on the date the amount is transferred and document this accordingly.
- 6.5.48 Transfer of sums between organisations' RCGF does not reset the three year repayment schedule. The time limit for spending transferred recoverable grant remains within three years following the year in which the date of the original Relevant Event occurred.
- 6.5.49 Transfers to and from other RPs must be separately accounted for in the Annual End of Year Returns, to avoid the possibility of double counting withdrawals and inputs. Please see **6.7**.
- 6.5.50 Where a transfer of engagements has occurred the process described above should be used, with a transfer of the full RCGF balance to the receiving RP. At 31 March an Annual End of Year Return should be made for both the receiving and the transferring RP, (the latter covering the period to transfer).

Repayment of RCGF

- 6.5.51 If RPs do not recycle the grant within three years, the GLA will collect it, including notional interest, and recycle the money through the Mayor's affordable housing programmes. See section **6.5.67** and following paragraphs regarding collection processes.
- 6.5.52 Whilst three years is the normal time allowed before seeking repayment of amounts in the RCGF, the GLA reserves the right to collect it sooner.
- 6.5.53 Notional interest due will be calculated by the GLA, added to, and identified in the invoices sent to RPs.
- 6.5.54 RPs must pay the invoice by the due date, or be liable for interest for late payment.
- 6.5.55 RPs must not simply send payment to the GLA without having first received an invoice. See **Interest Chargeable on Delayed Notification or Repayment 6.2.14** for how this is calculated.
- 6.5.56 When recycled grant, plus notional interest, is repaid to the GLA the amount must be debited from the fund on the date of repayment.
- 6.5.57 RPs may choose to repay sums in their RCGF to the GLA at any time during the allowed three year period. Full details should be forwarded to the relevant GLA area manager and an invoice will be sent.

6.5.58 On a case by case basis the GLA may allow RPs to roll-over balances of “three year old grant” into subsequent years. The GLA is prepared to consider cases where it believes this is in the interest of social housing provision, or results from an acknowledged error on the part of the GLA. To seek approval of a roll-over RPs should approach their GLA area manager and provide a full written explanation of:

- Why the fund has not been spent within the permitted 3 years.
- Why it needs to be rolled over.
- What it is to be spent on. and
- When it will be spent.

Requests will be agreed only in exceptional circumstances and at the sole discretion of the GLA. Approval will be scheme and time specific.

6.5.59 Any agreement to roll-over will initially be for only one year and will be subject to the GLA’s monitoring.

How to identify "three year Grant"

6.5.60 RPs must identify the amount of three year RCGF repayable, if any, while preparing their annual electronic end of year data return.

6.5.61 The three years starts from the end of the RCGF year (31st March) in which the recoverable grant was credited. The RCGF three-year period should be calculated as follows:

- £100,000 credited to the RCGF on 16.8.2010.
- That is during the 2010/11 RCGF year.
- The three year period following the year of credit is therefore 2011/2014
- If not spent by 31 March 2014 the £100,000 will become subject to collection.

6.5.62 When calculating the amount of three-year-old-grant repayable to the GLA, RPs must calculate grant as having been spent on a first in, first out basis.

Operating on a first in, first out basis means that if by the end of the following third year, the RP has spent, in total, more than it deposited during the year in question, it has nothing to pay, e.g.:

- During the year ending 31 March 2010 £500,000 was credited to the RCGF;
- The three year period is therefore 2011-2014;
- During 2011/2014 more than £500,000 is spent
- Therefore there is no three year old grant

6.5.63 If, by 31 March of the year in question, RPs have entered into a written contractual commitment to incur expenditure on permitted, approved uses, then that amount of RCGF can be treated as having been spent.

- 6.5.64 Only the following count as contractual commitments:
- An exchange of contracts to acquire;
 - Signing a building contract;
- 6.5.65 Contracts devised to avoid repayment of three-year-old grant are not acceptable. The GLA expects contractual commitments to result in the contracted expenditure being incurred within six months. On a building contract, that would mean signing building contracts and starting on site within six months.
- 6.5.66 RPs must not repay any outstanding three-year old grant to the GLA until they receive an invoice as per **6.5.55** above.

Collection process

- 6.5.67 Following a review of a RP's Annual End of Year RCGF Return (see 6.7.4) the GLA will raise an invoice for:
- Any three year old grant where a rollover request has not been approved.
 - The interest that the RP is required to calculate on that three year old grant up to 31 March of the year in question. plus
 - Interest that the GLA will calculate as due from 1 April to the date of the invoice.
- 6.5.68 The GLA will issue the invoice as soon as possible after the End of Year Return has been submitted. RPs should not send a payment until they receive the GLA's invoice.
- 6.5.68 If payment arrives later than the date required by the invoice, the GLA will calculate and invoice for additional interest, as pre-warned in the invoice.
- 6.5.69 Where RPs report sums over three years old, which the GLA has agreed to roll over beyond the usual deadline, no invoice will be raised for this amount.

6.6 GR - Permitted Uses

General

- 6.6.1 RCGF expenditure requires express GLA approval. Grant recycled from the RCGF will have the same Funding Conditions and conditions of grant as if the scheme had been funded with new social housing assistance, although properties provided from the RCGF are not subject to the Right To Acquire under section 180 of the Housing and Regeneration Act 2008 and section 16 of the Housing Act 1996, except when RCGF is used in combination with the Disposal Proceeds Fund or new grant.
- 6.6.2 RCGF balances previously ring fenced for use in key worker schemes, and grant recovered from previous key worker programmes (such as Starter Home Initiative, Key Worker Living etc.) will no longer be subject to previous restrictions, and should be spent on the general permitted uses and in the first instance on the priorities indicated below.

Priorities

- 6.6.3 The GLA expects RPs to spend recycled grant on the GLA's priorities although any spend must have prior GLA approval. Any proposed reinvestment of RCGF will be assessed on the same basis as new grant funding from the GLA.
- 6.6.4 The GLA priorities, in line with what is set out in the Mayor's Housing Covenant 2015-18 are:
- New supply of affordable homes for rent or flexible home ownership.
 - Supported housing for vulnerable Londoners including the provision of care and support schemes and initiatives for tackling homelessness.
- 6.6.5 In addition, again with GLA approval:
- Land acquisition that leads to the delivery on new homes within a five year period.
 - To repurchase homes sold outright under Social HomeBuy post April 2006 where the freehold transfer includes a 21 year re-emption right.
 - To repurchase properties sold under RTB or RTA after 1 Jan 2005 (the Housing Act 2004 gives a 10 year right to repurchase properties sold under RTA or RTB);
 - To repurchase a shared owner's equity in a grant funded shared ownership property provided the circumstances detailed in the Shared Ownership section of the Housing for Sale chapter are satisfied;
 - To repurchase properties sold under SHB or NBHB post April 06 on shared ownership terms, where the leaseholder has staircased to 100%.

Restrictions and or Additional Criteria to Permitted Uses

Affordable Rent

- 6.6.6 RPs that are not on their own, nor as part of a consortium, developing Affordable Rent under an agreed grant agreement, may not use RCGF to provide Affordable Rent, unless they are party to a Short Form Agreement (SFA) with the GLA.
- 6.6.7 RPs that are developing Affordable Rent under an agreed grant agreement may use their RCGF to provide additional Affordable Rent property, with GLA approval. However they should use any 'ring fenced' credits in the first instance, see 6.5.12.

HomeBuy

- 6.6.8 RPs that are not on their own, or as part of a consortium, developing or providing affordable home ownership such as Shared Ownership or Equity Loans under an agreed grant agreement, may use RCGF to provide shared ownership, subject to the usual considerations of local authority support and value for money.

Social Rent

- 6.6.9 RPs may only develop Social Rent with RCGF in limited circumstances, and only with prior approval of the GLA. In all cases RPs will require the support of their local authority. If RPs are developing Affordable Rent under a grant agreement, the RP will have to make a strong case as to why using RCGF for AR would not be a viable alternative.

Section 106

- 6.6.10 The 2015-16 prospectus makes clear that the GLA does not expect to fund S106 provision with new grant except where a viability case can be made using an economic appraisal tool. The same principle extends to the use of recycled grant to fund S106 development

Absolute Restrictions

- 6.6.11 Absolute restrictions on Permitted uses include:
- Funding Social HomeBuy or Right to Acquire discounts.
 - Work to existing stock that is ineligible for funding because of the terms under which it was originally financed. Examples are major repairs to general needs projects funded under the Housing Acts 1988 and 1996 and stock transferred from a Local Authority.
 - Day to day and cyclical maintenance.
 - Tenant Incentive Schemes.
 - Provision of the FirstBuy product.
 - Leasehold enfranchisement.

6.6.12 RPs must consult the GLA if unsure about a proposed use of RCGF.

Housing Needs – Locality & Priority

6.6.13 RPs must apply their RCGF in accordance with the investment priorities of the Mayor's statutory London Housing Strategy, and expenditure is expected to be for the provision of new affordable housing supply

6.6.14 RPs may make the case for an alternative use to:

- Meet other strategic priorities; and
- Ensure the RP remains financially viable.

6.6.15 All requests must be submitted to the GLA for consideration and approval.

6.6.16 The default position is that spend should take place within the Local Authority area within which the credit to the fund was generated. RPs' internal records of recoveries will therefore need to record the originating LA area in which the credit to the fund was generated.

6.6.17 In some cases the GLA may allow expenditure of RCGF in a different London borough from the one in which it was generated. If you have such a proposal, it is advisable to discuss it with your area manager before submitting the bid on IMS.

6.6.18 Please note that from 1 April 2012 amounts generated within Greater London should not be invested outside Greater London, and vice versa.

Combining RCGF with new grant, Disposal Proceeds Fund and Other Finance

6.6.19 RPs may combine recycled grant with DPF and new grant in the following ways:

- Combine recycled grant with grant in schemes receiving an allocation within the Affordable Housing Programme (AHP) or Mayor's Housing Covenant Programmes. Such schemes could only be those that are permitted uses of the DPF (for DPF Permitted Uses, See [here](#).)
- Combine recycled grant and DPF (but no new grant). Such schemes could only be those that are permitted uses of the DPF (for DPF Permitted Uses).

6.6.20 All schemes require a proportion of the costs to be met with private sector loans or a contribution from the RP's own resources.

6.6.21 Resource inputs to a scheme from RCGF must not normally exceed the level stated within the relevant bid (including if zero). Any proposal to add additional resources from RCGF to an existing allocation must be agreed with the GLA in advance.

Flexible tenure through the RCGF (downward staircasing)

6.6.22 Flexible Tenure (also referred to or known as downward staircasing) is a permitted use of the RCGF only in cases where other options for avoiding

repossession have been exhausted. It is a last resort option to enable a shared owner (NOT an outright owner) experiencing severe financial difficulties to remain in their own home despite changes in their financial circumstances. It is aimed at preventing repossessions and the loss of the home. It is not a means of allowing the shared owner to restructure their debts (including rent arrears) or otherwise improve their financial position.

Note: recycled grant may only be used to fund up to a maximum of 70% of the flexible tenure purchase.

6.6.23 There is no 'right' to Flexible Tenure and any offer is at the RP's discretion and subject to the GLA's approval. However, where offered by RPs the following eligibility criteria must be met:

- RPs must confine offers of Flexible Tenure to shared owners in their own stock, but can include both grant funded and non-grant funded stock;
- RPs may set their own detailed procedures provided that they comply with the required general policy and procedures in this section of the Recovery chapter.
- The shared owner must currently own less than 100% of the property.
- The shared owner must be paying rent on the unsold equity in the property. The term 'rent' excludes ground rent and service charges. Flexible Tenure is not available for other owner occupiers including former shared owners or those who have bought a property through a discount or incentive scheme such as Right To Buy (RTB), Right To Acquire (RTA), the Tenants' Incentive Scheme or any of the GLA's equity loan products. RPs must be satisfied that the shared owner has explored and exhausted other options. The shared owner must produce suitable evidence to prove their difficulty with mortgage repayments although they need not already be in mortgage arrears.
- Shared owners must be able to show that other short and long term options have been exhausted such as loan rescheduling, or selling and moving to cheaper property within a reasonable travel to work area.
- RPs must also take into account the shared owner's ongoing ability to meet future repair and maintenance liabilities.
- Future sustainability should be based upon advice from an independent debt-counselling agency, and should include consideration of Housing Benefit eligibility.
- For Shared Ownership for the Older Persons properties, the same policy applies. However, Flexible Tenure repurchase from the maximum shares permitted under this product will also be permitted to allow essential repair and maintenance work to be carried out where the leaseholder demonstrates that there is a need for such work to the property and that they lack the funds to pay for it.

- For non-grant funded stock, should RPs consider repurchasing all the leaseholder's share thereby converting the tenure to an assured tenancy, they must undertake a survey of the property before completion of the Flexible Tenure application in order to assess any immediate and future repair liabilities that would be required under the Social Housing regulator's social housing standards.
- 6.6.24 RPs cannot use recycled grant funds to help shared owners release equity for any other purpose than avoiding threats, or potential threats, to their ability to remain in their home. Recycled grant cannot be used to allow shared owners to repay debt (other than their principal mortgage debt and arrears), or to buy other goods or services. This is NOT Flexible Tenure. Note: The Disposal Proceeds Fund cannot fund flexible tenure.
- 6.6.25 Under Flexible Tenure, RPs must repurchase enough equity to reduce the leaseholder's total housing costs to a level which they and the RPs are confident is manageable and sustainable in the long-term.
- 6.6.26 This can include repurchasing sufficient equity to:
- Clear the mortgage.
 - Pay off arrears of interest and principal on the mortgage.
 - Reduce mortgage payments to nil.
- 6.6.27 In order to meet the needs as per the above paragraph, the repurchase of shares by RPs under Flexible Tenure is not restricted to particular tranches in the same way as for upward staircasing.
- 6.6.28 There is also the option of full re-purchase, under which the shared owner becomes an assured tenant of the RP. However, once a property has been re-possessed by the lender, Flexible Tenure ceases to be an option.
- 6.6.29 Where an RP does offer Flexible Tenure, its policy and procedures should be published and made available to all shared owners in its property. RPs should also ensure they retain any documentary evidence in support of their decision to use recycled grant to fund Flexible Tenure.
- 6.6.30 For any form of equity repurchase, the RP should ensure that any offer is acceptable to both the shared owner's mortgagee, and its own lender. The latter may require a revolving credit facility.
- 6.6.31 The same general procedures apply to downward staircasing as for upward staircasing, i.e. the maximum amount payable by the landlord will be the appropriate percentage of the shares to be purchased at their current open market vacant value as determined by an independent qualified valuer.
- 6.6.32 It will probably be a condition of the shared owner's mortgage that the sale proceeds are paid direct to the first mortgagee. The RP's solicitor should advise on this, but it would avoid any risk of misuse of the money. The shared owner must pay for the valuation and his/her own legal fees. In

practice, if paid by the RP, these costs may be deducted from the payment to the shared owner or the mortgagee allowing the RP to recover the costs.

- 6.6.33 The amount to be debited should be drawn down from the RCGF on the completion date of the legal transaction, and calculated as follows:

Debit from RCGF = (staircasing sales allowance) + (payment due for the shares to be purchased x 70%). The staircasing sales allowance at the level current at the date of completion should be used in this calculation.

The payment due to the shared owner or mortgagee must be the market value of the share to be repurchased. However only 70% of that share's market value is the maximum that can be funded with recycled grant. The remaining balance must be funded from an RP's own resources. Lesser amounts of recycled grant topped up by the landlords own resources are also permitted.

- 6.6.34 The resulting amount of public subsidy (HAG, SHG or SHA plus Recycled Capital Grant) attributable to the property must take into account any deferred recovery of HAG, SHG or SHA in the same scheme.
- 6.6.35 The resulting Deemed Loan Debt (DLD) for the property will be the outstanding balance of the original DLD plus the new DLD attributable to the repurchased part of the property (i.e. the 30% (or more) of the payment to the leaseholder that was not funded by recycled grant).
- 6.6.36 The following is a worked example.

A shared owner owns 75% of a house valued at £160,000, and staircases down to 25% ownership.
The owning RP pays £79,400 to the shared owner's mortgage company (£80,000 less valuation and the shared owner's legal fees totalling £600).
The staircasing sales allowance is (for illustrative purposes) £400.
The withdrawal from the RCGF is (£400 staircasing allowance) + (£80,000 x 70%) = £56,400
If the rent is 2.75% of the value of the equity owned by the RP (ex-RSL) per annum, the rent increases from £21 a week on 25% to £63 a week on the 75% now owned by the RP - ignoring any service charge.
The RP has increased the Deemed Loan Debt on the property by the element of the payment to the leaseholder that was not funded by the RCGF i.e. 30% x £80,000 = £24,000.

- 6.6.37 Should the shared owner's financial circumstances deteriorate even further, subsequent Flexible Tenure transactions can be permitted, even to the extent of a complete repurchase of the property.
- 6.6.38 Where a shared owner benefits from Flexible Tenure to reduce their share to a lower level of equity, the terms of the existing lease will continue, including the right to staircase again.

- 6.6.39 Where a shared owner's financial circumstances improve and they wish to purchase additional shares, then normal staircasing procedures should be followed. In these cases, RP must treat the recycled grant drawn down to fund the Flexible Tenure as if it were new grant, and add this sum to any outstanding original funding for grant recovery purposes.
- 6.6.40 Whenever the shared owner benefits from Flexible Tenure or staircases again, the rent should be adjusted pro rata for the changed percentage rented, and comply with all relevant rent policies.
- 6.6.41 Where a shared owner becomes an outright tenant, the shared ownership lease must be formally terminated and an assured tenancy agreement entered into on the same terms as for any other new tenancy agreement for rented housing let by that RP.
- 6.6.42 An ex-shared owner who becomes an outright tenant will not be able to purchase the property under the Right To Acquire because the property was not originally provided with public money for the purposes of being a rented property. This means it would not be an eligible property under RTA rules. However the assured tenancy would count towards future RTA residency criteria (see the Right to Acquire section of the Housing for Sale chapter). As a tenant s/he may, if circumstances improve, be eligible for any discount or incentive scheme if offered by the RP such as Social HomeBuy with any eligibility period starting from the date of this new tenancy.

Land Acquisition

- 6.6.43 RPs may use funds from the RCGF to acquire land where the intention is to develop the additional supply of affordable housing. This use of recycled grant requires express GLA approval.
- 6.6.44 Recycled grant may also be used to acquire land for market housing schemes which will include an affordable housing element. Recycled grant should be attributed pro-rata to affordable housing subsequently developed and shown as an RCGF input at bidding stage in addition to any new affordable grant bid for.
- 6.6.45 RPs will be required to begin development on any land purchased with recycle grant within 5 years of purchase. If start on site has not progressed after 5 years, RPs will be required to pay back the recycled grant to the GLA; it cannot be re-credited back into the RP's RCGF.
- 6.6.46 RPs are not to use RCGF to acquire land for speculative gain.

Management and Maintenance of New Units Produced from the Recycled Capital Grant Fund

- 6.6.47 Eligibility for grant to fund major repairs in respect of RCGF funded units is the same as for units initially funded with new grant; please refer to the Repairs section of the Housing for Rent chapter for further information. In this context, please note that RCGF expenditure requires express GLA approval.
- 6.6.48 Where applicable, property provided from the RCGF could be sold under Social HomeBuy or on the open market.
- 6.6.49 Properties provided from the RCGF must be made available to local authority nominees in the same way as property provided with grant.

6.7 GR - Reporting and Audit Requirements

General

- 6.7.1 All RPs who operate a Recycled Capital Grant Fund (RCGF) must report annually on credits to and expenditure from their RCGF– see section on annual returns below.
- 6.7.2 Those RPs who are subject to a Grant Agreement must also separately record RCGF (nil grant schemes) funded units on IMS as and when developed as required by their agreements.
- 6.7.3 RPs must retain documentary evidence to support an audit trail for all transactions leading to recovery and re-use of grant (for further details on this, please see **6.5.21**).

Annual returns

- 6.7.4 RPs who operate a RCGF must submit an annual RCGF End of Year Return electronically using the GLA's IMS. It is the RP's responsibility to ensure its return is submitted on time. The deadline for returns is 30 June of the year in question.
- 6.7.5 RPs that operate inside and outside of Greater London should ensure that balances generated and reinvested in London are reported to the GLA and balances outside of London to the HCA. This requires two separate returns recorded on the different funds in IMS.
- 6.7.6 RPs must submit a return for every year that they have been in business and operating a RCGF, even if they no longer are. For example, if a RP was subject to a transfer of engagements that completed in March 2013, a return would still be required for the year 2012-13. A nil return should be submitted if there has been no activity during a particular year.
- 6.7.7 In the event that a RP misses the deadline for submitting its End of Year Return and has a good reason for not having met the deadline, they should submit their return on IMS as normal. Submission of a late return will activate a 'Late Submission Comment' box. Providers must fill this in when submitting a late return. This will be reviewed by the relevant area manager.
- 6.7.8 The GLA may seek repayment and can require Repayment of all or part of the balance of an RCGF if information is not supplied to schedule, including either a late or absent annual End of Year Return.

Completion of the annual return

- 6.7.9 The annual End of Year Return will consist of a number of screens within the GLA's IMS:
- General details
 - Financial

- Analysis of inputs
- Analysis of balances by local authority
- Analysis of housing completions
- A statement of intentions (indicate proposals for the re-investment of two year old recycled grant)
- RP certification and authorised signature

6.7.10 Details of how the various IMS screens should be completed can be found on the IMS help page.

Collection and administration of the annual returns

6.7.11 The GLA collects the RCGF End of Year Return via IMS and RPs submitting an End of Year Return will require access rights. RPs who do not have access to IMS and require help should contact their GLA area manager if they have one, or email glaims@london.gov.uk .

6.7.12 After reviewing the electronic End of Year returns the GLA area manager will contact the RP in writing detailing any errors and/or adjustments required.

6.7.13 Any adjustment will be effected in the following year's return. Where a prior year adjustment is made, notional interest should be recalculated (and credited to or debited from the RCGF) using the adjusted balance and across the full term of the adjustment. If a further explanation on this is required, the RP should contact the area manager.

6.7.14 Having reviewed the annual returns the GLA will also consider requiring repayment of three year old grant as per **section 6.5.51** and invoice RPs accordingly.

Role of the external auditor

6.7.15 The RCGF return is an integral part of a RP's annual independent audit. Therefore, RPs' auditors must have regard to the disclosure of RCGF balances and transactions and the overall accuracy of the return within their sign-off of an RPs accounts (see **6.5.21**).

6.7.16 RPs must keep a record of external auditors' examinations of RCGF accounts. Any observations by the external auditor should be communicated to:

- The GLA.
- The Social Housing Regulator.