



Legal update — November 2017

## Housing and regeneration Right to Buy receipts – Use them or lose them

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**A number of councils are struggling to spend their retained right to buy (RTB) receipts under the 1-4-1 retention agreement because of the restrictive rules that apply. We are working with local authorities who are using different methods to spend their retained RTB receipts.**

### Spending the RTB receipts itself

Local authorities can spend their RTB receipts themselves, to fund the development costs associated with the provision of social rented housing, as defined in Section 68 (1) (a) of the Housing and Regeneration Act 2008.

This is a very straightforward option favoured by many local authorities. The RTB receipts must constitute no more than 30% of the total amount spent on the development. Having to fund the remaining 70% along with the unavailability of land for some and the potential lack of skill set to manage operation can make this option less attractive.

### Gifting the receipts to a registered provider

A local authority can provide the RTB receipts as grant to bodies in which they do not own a "controlling" interest. The Council may already have established RP relationships, or it may wish to create new relationships with RPs that suit their ambitions. Any grant agreement would contain specific conditions to satisfy the terms of the 1-4-1 retention agreement and could include the receipt of nomination rights.

### Establishing a Housing Delivery Partnership

Partnerships between local authorities and RPs and/or the private sector are becoming increasingly common, with the aim of increasing the supply of new homes of all types and tenures.

Corporate partnerships, often 50/50 LLPs, can provide significant flexibility for local authorities and RTB receipts can be passed to such a body if it is structured correctly and is not controlled by the local authority.

We have recently launched a publication exploring what makes a successful housing delivery partnership. To view this, please visit [www.trowers.com/hdp](http://www.trowers.com/hdp).

### Setting up an independent charity

We have advised a number of local authorities who have set up (or are in the process of doing so) independent charitable organisations, usually community benefit societies (CBS), to develop and provide social housing.

As a charity must be independent from the state, the local authority will not have a controlling interest in the charitable CBS.

Whilst the local authority will not have constitutional control, it can have control/influence over the CBS's activities in other ways. For example, local authorities may provide the charity with a loan for the remaining 70% of the cost of developing the social housing and can retain control through loan covenants and/or through land transfer conditions. The deal could also be structured so the authority could benefit from regular lease payments and have the properties returned back to the council's ownership after the loan and lease terms have come to an end.

### Use the RTB receipts or lose them

A number of local authorities have had to repay RTB receipts back to government with compound interest. Whilst it might be easier said than done, if you don't use the receipts you will lose them. Please contact us if you would like to discuss these and other options.

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For more information please contact

Scott Dorling  
Partner  
t +44 (0)20 7423 8391  
e [sdorling@trowers.com](mailto:sdorling@trowers.com)

Robert Bailey  
Partner  
t +44 (0)20 7423 8332  
e [rbailey@trowers.com](mailto:rbailey@trowers.com)

Published by  
Trowers & Hamblins

Trowers & Hamblins LLP  
3 Bunhill Row  
London  
EC1Y 8YZ

t +44 (0)20 7423 8000  
f +44 (0)20 7423 8001

[www.trowers.com](http://www.trowers.com)

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