



OFFICE OF THE
DEPUTY PRIME MINISTER

Housing Allocation, Homelessness and Stock Transfer

A Guide to Key Issues

January 2004

Office of the Deputy Prime Minister: London

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or online via the Office of the Deputy Prime Minister's web site.

Printed in Great Britain on material containing 75% post-consumer waste and 25% ECF pulp.

January 2004

Product code: 03HC01808

Acknowledgements

We would like to express our thanks to Hal Pawson of Heriot-Watt University and to David Mullins and Rob Rowlands of Birmingham University for producing the research findings on which this Guide is based. We are also extremely grateful to the case study interviewees who participated in the research from both housing authorities and housing associations for providing examples and agreeing to their use in this Guidance. We also acknowledge assistance from Michele Walsh, Housing Corporation and Gill Green and Roger Jarman, Audit Commission, as well as to internal policy colleagues in ODPM, in providing access to further good practice examples and commenting on earlier drafts of the Guide.

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Introduction

*Sustainable Communities: building for the future*¹ sets out the Government's programme of action to tackle pressing problems in England's communities in order to raise the quality of peoples lives.

In considering the framework for social housing, the *Sustainable Communities* report notes that the separation of housing authorities landlord functions from their strategic housing responsibilities will help ensure that proper attention is given to both these areas of responsibility. Housing transfer is a key way of allowing authorities to focus on their strategic responsibilities as well making a major contribution towards achieving the Government's target of making all social housing decent by 2010, through attracting additional resources to bring social housing up to the decent homes standard.

In pursuing transfer it is important that local authorities are fully aware of their continuing statutory and strategic housing obligations, which apply regardless of stock ownership.

Scope of the guide

This guide sets out the key issues that housing authorities need to consider when deciding whether to retain or contract out the delivery of their statutory housing functions in a post stock transfer environment.

The statutory housing functions considered in this guide are:

- Housing allocation
- Homelessness
- Housing advice.

The guide recognises that contracting out the delivery of certain statutory housing functions is one option that housing authorities may wish to consider when planning the transfer of their housing stock. It sets out the factors that a housing authority would need to consider in order to weigh the advantages and disadvantages of operating services in-house versus contracting out.

¹ ODPM (2003) *Sustainable Communities: building for the future*, London: ODPM available at www.communities.odpm.gov.uk.

The guide does not make any recommendations regarding whether or not to retain services in-house or contract out. Rather, it recognises that a housing authority can only soundly make such decisions *after* the authority has given careful consideration to its continuing need to:

- meet its statutory obligations;
- fulfil its strategic responsibilities; and
- deliver its policies in relation to preventing and tackling homelessness and meeting housing need.

Who the guide is for

The guide is primarily aimed at those housing authorities that are considering stock transfer and how best to deliver their statutory housing functions within a stock transfer setting.

However, since all housing authorities in England can contract out certain housing functions to another organisation, regardless of whether the authority has also transferred ownership of its housing stock², the guide will also be useful to any housing authority that is reviewing the delivery of its statutory housing functions.

Housing associations (or other organisations) that are considering taking on, or bidding to retain, the delivery of a housing authority's statutory housing functions, whether or not this is part of a transfer arrangement, may also find the guide helpful.

Background note

For the purpose of this guide a *post-transfer* housing authority is one which has transferred all its housing stock to one or more housing associations and a *transfer landlord* is a housing association that has taken on the housing authority's stock.

The guide also includes a chapter covering partial transfers where the housing authority retains some of its stock but transfers part (usually housing in single estates or neighbourhoods) to a housing association.

Source material

The guide draws on recent research commissioned by ODPM. Findings from related studies conducted by the same researchers for both ODPM and the Housing Corporation are reported in full elsewhere³. The 'stock transfer' housing authorities and housing associations involved as case studies in all of these projects are listed in Appendix C. A list of further reading is also set out in Appendix B.

2 See "the contracting out provisions" in the *Local Authorities (Contracting out of Allocation of Housing and Homelessness Functions) Order* (S.I.1996/3205) made under s. 70 of the *Deregulation and Contracting-out Act 1994*.

3 Pawson, H, Levison, D., Third, H., Lawton, G. and Parker, J.(2001) *Local Authority Policy and Practice on Allocations, Transfers and Homelessness*; London: DETR; Pawson, H and Mullins, D. (2003) *Changing Places: Housing Association Policy and Practice on Nominations and Lettings*; Bristol: Policy Press

Status of the guide

This guide, published by ODPM, has no statutory force. However, as with other official guidance, the Housing Inspectorate will take it into account in future inspections of housing authorities and housing associations.

CHAPTER 1

Statutory and Regulatory Requirements

Key issue

Housing authorities retain their statutory obligations regarding housing allocation, homelessness and the provision of housing advice *regardless of*:

- whether or not they retain ownership or management of the housing stock; and
- whether or not they contract out the delivery of any of their statutory housing functions.

It is essential that housing authority plans for stock transfer and/or for contracting out the delivery of their housing related functions include clear provisions to ensure that these statutory duties will continue to be met.

Housing authorities' responsibilities

A housing authority which passes ownership of all (or part of) its housing to another landlord remains a housing authority. Regardless of stock ownership, the housing authority retains important responsibilities for:

- housing allocation;
- tackling and preventing homelessness;
- private sector housing; and
- broader strategic duties such as the duty to undertake a periodic review of housing conditions and to consider aggregate housing needs.

To obtain Secretary of State endorsement of a whole stock transfer proposal a housing authority will have to demonstrate that such services will be satisfactorily provided in the post-transfer context.

The performance of a housing authority's statutory housing functions will continue to be part of its Comprehensive Performance Assessment and will need to be covered by Best Value reviews, whether or not it discharges these housing functions directly. The Housing Inspectorate has criticised a number of post-transfer housing authorities in relation to their contracted out allocations and homelessness services – these reports can be viewed at www.audit-commission.gov.uk ⁴.

The ODPM stock transfer guidance⁵ makes it clear that the provision of adequate resources, including staffing, is essential for the post-transfer strategic housing role. Further guidance on housing authorities' strategic housing role and its relationship to other local authority activities is provided by ODPM and CIH at www.odpm.gov.uk/housing.

Functions covered by this guide

The statutory housing functions covered by this guidance are:

HOUSING ALLOCATIONS

This is the process of sifting and prioritising applications and allocating long-term social tenancies to households on the housing waiting list⁶. Under Part 6 of the Housing Act 1996 (as amended by the Homelessness Act 2002), all housing authorities must have an allocation scheme.

Where a housing authority retains housing stock, 'allocations' will include both the allocation of tenancies in their own stock and the nomination of prospective tenants for vacancies in stock held by partner housing associations.

Where a housing authority has transferred its stock, 'allocations' includes the sifting and prioritising of applicants for nomination to either the transfer landlord or to other partner housing associations⁷.

In discharging their Part 6 obligations, housing authorities must have regard to the ***Allocation of Accommodation Code of Guidance for Local Housing Authorities***, issued by the First Secretary of State (ODPM)⁸.

Housing authorities should also note that ODPM expects all housing authorities to be operating some form of choice based letting scheme by 2010.

4 See also: Audit Commission (2003); *Homelessness, Responding to the New Agenda*; London: Audit Commission

5 Office of the Deputy Prime Minister (2003); *Housing Transfer Manual 2003 Programme*; London: ODPM

6 By virtue of the Homelessness Act 2002, housing authorities are no longer required to maintain a housing register (whether or not they transfer their stock).

7 Section 159 Housing Act 1996

8 Office of the Deputy Prime Minister (2002); *Allocation of Accommodation Code of Guidance for Local Housing Authorities*; London: ODPM

ADVICE ABOUT APPLYING FOR AN ALLOCATION

Housing authorities have a duty to people in their district to ensure that:

- advice and information about the right to make an application for housing is available free of charge;
- assistance is given free of charge to those who are likely to have difficulty in making an application for housing without such assistance.

HOMELESSNESS

The homelessness legislation under *Part 7 of the Housing Act 1996* (as amended by the Homelessness Act 2002) provides a safety net for people who are actually homeless or threatened with homelessness within 28 days.

Authorities must secure that accommodation is available for applicants who have become homeless through no fault of their own and who have a priority need for accommodation (the main homelessness duty). For more details on the types of household that have a priority need for accommodation please see *the Homelessness Code of Guidance for Local Authorities*. Typically, in areas where demand for housing is high, authorities will discharge the main homelessness duty by securing temporary accommodation until a more settled housing solution (eg. a housing allocation made under *Part 6 of the 1996 Act*) becomes available⁹.

In discharging its Part 7 obligations, a housing authority must have regard to the ***Homelessness Code of Guidance for Local Authorities***, issued jointly by the First Secretary of State (ODPM) and the Secretary of State for Health.¹⁰

Housing Advice

Housing authorities have a general duty to ensure that advice about homelessness and the prevention of homelessness is available to everyone in their district free of charge.

Under the homelessness legislation, authorities are also required to provide advice and assistance to individual applicants who are owed certain homelessness duties (e.g. those unintentionally homeless but not in priority need and those intentionally homeless and in priority need).

For the purpose of this guide, the term 'housing advice function' refers to the general duty. The various duties to provide advice and information to individuals are treated as part of the normal 'homelessness function'.

A good quality general advice service is crucial in helping to prevent homelessness. Typically, it may involve explaining to somebody their legal rights, or providing information about appropriate housing options taking into account their financial and other circumstances.

⁹ Note that priority need under the homelessness legislation is not the same as priority for an allocation – although people owed a main homelessness duty must at least be given reasonable preference for an allocation.

¹⁰ Office of the Deputy Prime Minister and Department of Health (2002); *Homelessness Code of Guidance for Local Authorities*; London: ODPM and DoH

Homelessness Reviews and Strategies

All housing authorities – irrespective of stock ownership – are required to carry out a periodic review of homelessness in their district and to adopt and publish a homelessness strategy for preventing homelessness and ensuring that accommodation and support will be available, as necessary, for people who are homeless or at risk of homelessness. Housing (and social services) authorities must take the homelessness strategy into account when they are discharging their functions and providing services.

Duty to consider housing conditions and needs

Under section 8 of the Housing Act 1985, housing authorities have a general duty to consider (aggregate) housing conditions and needs in their district, with respect to the provision of further housing accommodation.

Closely linked to a housing authority's duties under s.8, a housing authority is also obliged under s.605 to undertake a periodic review of housing conditions. This is an inspection to be carried out from time to time to determine the action the housing authority will take in relation to individual housing conditions. The ways that these duties should be honoured are elaborated in good practice guidance on Local Housing Needs Assessment¹¹ (see below).

Housing authorities will also need to consider their other strategic responsibilities such as the delivery of the decent homes target¹².

Contracting-out of statutory obligations

The duty to carry out homelessness reviews and to adopt and publish a homelessness strategy, cannot be contracted out. Reviews and the formulation of strategies can, however, be informed by research commissioned from external organisations. Specific advice on developing housing authority homelessness strategies is available from ODPM and other sources¹³.

Housing authorities can contract out certain housing functions of Parts 6 and 7 of the Housing Act 1996 including¹⁴:

- making inquiries and/or decisions on homelessness applications;
- securing accommodation to discharge homelessness duties;
- the allocation of housing.

11 Bramley, G. and Pawson, H. (2000); *Local Housing Needs Assessment: A Guide to Good Practice*; London: Department of the Environment, Transport and the Regions

12 See ODPM (2003) *Delivering Decent Homes – Option Appraisal. Guidance for Local Authorities* available on line at www.odpm.gov.uk/housing

13 Office of the Deputy Prime Minister (2002); *Homelessness Strategies: A Good Practice Handbook*; London: ODPM(www.odpm.gov.uk); See also Chartered Institute of Housing (2002); *Strategic Approaches to Homelessness*; Good Practice Briefing No 24; Coventry: CIH; Northern Housing Consortium (2002) *Toolkit for Developing Homeless Strategies*.

14 *Local Authorities (Contracting-out of Allocation of Housing and Homelessness Functions) Order* (S.I.1996/3205) made under section 70 of the *Deregulation and Contracting-out Act 1994*

The duty to provide advisory services is not subject to the contracting out provisions but it is open to authorities to make whatever arrangements they consider appropriate to ensure this duty is discharged. This may include making provision for other organisations to deliver housing advice services in their district.

The factors that housing authorities need to consider when deciding on the post-transfer delivery of their housing functions are discussed in more detail in Chapter 2 (Option Appraisal).

Housing association co-operation with housing authorities

To meet their statutory and regulatory requirements Housing Associations (HAs) must work with local authorities to enable authorities to fulfil their duties to the homeless and people in priority need and their duties to the vulnerable and those covered by the Government's *Supporting People* policy¹⁵.

When requested by a housing authority, HAs are expected to co-operate – to such an extent as is reasonable in the circumstances – in offering accommodation to people with priority under the authority's allocation scheme. HAs are also required, on request, to assist a housing authority in the discharge of their homelessness functions – so far as is reasonable in the circumstances¹⁶.

More specifically, the Housing Corporation's regulatory guidance expects housing associations¹⁷:

- to demonstrate their co-operation with housing authorities in homelessness reviews, in the formulation of homelessness strategies and in the delivery of housing authorities' homelessness functions;
- when requested to do so by the housing authority and to such an extent as is reasonable in the circumstances... (to) provide a proportion of their stock to housing authority nominations and temporary accommodation to the homeless;
- to adopt criteria (following consultation with housing authorities) for accepting or rejecting nominees and other applicants for housing – and to exclude applicants from consideration for housing only when their unacceptable behaviour is serious enough to make them unsuitable to be a tenant, and only in circumstances that are not unlawfully discriminating;
- to operate lettings policies which are responsive to housing authority duties.

¹⁵ Sections 170 and 213 Housing Act 1996 and Paragraph 3 pIX of Housing Corporation Regulatory Code in The Housing Corporation (2002) *The Way Forward: Our approach to regulation*, London: the Housing Corporation

¹⁶ Ibid

¹⁷ Paragraphs 3.6b to 3.6f p. IX of Housing Corporation Regulatory Guidance in The Housing Corporation (2002) *The Way Forward: Our approach to regulation*, London: the Housing Corporation

In considering Housing Associations responsibilities to co-operate with housing authorities, when requested to do so by an authority, it should be borne in mind that the Housing Corporation also notes within its Regulatory Code that Housing Association's (HAs) are independent bodies. As such the Housing Corporation expects HAs to have their own allocations policies, which in practice, may differ from those of the housing authority.

Transfer guidance

An official guidance manual on preparing stock transfer bids is published annually by ODPM. This includes a summary of a transfer housing authority's legal obligations in respect of housing functions and the extent to which day to day provision of these services may be contracted out.

Supporting people

Housing Authorities contributions to the *Supporting People* programme will be assessed and reported whether or not they continue to own their own housing stock. The inspection programme for *Supporting People* is being carried out jointly with the Social Services Inspectorate, the Probation Inspectorate and the Housing Inspectorate, who have lead responsibility for this work.

For more information on *Supporting People* see <http://www.spkweb.org.uk>.

Comprehensive performance assessment and housing inspection

Comprehensive Performance Assessment (CPA) by the Audit Commission will assess housing authorities on the operation of their housing allocation, homelessness and housing advice functions, regardless of whether or not the council remains a landlord in its own right and irrespective of whether the delivery of these functions has been contracted out.

All housing authorities will be expected to have developed service standards and monitoring systems regarding the day to day practice of their housing functions. They will also need to account for decisions concerning the delivery of their housing functions within a Best Value framework (see Chapter 3).

All housing associations, regardless of whether they are transfer landlords, are also subject to a regulatory regime which includes periodic inspection by the Audit Commission. The nature and quality of a housing association's relationships with its housing authority partner(s) will form an important part of such assessments. Housing associations also need to be able to demonstrate that they are meeting the relevant regulatory expectations as set out above.

CHAPTER 2

Option Appraisal: the Delivery of Housing Functions

Key issues

Crucial considerations in appraising the post-transfer options of retaining housing functions in-house versus contracting out include the need:

- for the housing authority to ensure that, post-transfer, it can continue to discharge its statutory housing responsibilities and deliver its own housing policies;
- to ensure that appropriate targets can be set for the delivery of housing functions in the post-transfer setting and, if services are contracted out, that these targets (and any related incentives) can be varied appropriately to meet changing circumstances;
- for the housing authority, post-transfer, to maintain the capability to fulfil its strategic housing role (e.g. through access to operational data about housing demand and homelessness in the district) and to continue to make the correct links to its regional housing strategy;
- to strike the right balance between control and efficiency;
- to deliver high quality services to the public;
- to secure local ownership of decisions (e.g. from members) and joint undertakings from partners;
- to ensure that housing functions are delivered in a coherent way that allows appropriate referral on to other relevant services, e.g. referral from the housing advice service to the allocation and/or homelessness services and vice versa, whether or not these functions are delivered by the same organisation;
- to maintain high morale among housing authority staff affected by transfer;
- to avoid irrevocable contracting out decisions.

Overview of post-transfer delivery options

Housing transfer involving the whole of a housing authority's stock has important implications for a housing authority's ability to meet its statutory housing functions and deliver its housing policies.

There is no requirement, or expectation, that housing authorities will contract out housing functions simply because they are transferring their housing stock.

The appraisal of which option to pursue for the delivery of housing functions in the post-transfer setting should be based on a best value review of how these functions are currently delivered. This will be crucial in helping the housing authority to identify the best approach for their particular circumstances. This review should take into account the housing authority's statutory and strategic responsibilities, which apply regardless of stock transfer or contracting out, as well as value for money.

The following sections set out the issues that housing authorities should consider when appraising which post-transfer option would best deliver their statutory and strategic housing functions. The functions that can be contracted out are described in Chapter 1.

It is notable that in many existing transfer cases where allocation and/or homelessness functions have been contracted out, the transfer landlord has usually been appointed as the contractor. However, transfer authorities can contract out these functions to other agencies. A number of housing authorities have, for example, chosen to contract out to transfer associations based in other areas. This scenario can help to avoid potential conflicts of interest where a transfer landlord is carrying out the twin roles of independent housing association and agent of the housing authority.

The various post-transfer options open to the housing authority in delivering its housing functions are:

- continued delivery of all its housing functions in house;
- contracting out part of a housing function;
- contracting out the housing allocation function **or** the homelessness function (in so far as these can be contracted out) to an organisation that may or may not be the transfer housing association;
- contracting out both the housing allocation function and the homelessness function (in so far as these functions can be contracted out) to one organisation that may or may not include the transfer housing association;
- contracting out (in so far as these functions can be contracted out) the housing allocation function to one organisation and the homelessness function to another organisation where either organisation may or may not be the transfer housing association.

In all of these scenarios the housing authority retains responsibility for the delivery of its statutory housing functions and must ensure that it will continue to be able to direct the discharge of these functions in the post-transfer, and/or contracted out, environment.

Option appraisal: key considerations

CONTROL, CONFLICT AND EFFICIENCY

The ability to continue to secure suitable accommodation to enable its statutory housing functions to be discharged is a particularly important factor for housing authorities to take into account when considering stock transfer or reviewing post-transfer arrangements for the delivery of housing functions. This encompasses both the prioritisation of applicants for housing under the housing authority's allocation scheme, according to the criteria set out in Part 6 Housing Act 1996, and discharging the housing authority's homelessness duties under Part 7 of the 1996 Act.

Where functions are contracted out the housing authority will need to ensure that the contract provides for the contractor to deliver its housing functions in accordance with both statutory obligations and the authority's own policies on housing allocations and tackling and preventing homelessness.

One authority's routine monthly liaison meetings with its housing association contractor, to discuss 'problematic' homelessness assessment cases, allow the housing authority to provide 'a steer' as to the correct approach for its contractor to take.

Housing authorities should specify targets and appropriate incentives for the improvement of the functions that their chosen contractor will deliver with clear sanctions where this improvement is not attained. It may also be appropriate to set incentives to encourage good performance in the delivery of services. Examples of broad aims for improvement might include:

- the reduction and prevention of homelessness;
- facilitating settled housing solutions for homeless households and those in housing need (including homeless households) according to the housing authority's allocation scheme;
- minimising the use of temporary accommodation for homeless households.

Retaining housing functions in-house obviously allows housing authorities the greatest degree of control over the delivery and development of these functions. However it may be possible for the contract with the agency or agencies taking over delivery of one or more of the housing authority's functions to clearly specify the on-going role of the local authority. See Chapter 4 for more information on drafting contracts.

PARTNERSHIP WORKING

Effective joint working between housing authorities and their partner housing associations is extremely important to ensure that authorities are able to discharge their statutory housing functions. This becomes even more crucial where a housing authority has transferred its housing stock and is relying solely on nomination agreements with partner housing associations to secure accommodation that will enable the discharge of statutory duties.

Joint working will be most effective where the housing authority and its partners have shared ownership of decisions on operational criteria and policies. When considering contracting out the housing allocation and/or homelessness function to the transfer landlord or other local housing association the housing authority will need to be sensitive to the potential impact of such arrangements on third party housing associations. Where the transfer landlord is nominating households to third party housing associations on the authority's behalf, the goodwill of third party associations may be jeopardised if they feel that there is a 'conflict of interest' between the transfer association's role as agent of the housing authority and its role as a landlord in its own right. One possible solution might be for the contract to specify that the transfer association must maintain a 'Chinese wall' between housing allocation and homelessness functions operated under contract to the housing authority and the housing management functions that are more clearly part of the transfer association's landlord role.

STRATEGIC AND ENABLING ROLES POST-TRANSFER

Housing authorities' strategic role is crucial, regardless of stock transfer. In order to meet their responsibility for assessing local housing need an authority will require data about applications for local authority housing and homelessness assistance. Where these functions are contracted out a housing authority should ensure that they retain access to relevant data.

Housing authorities should also ensure that they have enough staff to effectively deliver their strategic responsibilities. This applies whether or not housing functions are also contracted out. Where the delivery of any housing function is contracted out the housing authority should delegate a senior officer who will be responsible for monitoring the contracted out functions and maintaining links with the contractor. The housing authority should also have a well-specified service level agreement with the contractor that covers all the possible information and monitoring requirements that are likely to arise.

STAFF MORALE AND MAINTAINING A POST-TRANSFER PROFILE FOR HOUSING ISSUES

It is important that elected members and senior management within local authorities recognise that housing authorities retain important housing responsibilities regardless of the transfer of stock. This should be reflected in both the organisational structure of the local authority and the resources that are made available to ensure that statutory housing functions are effectively discharged and a good level of service provided (whether in-house or by an external contractor). Staff morale can also be addressed by early and transparent decisions on which functions are to be retained and by building the profile of these functions within the authority.

IRREVOCABILITY

Where housing functions are contracted out, break clauses regarding unsatisfactory performance should be included in the contracts. These would allow functions to be brought back in-house or re-tendered where service delivery falls below a reasonable standard or there is any other breach of contract.

Where housing authorities have recovered direct control of one or both of the allocations or homelessness functions, having initially contracted these out, this has typically involved a decision not to re-award a contract at the end of its initial term. In at least one case, however, it was achieved through invoking a contract break-clause¹⁸.

Bringing contracted out services back in-house can, however, be a demanding task. There may be difficulty, for example, with re-establishing appropriate IT systems so, whilst a decision to contract out functions may not be wholly irrevocable, it could prove to be very difficult to reverse.

EXCEEDING MINIMUM STATUTORY EXPECTATIONS

A housing authority's decisions about how to structure delivery of the housing functions should be guided by an aspiration to improve the quality of the services being provided. An external organisation seeking to take on an contracted-out service should be expected to 'add value' by coming forward with proposals for service improvement as part of their tender for the service.

ENSURING THAT POLICIES ARE DELIVERED

Post-transfer, housing authorities will need to ensure that their various policies, both strategic and operational, can continue to be delivered. Where functions are contracted out, it is necessary to retain some control over how these are discharged. This may be achieved by ensuring that the contract includes specifications that are sufficiently clear and detailed and that there is flexibility to re-negotiate the contract, if necessary, to reflect any subsequent policy developments.

IMPACT ON RELATED LOCAL SERVICES

Changes to the delivery of statutory housing functions can have knock on effects on other services such as:

- Private sector housing
- *Supporting People*
- Housing Services for people with disabilities
- Housing and support services for refugees and asylum seekers
- Housing Benefits.

Decisions surrounding the arrangements for delivering housing advisory services should be considered particularly carefully. Advice about homelessness, and about housing options available to individuals, plays an important role in helping to prevent homelessness and authorities need to ensure that the advice service provided for them by an external

¹⁸ Audit Commission (2002) Housing Inspectorate report; Elmbridge www.housinginspectorate.gov.uk

organisation is fair, robust and comprehensive and links closely with the housing allocation and homelessness services.

Arranging for advice to be delivered externally may also have a detrimental impact on providing an integrated service to, for example, private tenants living in poor quality accommodation which may call for enforcement action against their landlords and who are, at the same time, looking for a move into social housing. The challenge is to ensure that links between services provided on either side of the boundary are as seamless as possible.

INTER-ACTION WITH EXISTING PARTNERSHIPS

Most housing authorities deliver many of their housing services in partnership with networks of local providers. Key examples of more formal partnerships that may exist prior to stock transfer or contracting-out are:

- Common Housing Registers
- Common Allocation Schemes
- Choice Based Lettings schemes
- Independent networks of housing advice provision
- Homelessness strategy partnerships.

Pre-existing partnerships of this sort are usually a positive advantage to housing authorities in discharging their homelessness, allocations and advice functions after stock transfer.

However, it is important to avoid taking such partnerships for granted. In considering whether to contract out the housing allocation and/or homelessness functions, the council should seek the views of 'third party' housing associations. If services are contracted out, it will be necessary to agree protocols that mitigate any 'conflict of interest' between the transfer association's twin roles of (1) agent of the housing authority and (2) landlord in its own right.

In considering whether to retain services in-house or contract out, it would also be unwise for the housing authority to place too much reliance on existing partnerships that had been established for a different purpose. As a bare minimum, housing authorities should use transfer contracts to provide for these duties to be met in a different way should existing partnerships fail to continue (see Chapter 4 for more detail on drafting contracts).

One authority used its selection as a choice-based lettings pilot to co-ordinate with the two existing stock transfer landlords and other housing associations through an independent partnership agency, a partnership between the Council, two earlier stock transfer landlords, two other associations and the new transfer landlord H.

The nominations deed provides for 75 per cent of the company's lettings to go to Council nominees, including homeless and other households in housing need (defined in the deed as 'people on the housing authority's waiting list'). The Agency will operate a Common Housing Needs Register so long as both the Council and H remain as participating partners. This means that H is required to input most void properties to the Agency which prioritises applicants and allocates dwellings. However, in the event of the Agency being wound up, H will still be required to nominate 75 per cent of lettings.

Local context

Decisions about whether to retain delivery of the housing functions in-house or to contract out need to take account of local circumstances such as:

THE FORM OF THE TRANSFER

Stock may be transferred to a single housing association, a number of housing associations linked within a group structure, or to two or more associations that are independent of each other. The form the transfer takes may influence the housing authority's decision as to which organisations might be suitable contractors, if services were to be contracted-out.

However, where a housing authority has decided that contracting out would be an appropriate option for delivery of some or all of its housing functions it may contract out the delivery of these functions to any appropriate body – it does not necessarily have to be to the transfer housing association.

A small number of housing authorities have engaged contractors other than the transfer landlord. This has the potential advantage that such agencies can deliver the housing functions independently of any landlord interests. They may also develop specialist skills and expertise and could potentially exploit economies of scale to develop higher specification IT systems by spreading costs over a number of contracts.

A Housing Association that was operating two 'out-of-authority' contracts for housing services for different housing authorities had tendered for a third contract. They saw this as a developing market characterised by increasingly genuine competition, partly resulting from transfer housing authorities' need to satisfy Best Value requirements in the course of service reviews.

This HA sees itself as having developed a specialism, putting it in a strong position to bid to take on further contracts with other stock transfer housing authorities. A key factor is the ability to adapt the association's IT system to achieve compatibility with the systems of partner housing authorities and housing associations. Experience from their first contract with a District Council is said to have shown the benefits of being a 'third party' organisation, free of the potential conflicts of interest that can be experienced by transfer landlords that are also contracted to deliver housing functions on behalf of the transfer authority. Without a substantial local stock management responsibility it can be easier for a contractor to focus on its role as an appointed agent of the housing authority.

However, potential problems can still arise from the need to act on the housing authority's behalf in making nominations to other partner associations – particularly where relations with key local landlords may have been strained as a result of the competitive tendering process. As such the housing authority needs to provide firm backing for any external contractor that is acting as its agent in this role.

THE CONFIGURATION OF THE LOCAL HOUSING SYSTEM

The way the housing allocation, homelessness and housing advice functions are being delivered prior to transfer should be the starting point for considering how they should be delivered post-transfer. Reviewing how effectively these housing functions are currently being delivered, and the quality of the services being provided, can also be an opportunity to restructure a 'failing' or otherwise unsatisfactory service.

Where the housing authority is a party to some form of joint allocation scheme (eg. choice-based lettings scheme (CBL), common housing register, (CHR) or common allocation scheme (CAS)), it will also need to consider the impact on the scheme of deciding to retain services in-house or to contract-out. Where a housing authority decides to continue with existing joint arrangements it will need to continue to play an active part in the on-going operation of such services in the post-transfer environment.

In any situation involving partnership working in delivering allocations, (e.g. CBL, CHR and CAS) it is important that the housing authority has (and retains) the ability to monitor nominations to the transfer landlord and to other partner housing associations.

LOCAL HOUSING MARKET CONDITIONS

Planning or reviewing the post-transfer delivery of housing functions also needs to take account of the characteristics of the local housing market – for example, the level of homeless applications and demand for social housing relative to social housing supply will be relevant factors.

Where stock is transferred a nominations agreement is crucial in clearly setting out, for both the housing authority and the transfer landlord, the minimum level of co-operation that is required from the transfer landlord in the housing of nominees and clarifying the basis on which nominations may be refused. This applies whether or not any of the statutory housing functions are contracted out.

Whilst nomination agreements in place prior to transfer might continue to be appropriate, it is likely that any existing agreement with the transfer association would need to be renegotiated to reflect the new post-transfer circumstances. This may be to secure an increase in the proportion of lettings that will be made available for nominees of the housing authority and to agree the criteria, if any, that the transfer landlord will apply regarding the refusal of nominations from the housing authority. Both these issues are crucial to the effective delivery of a housing authority's statutory housing functions.

CHAPTER 3

Making the Decision

Key issues

- Make early and informed decisions on how housing functions are to be delivered. Ideally this should be based on a Best Value review conducted around the time of the authority's initial investigation into investment options for the delivery of the decent homes target and independent of the decision to transfer stock.
- Plan ahead and build in scope for monitoring and for continuous improvement.
- Focus on staff issues as well as customer benefits and ensure good communication is maintained.
- Where changes are proposed, interim arrangements should be made to maintain the service during the change process.
- Adequate time should be allowed for a methodical, step by step approach to making the decision whether to retain in-house or contract out delivery of the statutory housing functions.

Overview of decision making process

It is crucial that a housing authority's decisions regarding the post-transfer delivery of its statutory housing functions are based on careful consideration of its:

- continuing responsibility for ensuring that its statutory duties are discharged;
- strategic responsibilities such as preparing housing strategies based on its review of housing conditions and needs in its district (see Chapter 1);
- continuing need to ensure the effective delivery of its own housing policies and its ability to respond to any central Government policy initiatives; and
- Best Value review of the current delivery of these functions¹⁹.

This chapter outlines the other factors that should be considered in making these decisions and managing the process.

¹⁹ See Annex D for details of the principles of best value reviews and the stages in reviewing the delivery of currently contracted out services.

WHO SHOULD MAKE THE DECISION

It is important that a senior member of the housing authority's management team, who will be remaining with the authority after the stock transfer, is assigned responsibility for considering the arrangements for the post-transfer delivery of housing functions. They should be supported by expertise from other departments within the housing authority and, where appropriate, by external consultancy advice. This will help ensure that decisions take into account the housing authority's continuing housing responsibilities. This approach may also provide the basis for a well informed in-house team after the transfer of stock.

Decisions on the post-transfer delivery of statutory housing functions should not be left to consultants, whose key priority will be to deliver the transfer deal or to the transfer housing association whose interests may differ from those of the housing authority.

WHEN SHOULD THE DECISION BE MADE

Initial decisions on the best arrangements for delivering housing functions in the post-transfer setting should ideally be made on the basis of a Best Value review conducted around the time of the housing authority's initial investigations into its future investment options for the delivery of decent homes²⁰.

The Audit Commission has suggested that the immediate pre-transfer period is the worst time to consider future arrangements for the delivery of statutory housing functions²¹. There is a risk that decisions made at this time may be based on an inadequate appraisal of the options due to the competing priorities involved in delivering the transfer itself.

KEY FACTORS IN MAKING THE DECISION

Wider experience in achieving Best Value in housing services also suggests that the option to contract out the delivery of housing functions should only be considered where:

- there is a clear specification and costing of the existing service;
- there is good information about potential suppliers;
- the local authority has good contract management skills.²²

A clear service specification

An early Best Value review of the current delivery of its housing functions will place the housing authority in a more informed position in relation to the cost and quality of existing services. This then allows a robust service specification to be developed (see Chapter 4 for more details of the service specification as part of the contract drafting process).

²⁰ See ODPM (2003) *Delivering Decent Homes – Option Appraisal* available online at www.odpm.gov.uk/housing

²¹ Audit Commission (2002) *Housing After Transfer – the local authority role*

²² see Walker et al (2000) *Evaluation of the HA Best Value Pilots*. Housing Corporation, London

The specification can then be used to set the housing authority's key requirements for future service delivery and will help inform the decision on whether to contract-out any services or retain them in-house.

Key features of a service specification include:

- Costing existing services
- Setting performance indicators to achieve quality improvements
- Placing an underlying responsibility on the contractor to control temporary accommodation costs
- Setting a requirement for the service to demonstrate continuous improvement
- Providing for regular reviews and performance reports.

Knowledge of the contractor market

In order to gain better knowledge of the market of potential contractors it should be possible for housing authorities to undertake market research on third party agencies who are currently providing these services on behalf of other housing authorities.

This will place the housing authority preparing to contract out any of its services in a more informed position when it considers any offers to deliver its housing functions that are made by either the proposed stock transfer landlord or other contractor.

Contract management

Housing authority staff will need to monitor any contracted out services to ensure that the authority's statutory functions are delivered effectively and that it can continue to meet its strategic and enabling obligations.

The housing authority may be able to link its housing department with other departments that have contract management expertise in order to ensure that it can effectively monitor any contracts for the delivery of its statutory housing functions. One case study authority adopted this approach by using its experience of contracting out other services to develop a post-transfer monitoring system for its housing services and to link this to its regeneration and private sector housing activities.

Change management

The Community Housing Task Force is producing a variety of materials to assist housing authorities and transfer landlords in the change management processes involved after transfer. These include a briefing paper on managing change and a change management self-assessment tool ²³.

Local authority corporate sign-up to its continued statutory and strategic housing roles is crucial in post-transfer authorities. This is evidenced by the Government's strategy *Sustainable Communities: building for the future*²⁴ which requires 'fit for purpose' housing authority housing strategies to contribute to regional and sub-regional strategies.

²³ These resources may be found at the CHTF Driving Change in Social Housing website: www.odpm.gov.uk/housing/chtf

²⁴ ODPM (2003) *Sustainable communities: building for the future* available at www.odpm.gov.uk

FOCUS ON STAFF ISSUES

While the key focus of these changes should be on customer benefits it is also important to focus on staff issues. The Audit Commission has highlighted the importance of staffing arrangements in post-transfer housing authorities and this chapter has noted that there should be a senior housing authority official with a lead responsibility for housing matters both during and after the transfer period.

Housing authorities that undertake early Best Value reviews will be able to provide staff with a clear picture of which functions are likely to be retained and which services may be contracted out. This enables early identification of posts to be protected under TUPE arrangements and minimises morale dips through uncertainty. Staff remaining with the authority should be involved in thinking through what will change and how they will maintain and improve services through the transfer period. Where this good practice is not followed there can be a failure to recognise legitimate differences of interest between the housing authority and the transfer landlord.

INTERIM MANAGEMENT ARRANGEMENTS

As soon as the housing authority has decided how its statutory housing functions will be delivered, planning needs to start on managing the relationship between housing authority staff and staff working for the other organisations, such as the transfer landlord, that it needs to liaise with after transfer.

This process should start before transfer by encouraging staff at all levels to think through and discuss the implications of the proposed new structures for the operation of their own roles.

The most successful transfer relationships have been built on specific measures to maintain communication between the staff involved on 'either side of the fence', rather than a reliance on the continuance of trust based relationships that may have built up over the years between staff working in the same department.

Where it is decided to contract out any statutory housing functions, it will be important for the housing authority to identify which staff will be responsible for ensuring compliance with its statutory duties. These staff will need to develop effective working relationships with staff working for the transfer landlord (and the contractor where this is not the transfer landlord) as well as any other partner organisations. A key issue for transfer housing authorities is how to maintain and build trust and good communications between these organisations during and after the transfer process.

Through regular meetings between the staff involved and the introduction of joint training it should be possible for the housing authority, the transfer landlord and any other relevant parties to maintain a joint commitment to the continuous improvement of services.

HOUSING BENEFIT ADMINISTRATION

Housing benefit administration is a key issue in preventing homelessness. Housing authorities need to give priority to ensuring that housing benefit administration is well run after transfer. This can be worked towards by:

- agreeing and meeting timescales for housing benefit claims and payments; and
- by providing training for staff in each partner agency to ensure accurate and timely housing benefit claims are made.

Transfer landlords should also give priority to developing effective relationships with the housing authority's housing benefits section.

CHAPTER 4

Drafting Contracts for the Delivery of Housing Allocation and Homelessness Functions

Key contract issues

- Relationships between housing authorities, housing associations and other service providers need to be formalised and documented. Plain English working protocols for operational staff should supplement these formal documents. Nominations agreements form a crucial part of this documentation.
- Specifications for contracted out services should avoid uncritical use of ‘off the shelf’ documents.
- Contracts need to specify detailed service standards, performance indicators, targets and monitoring requirements.
- Contracts should provide for access to operational data required by the authority to fulfil its strategic responsibilities (e.g. reviews of homelessness, and assessment of housing needs in the district).
- Contracts need to specify procedures for reviewing the contract and altering it in response to policy or legislative changes and, if necessary, the termination of the contract in relation to poor performance.
- A housing authority will also need to ensure that contract remuneration allows for possible changes in service demand, as well as for inflation.
- Contract fee structures should be designed to encourage ‘good performance’.
- Nominations agreements are relevant to all transfer scenarios and should include clear dispute resolution procedures and arrangements for nominations to third party housing associations.

General principles

Relationships between housing authorities and other parties should be formalised for a number of reasons including to:

- ensure that all parties are clear about their respective obligations;
- establish standards against which performance can be assessed;
- avoid over-reliance on personal relationships to make liaison between the organisations work effectively since staff turnover following transfer can lead to these relationships being lost.

There is a case for two sets of documents – one that sets out the formal requirements of the contract between the parties and a supplemental document drafted in plain English which details the day to day operational procedures which should be followed by front line staff.

Contracts for the delivery of housing functions

DEVELOPING A CONTRACT SPECIFICATION

Specifying services to be contracted out traditionally involves an activity analysis of all the tasks carried out within the scope of a particular service. Although ‘off the shelf’ specifications are available through consultants or other housing authorities that have contracted out services, these should only be used with caution and should be appropriately tailored to the individual housing authority’s particular needs and circumstances.

If it is decided to market-test the in-house provision option against external competitors, it will be necessary to draw up contract specifications for each of the services to be tested.

The following points should be considered:

- There may need to be some linkage between achieved performance and contractor fees (e.g. it may be advisable to provide an incentive for any external contractor to minimise the costs of temporary accommodation for homeless households).
- Provision must also be made for action to be taken in the event of seriously unsatisfactory contractor performance – e.g. circumstances that would justify invoking a contractual break clause.
- A specification regarding delivery of the housing allocation function will need to include a requirement for the contractor to act on the housing authority’s behalf in making nominations to ‘third party’ social landlords. It is important that this function is seen by these ‘third party’ landlords to be undertaken impartially and without reference to the contractor’s own landlord interests (if any).
- All specifications for the delivery of housing functions will also need to:
 - make clear that the responsibility for policy in relation to the contracted out function(s) rests with the housing authority;

- provide for the provision of data necessary to enable the housing authority to monitor delivery of the service;
- define which party has responsibility for the submission of statutory or regulatory returns relevant to the service (e.g. CORE, PIE);
- require continuous improvements to the service, including consultation with users and refinements of contractual terms.

Whilst consultants may have a role in drawing up service specifications and any ensuing contracts, it is important that the housing authority and its partner(s) have control over the drafting. This should include the direct involvement of the staff who will be responsible for delivering the operation of the finalised agreements.

Under the Best Value framework it is also important for other stakeholders, such as council members and housing management staff, to be involved in service specification. Representatives of tenants and residents should also be involved in the process, along with voluntary agencies that advise or advocate on behalf of housing applicants.

ADDITIONAL CONTRACT CONTENT

As well as covering the factors outlined in the previous section any contract for delivering the housing allocation or homelessness functions will also need to include:

- **specified service standards** – e.g. office opening hours; any required outside office hours service, requirement for appointments system, maximum applicant waiting times;
- **performance indicators** – e.g. length of stay in temporary accommodation;
- **performance targets** – e.g. average time taken to reach a decision on homelessness cases and how performance against each target is to be measured.

CONTRACT LENGTH

Contract terms for the delivery of housing functions have in the past tended to be set at 5 years. Contracts should, however, include the following provision for review:

- an initial review of services after around 12 months of operation. This should expose any unsatisfactory or unrealistic features of the formal contract specification that can then be resolved;
- an interim review of service delivery within an agreed timescale;
- a review of performance prior to expiry of the contract and any discussion regarding renewal of the contract.²⁵

²⁵ see annex D for a process map regarding reviewing existing contracts for service delivery

Such review should be unproblematic where the contract specification has included adequate provision for monitoring the contractor's performance. Where, on reviewing the delivery of contracted out functions, the parties are mutually agreed that there are good reasons for practice having diverged from that specified in the contract, it is recommended that contracts are modified to reflect this.

In addition to allowing for a routine 'interim review' of its terms, any contract of this kind also needs to incorporate a 'break clause' to allow for the pre-expiry withdrawal of either party in specified circumstances, such as continued poor performance.

Contracts also need to include provision for modification in the event of changes in relevant legislation, regulatory requirements or policies. This may be delivered by a clause that specifies the process to be followed where a party to the contract requires a change. The clause could involve the party requiring the change:

- to set out their proposals for change, including estimating their impact on the financial and service provision terms of the contract; followed by
- the contractor working up a detailed proposal to bring the proposed change into effect; and
- the discussion and agreement of the proposal between the housing authority and contractor prior to its agreed implementation.

MONITORING ARRANGEMENTS

Clearly specified performance indicators and targets should form the basis for the monitoring regime which needs to be built into any contract. These should be consistent with information required for official returns (e.g. BVPIs, HIP, PIE returns). The monitoring system should include monitoring the outcomes of the contractors decision making on individual cases, as well as the implementation and impact of wider policy to ensure that it fits with the housing authority's priorities and needs.

Frequent monitoring is essential for this process to work effectively. In many cases a quarterly reporting period and meeting cycle has been adopted. Where necessary this can also be supplemented by more regular 'exception' reporting (e.g. in relation to nominations not accepted for reasons of eligibility or suitability)²⁶. This enables problems to be highlighted, raised and addressed early on without the danger of the local authority being accused of being too hands-on.

Monitoring should include recording:

- the numbers of households who are successfully housed as a result of nomination to the transfer landlord or other partner housing association;
- the homelessness status of nominees, i.e. whether they are statutory homeless; and

²⁶ Specific guidance on how to define 'local authority nominations' for monitoring purposes is included in the Housing Corporation's CORE guidance manual.

- the number of failed nominations, i.e. those households who would have been successfully housed according to the housing authority's allocations criteria but who fail to be housed because they do not meet the transfer landlord's (or other partner housing association's) own eligibility criteria. This should include recording of the specific reason for failure of the nomination.

Depending on which housing functions are contracted out housing authorities are also likely to need access to operational data on homelessness, allocations and related housing demand issues. Such provision would allow the housing authority to be sure that its contractor was effectively delivering its statutory obligations.

The nomination process can be monitored on three levels:

- Monitoring of each nomination.
- Monitoring of the transfer landlord's allocation procedure to ensure that it remains in line with the policy of the Council.
- Quarterly review of nominations outcomes.

In addition it should also be made clear which organisation is required to maintain systems for gauging consumer satisfaction in relation to services provided.

In all of this there is a need to consider ICT system implications such as which organisation should take responsibility for maintaining and upgrading systems and who should hold the user licence.

CONTRACT REMUNERATION

Ideally, contract fee structures need to be carefully and realistically constructed. Allowances need to be made, not only for inflation, but for possible changes in workload volume. The absence of any allowance for changing demand in the fee structure leads to pressure to reduce service standards.

One transfer housing authority's 2001 contract specification provided potential tenderers with data on recent workload volumes in the three service areas concerned and requested that tender prices be calculated on this basis. It allowed for the possibility of increased (or reduced) future service use (in relation to allocations and homelessness). Should measured workload volumes fall below 80 per cent or above 120 per cent of benchmark volumes, a revised fee would be negotiated.

Wherever possible, fee structures should provide incentives for performance improvement. In the case of the homelessness function, for example, it should be possible to devise ways for a contractor to share in the benefits of any efficiency savings achieved through minimising expenditure on the provision of temporary accommodation. This should help to protect the housing authority's financial interests and is consistent with a 'partnering' rather than adversarial style of client-contractor relationship, in tune with the spirit of the Egan report²⁷.

27 Construction Task Force (1998); *Rethinking Construction* – the Egan Report; London: DETR

Nomination agreements

It is crucial for the housing authority to have a nomination agreement with all of its partner housing associations, including the transfer landlord. The nomination agreement that the housing authority has with its transfer landlord should form a key part of the contract for the transfer of stock. General good practice guidance on nominations is available²⁸.

Where a contractor's role will involve making nominations to third party housing associations on behalf of the housing authority, the relevant functions that the contractor is delivering on behalf of the housing authority will need to be clearly defined in the contract for the delivery of these services (see below). Such contracts will need to encompass procedures ensuring that 'third party associations' are fairly treated, as well as mechanisms to monitor the adherence to such procedures. They will also need to include details on responsibilities for monitoring the 'nominations performance' of third party associations.

Generally, nomination agreements should cover policy issues such as:

- definition of a 'net let' (or 'true void');
- a nomination entitlement figure (or a range of figures applicable to different circumstances) expressed as a percentage of net lets (or true voids);
- the respective roles of the housing authority and housing association in terms of selecting and prioritising applicants;
- the allocations policy under which nominations will be made and who has responsibility for any changes to this policy;
 - the housing authority will need to be sure that any 'common' allocation schemes that it is party to are compliant with the requirements of Part 6 Housing Act 1996;
- the agreed method for identifying and counting referrals to housing association partners as a nomination and for counting such nominations;
- grounds for the refusal of nominations by partner housing associations and a dispute resolution mechanism where the housing authority and its partner housing association disagree.

Nomination agreements should also include operational matters such as:

- the nominations process – e.g. whether 'applicant-led' or 'vacancy-led';
- the number of nominees to be referred for each notified vacancy (under a vacancy-led system);
- the information about vacancies and nominees to be supplied by the respective parties;

²⁸ See Chartered Institute of Housing (2002); Housing Standards Manual; Coventry: CIH; Parker, J. and Stirling, T. (1995) *Seen to be Fair: A Guide to Allocations*; Cardiff: Housing Management Advisory Panel for Wales; School of Planning & Housing (1997); *Nomination Arrangements: A Guide to Good Practice*; Edinburgh: Scottish Office and Levison, D. and Robertson, I. (1989); *Partners in Meeting Housing Need*; London: ALA/LBA/NFHA.

- agreed procedures for the acceptance and rejection of nominees;
- agreed timescales for each stage of the process.

It is important that potential problems regarding the refusal of nominations are openly discussed between housing authorities and housing associations and that a range of options is developed to enable such issues to be resolved. The following examples provide some illustration of how these issues have been resolved in other authorities:

Nomination procedures and protocols:

One authority's nomination agreement with its transfer landlord contains a homeless nomination protocol which forms a procedure to be followed in the event of a homeless nominee being considered by the association as possibly in breach of its eligibility criteria. The procedure provides for the association, within a given timescale, to request more detailed information about the applicant. If, having received this information the association wishes to decline the nomination, the case must be referred to an Appeals Panel on which both the Council and the transfer landlord are represented but where an independent chairman has a casting vote. A panel recommendation for the transfer landlord to accept the nominee is final.

Nominee support needs:

In one authority, where the District Council (DC) continues to carry out homelessness assessment and CHR management post-transfer, the transfer housing association felt that the most common reason for nominee rejection involved 'unsupported vulnerable' applicants.

To counter this problem the transfer association has now become party to an information sharing protocol involving the DC's housing service, as well as County Social Services and others. This has helped to defuse such problems by ensuring common access to information on applicants' vulnerability and medical and/or offending history. The situation has also been eased through the association bringing in a voluntary organisation to provide floating support and by a more active involvement on the Council's part in making arrangements for the provision of support.

Nominee rent arrears:

One authority has developed an innovative scheme, in partnership with local housing associations and a credit union to assist statutory homeless families unable to access settled social housing due to former tenancy debts, to acquire a sustainable social housing tenancy.

The scheme, involves the Credit Union, the CAB, Housing Associations and the Local Authority.

It aims to provide a constructive and innovate opportunity to facilitate the successful housing of a vulnerable client group, preventing long term homelessness, and reducing the financial and emotional costs of keeping families in temporary accommodation.

Under the scheme:

- The homeless person obtains a loan to the value of one third of the rent arrears from the Credit Union, payable to the housing association to whom the arrears are owed.
- The Authority 'underwrites' or guarantees the loan from the Credit Union and 'matches' the loan payment with a grant equal to a further third of the debt to the housing association.
- The housing association 'writes off' the final third allowing the homeless person to be considered for their accommodation.
- The homeless person agrees to money management/budgeting advice from the CAB, and tenancy support from the housing association to prevent repeat homelessness.

Initial projections indicate that there will be longer term savings for the housing authority and for the participating housing associations, if the scheme is successful.

CHAPTER 5

Partial Transfer Issues

Key issues

- Housing authorities planning partial transfers should refer to past letting patterns and carefully consider the possible implications for any loss of housing resources arising from partial transfers.
- Partial transfers often reduce housing supply as a result of decanting requirements, and frequently as a result of addition agreements enabling the landlord to change the social mix of the community by letting outside of needs based criteria.
- Housing authorities should monitor any partial transfer housing association's 'holiday period' letting activity.
- Annually agreed lettings plans can have the advantage of enabling a housing authority to retain greater control over the situation than nominations holidays.

The fundamental nature of the repair and modernisation work that is often required in the partial transfer context makes it likely that tenants will need to be decanted to a temporary home while the investment programme is carried through. The terms of many existing partial transfer agreements involve transfer landlords undertaking community regeneration activities of various kinds²⁹.

These issues have implications for the housing authority's post-transfer agreement with the partial transfer landlord. Since partial transfers are usually to existing housing associations with their own established lettings practices a clear nominations agreement is crucial in setting out the responsibilities of the partial transfer landlord in helping the housing authority to discharge its statutory housing functions.

One approach to the acknowledged need to make provision for a transfer association's decanting requirements is to allow a 'nominations holiday'. One London borough effecting a series of partial transfers adopted this as standard procedure. Transfer associations were allowed a five-year relaxation from the extremely demanding nomination regime normally applicable to associations operating in the authority. There is a clear logic to scheduling the 'holiday period' to coincide with the planned development programme. After the expiry of the holiday, the expectation is that arrangements will revert – through a transitional 'high nominations' phase – to a system similar to the standard for non-transfer associations.

²⁹ HACAS Chapman Hendy (2002) *Beyond Bricks and Mortar: Bringing Regeneration into Stock Transfer*; Coventry: Chartered Institute of Housing

Whilst it may be appropriate to agree transitional special nominations arrangements to stock owned by a partial transfer landlord the longer-term need for administrative simplicity suggests that arrangements should revert to those applicable to other associations in the locality within a clearly specified time frame.

Gauging the potential impact of partial transfers

In planning a partial transfer, particularly where this is likely to form part of a larger programme, it is important for a housing authority to look ahead to estimate the potential impact of the scheme on its housing resources. In making such an assessment, a housing authority will need to analyse past housing patterns. It will also need to take account of the fact that, where a partial transfer scheme succeeds in reviving the popularity of a formerly stigmatised estate, this will impact on the ‘value’ of vacancies arising there.

It is important to consider the potential cumulative effects of successive partial transfers. Formal agreements concerning nominations are required even in low demand areas.

Making provision for decanting needs

Possible approaches to facilitate a partial transfer landlord’s decanting needs include:

- adopting standard agreements as operated in conjunction with existing ‘mainstream’ associations – if these contain provision for decanting;
- allowing a time-limited ‘nominations holiday’;
- limited, monitored relaxation of standard nominations expectations.

USING STANDARD AGREEMENTS

In some cases, standard nomination agreements may make provision for an association’s occasional need to decant tenants. In its accord with a partial transfer landlord, one London borough, for example, simply adopted its standard agreement. This understanding allowed the association a free hand to top slice all vacancies needed as decant accommodation, whilst being expected to invite nominations to 75 per cent of remaining vacancies.

‘NOMINATIONS HOLIDAYS’

In the operation of ‘nominations holiday’ arrangements a distinction can be drawn between initial and subsequent lettings to reflect the view that, in the immediate aftermath of the development programme, the attractiveness of the estate may be at a peak.

The flexibility permitted by ‘holiday’ arrangements can afford the partial transfer landlord a potential opportunity to implement measures aimed at achieving more ‘balanced communities’. This may be an attractive proposition for some estates earmarked for partial transfer³⁰. It might involve, for example, seeking to draw in key workers to increase the employment rate of the tenant population as in the following example:

Under its 1999 acquisition of former Hackney LBC stock, **Sanctuary HA** took on 1,153 homes in South Hackney. Subsequently, local lettings policies have been developed in response to the views of local tenants and area committees. These include the earmarking of 24 per cent of vacancies – particularly bedsits for which there is relatively little demand from Council nominees – for ‘key workers’ such as police, nurses and teachers. Scope for such an experiment is afforded by the temporary relaxation of standard nomination expectations which has been agreed between Sanctuary and Hackney. The Council, for its part, believes that the policy has merits and accepts that it is strongly supported by local residents. In determining whether to endorse the continued operation of the scheme, however, the Council has to balance these arguments against the continuing pressures to house other priority groups.

Within these arrangements the partial transfer landlord must still comply with the Housing Corporation’s regulatory requirements.

A third argument in favour of relaxing nomination expectations – perhaps through a ‘holiday agreement’ – is that this can allow greater flexibility for the transfer landlord to effect intra-estate moves to resolve overcrowding and underoccupation.

Finally, where the quid pro quo for a ‘nominations holiday’ is for a post-holiday boost to a housing authority’s nominations entitlement, this may be an attractive package for the authority because it will provide them with special access to vacancies at just the point where sustained investment should have transformed an estate’s popularity.

Nominations holidays carry the risk of potential conflict when a housing authority attempts to recover control. The cumulative impact of agreed nominations holidays where a housing authority is involved in several partial transfers may be significant. To make the process of regaining nominations after a holiday period a housing authority needs to carefully monitor lettings during the holiday period. A ‘holiday exit strategy’ also needs to be planned well in advance of the expiry date.

LIMITED RELAXATION OF STANDARD NOMINATIONS AGREEMENT

An annually negotiated lettings plan, agreed between the housing authority and its partial transfer landlord partner, maybe an alternative to a ‘nominations holiday’. The association would be expected to make a case for proposed departures from standard nominations expectations. Under such an approach, a housing authority might offer direct help to its transfer landlord partner through provision of decant accommodation as in the following example:

³⁰ London Housing Federation (1999); *Great Expectations: Managing Local Authority Estates After Transfer*; London: National Housing Federation

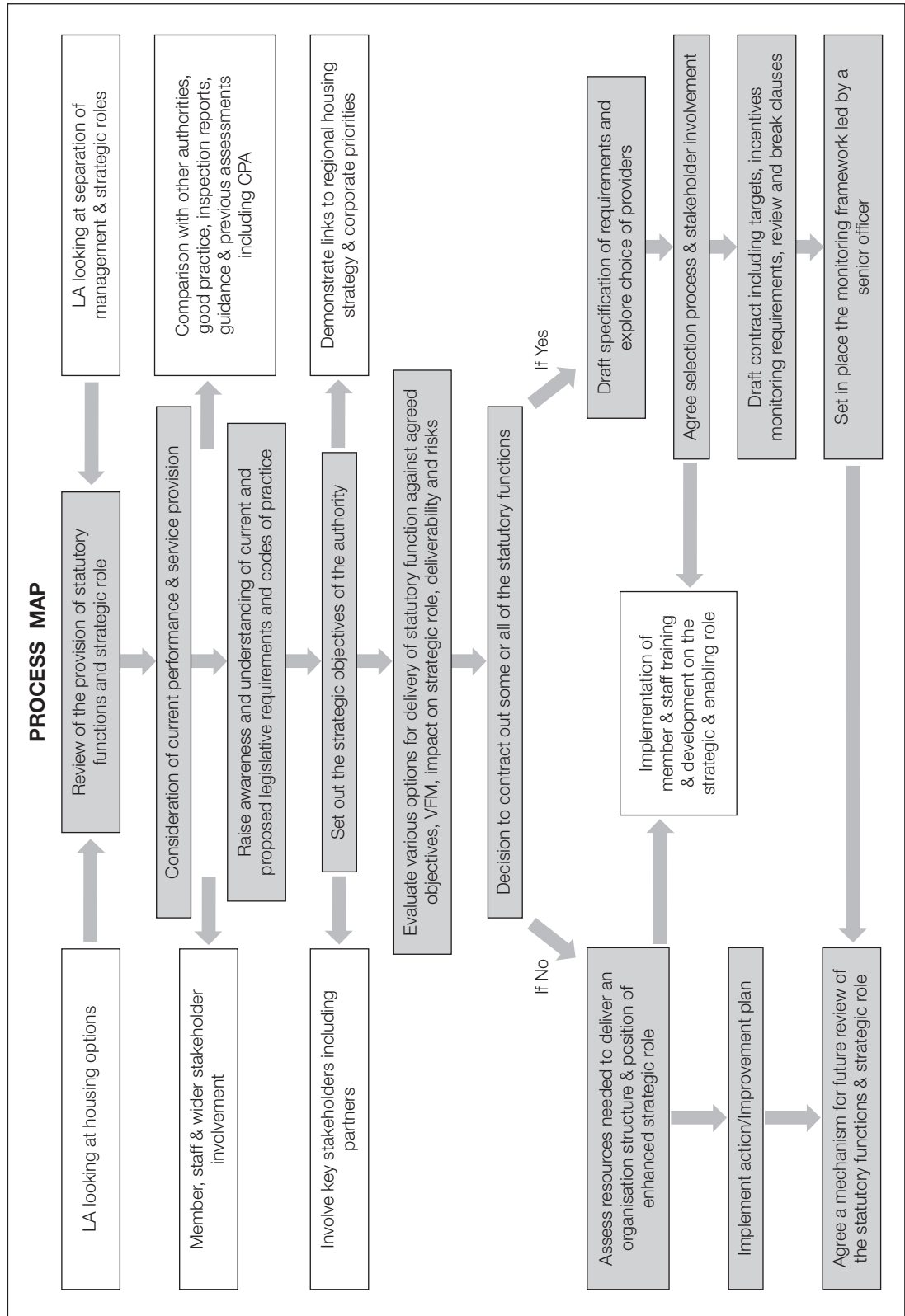
Greenwich LBC transferred some 1,280 homes to **Charlton Triangle HA** in 1999. These included around 200 units scheduled for demolition and replacement. To assist the association in delivering this element of its business plan the Council agreed to accommodate tenants decanted from the cleared blocks. The tenants concerned were to be offered permanent tenancies elsewhere in Greenwich, with an option to take up a tenancy in the new housing being developed as part of the programme. In addition, Greenwich agreed to provide for the association's decanting needs in connection with the planned refurbishment/replacement of a body of ORLIT homes. With these specific exceptions, the Council's nominations arrangements with Charlton Triangle are the same as those with established housing associations. Under these, CTHA is expected to make its own internal provision for other decanting and transfer requirements, and to make available the bulk of its net vacancies for Council nominees. In making its demolition decant offer, the Council took the view that this would provide re-assurance for tenants and so help to facilitate a positive outcome in the transfer ballot.

OFF-SITE ASSOCIATION PROVISION

Where a partial transfer involves an existing housing association, or a newly-established body highly integrated within a group structure, it may be possible for the association to facilitate decanting by off-site lettings within its own stock. For example, **Pollards Hill HA** (Merton LBC) was able to offer some of its decant tenants the option of vacancies in Moat HA (group parent) accommodation outside the immediate area. For the households concerned, this broadening of housing options may well have been seen as very welcome.

APPENDIX A

Option Appraisal Checklist



APPENDIX B

Useful Reading

- Aldbourne Associates (1996); *Vision Into Reality: The Role of Transfer Authorities as Enablers*; Swindon: Aldbourne Associates
- Audit Commission (2002); *Housing Services After Stock Transfer*; London: Audit Commission
- Audit Commission (2003); *Homelessness, Responding to the New Agenda*; London: Audit Commission
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APPENDIX C

Methodology and Case Study details

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Evidence base

This Guide draws on literature reviews, key player interviews and case study evidence from a range of sources. The majority of the examples referred to in the text were drawn from one of three recent projects commissioned by ODPM and by the Housing Corporation³¹. Some additional examples have been obtained from Audit Commission publications³² and Housing inspection reports (www.housinginspectorate.gov.uk). A fuller description of the methodology and case study examples follows. We are grateful to all case study local authorities and housing associations for this material.

Literature review, issues checklist and key player round table discussion

The first stage in the production of this guide was to prepare an 'issues checklist' drawing on the existing literature on stock transfer, access to housing and Best Value (see Appendix B for sources). This checklist was intended to model the decision process of authorities preparing for stock transfer and undertaking subsequent reviews of their access to housing arrangements and thereby to identify the scope of this guidance. The checklist was tested by round table discussion with the relevant divisions of the Office of the Deputy Prime Minister (HHM, Homelessness Directorate, HAPF and CHTF) together with representatives of the Housing Corporation and Audit Commission. The modified issues checklist was then used to review existing case study evidence and was developed as a topic guide for ten additional case studies undertaken to cover newly emerging stock transfer practice. Details of the case study authorities and associations are shown below.

³¹ Pawson, H., Levison, D., Third, H., Parker, J. and Lawton, G. (2001); *Local Authority Policy and Practice on Allocations, Transfers and Homelessness*; London: DETR

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Mullins, D, Pawson, H and Rowlands R (2003) *Housing Allocations, Homelessness and Housing Advice Services After Stock Transfer: A Guide to Good Practice*. ODPM.

³² Audit Commission (2002); *Housing Services After Stock Transfer*; London: Audit Commission

Audit Commission (2003); *Homelessness, Responding to the New Agenda*; London: Audit Commission

Before work commenced on this Guide, summary guidance was produced for inclusion in the annual stock transfer guidance for local authorities³³. This appears as Section 1.5 and Annex V of the Guidance.

Reviewing existing case study evidence

(I) LA POLICIES AND PRACTICES ON ALLOCATIONS, TRANSFERS AND HOMELESSNESS – PUBLISHED BY DETR, 2001

This study, carried out in 1999/2000, included a postal survey covering both stock transfer LAs and their HA counterparts. The three case studies focusing on transfer LAs were particularly informative. The research report included a specific chapter on the stock transfer scenario.

Name of Local Authority/Housing Association	Type of stock transfer
Allerdale DC/Derwent & Solway	Whole stock transfer to subsidiary of existing housing association
Hertsmere DC/Ridgehill/Aldwyck	Split stock transfer
Swale BC/Amicus Housing Group	Whole stock transfer (transfer landlord now subsidiary of Group Structure)

(II) CHANGING PLACES: HOUSING ASSOCIATION POLICIES AND PRACTICES ON NOMINATIONS AND LETTINGS – FUNDED BY THE HOUSING CORPORATION AND PUBLISHED BY POLICY PRESS IN 2003

This study, published by Policy Press in 2003 also included a postal survey covering all whole stock transfer housing associations as well as some of the larger partial transfer landlords. Six case studies focused on whole stock transfers in a range of different circumstances, while two included some partial transfers. The report included a specific chapter on the implications of stock transfer.

Name of Local Authority/Housing Association	Type of stock transfer
Calderdale/Pennine 2000	Whole stock transfer
LB Richmond/Richmond Housing Partnership	Whole stock transfer
Sevenoaks DC/West Kent	Whole stock transfer
South Warwickshire/Heart of England Group	Whole stock transfer
West Dorset/Magna	Whole stock transfer
West Lindsey/Acis Group	Whole stock transfer
LB Lambeth/Metropolitan Housing Trust	Partial transfer
LB Hackney/Sanctuary Housing	Several partial transfers

³³ Office of the Deputy Prime Minister (2003); *Housing Transfer Guidance*; London: ODPM

Collection of new research evidence

Some new case studies were carried out for this project. The purpose of this fieldwork was to complement existing evidence; in particular, as regards:

- recently completed whole stock transfers (post 2001)
- forthcoming whole stock transfers (post-ballot)
- partial transfers

Seven case study visits focusing on these categories were undertaken as shown below. In each case study there were interviews with relevant local authority and housing association staff focusing mainly on:

- the post-transfer division of responsibilities for homelessness, allocations and housing advice
- the process of determining the post-transfer division of responsibilities for the relevant functions
- the post-transfer operation of homelessness, allocations and housing advice functions – e.g. liaison between the two organisations, monitoring, policy development
- how, with the benefit of hindsight, arrangements might have been improved or mistakes avoided.

Individual reports were written up for each case study and returned to the main informant organisation(s) for checking and verification. A summary of the key lessons identified in each case study is listed below.

Name of Local Authority/Housing Association	Type of stock transfer/ALMO
Bradford MBC/Bradford Community HA	Whole stock transfer to freestanding Group Structure
Carlisle DC/Carlisle HA	Whole stock transfer into pre-existing housing association Group
Hackney LBC/Kingsmead Homes	Partial transfer
Herefordshire CC/Herefordshire Housing	Whole stock transfer to newly established HA
Merton LBC/Pollards Hill HA	Partial transfer
Sunderland MBC/Sunderland HG	Whole stock transfer, freestanding Group Structure
West Oxfordshire DC/West Oxfordshire Housing	Whole stock transfer

APPENDIX D

Best Value Reviews and Preparing for Contract Expiry

Best Value Reviews

The points that housing authorities should consider in Best Value reviews of homelessness, allocations and advice services prior to decisions on stock transfer are:

- Best Value reviews of homelessness, housing allocations and advice functions should be undertaken well in advance of any stock transfer process. Ideally they should be undertaken at option appraisal stage.
- They should provide a clear picture of the cost and quality of existing services and identify areas where there is scope for improvement.
- Benchmarking should include assessments of the market of potential suppliers beyond other landlords so that informed choices can be made regarding retention versus contracting out of services.
- User views of existing services should form an important part of the review process.
- There should be a genuine challenge to the status quo option.
- Judgements should be made about existing capacity and competence as well as scope for future improvement.
- Other options should be considered.
- Targets for improvement should be set for future service delivery, whether services are to be retained or contracted out.

Preparing for Contract Expiry

Preparation for contract expiry should begin at least 18 months before the specified contract end date. This will allow time to review contractor performance and the terms of the contract itself. If the service is to be re-tendered, this should take place at least nine months ahead of the expiry date to allow sufficient time for a possible change of contractor.

STEP 1. ESTABLISH THE CURRENT POSITION OF THE PARTIES

Determine if the parties to the existing contract are prepared to consider extending the existing arrangement. It cannot be assumed that a transfer association that is currently acting as a contractor will wish to maintain this role.

A housing authority that is highly dissatisfied with the performance of an existing contractor may rule out any contract extension at this stage.

STEP 2. ESTABLISH THE POTENTIAL FIELD OF CONTRACTORS

The housing authority should consider the possibility that other parties might be invited to tender for the service (whether or not an in-house bid is also planned). This might, for example, involve comparing contractor performance with that of potential competitors.

Similarly the Best Value principle of comparison should generate benchmarking data so that the housing authority can compare the cost and quality of its existing arrangements with those achieved by comparable peer authorities.

STEP 3. PREPARING CONTRACT DOCUMENTS

Assuming that some kind of competitive process is going to be pursued, a revised service specification needs to be drawn up and issued to the potential competitors.

STEP 4. ASSESSING BIDS

Bids received will need to be judged in relation to both quality and cost, with due weight accorded to evidence of 'good performance'

Such a process will need to be undertaken in an open and transparent way, unfettered by untested pre-conceptions about the relative merits of in-house versus contracted out arrangements.