



Office of the
Deputy Prime Minister
Creating sustainable communities

Right to Manage

Modular Guidance Management Agreement
for Tenant Management Organisations
Guidance on Schedules





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Guidance on the Schedules

July 2005

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Introduction

This guidance deals with the Schedules to the Modular Management Agreement for Tenant Management Organisations (TMOs) that has been approved by the Secretary of State in July 2005. The Schedules are to be agreed between the local housing authority (“the Council”) and the TMO and must be in accordance with the statutory guidance given by the Secretary of State under regulation 7 of the Housing (Right to Manage) Regulations 1994.

The guidance sets out the statutory guidance, which is highlighted to distinguish it, and, in addition, non-statutory guidance which forms the remaining text.

The purpose of the non-statutory guidance is simply to assist Councils and TMOs to draft the Schedules to their particular agreement in accordance with the statutory guidance but it should not be treated as binding.

Chapter 1: Schedules

SCHEDULE 1:

PROPERTY INCLUDED IN THE MANAGEMENT AGREEMENT

clause 2

1 List of dwellings included in this agreement, by postal address and tenure

2 Site Plan

This must include all of the dwellings included in this agreement.

It may also include walls, fences or other boundaries, drains, estate lighting, estate roads, play areas, trees and green areas and any other features relevant to the Agreement.

The Plan should be clear, accurate and updated as necessary.

3 List of equipment and other items owned by the Council which the TMO may use under this Agreement

SCHEDULE 2:

EQUAL OPPORTUNITIES POLICY AND PROCEDURES

clause 9

1 Aims

The aims must reflect the TMO's responsibilities as a service provider, an employer and as a democratic organisation.

Aims may include: a fair and equal service to all residents which takes into account any special needs they may have; fair and equal treatment of employees; a management Board which reflects the composition of the estate's population; the encouragement of active participation from all individuals and sections of the community.

2 Procedures

The procedures must demonstrate how the TMO will achieve its aims in terms of equal opportunities and as a service provider, an employer and a democratic organisation. The procedures should also enable the Council to fulfil its statutory duties under the Race Relations (Amendment) Act 2000.

The TMO as a Service Provider

Reference may be made to other Schedules in the Agreement in relation to the particular service being provided. This should cover the TMO's actions in respect of hiring contractors or other agencies. This should refer to the Commission for Racial Equality's Code of Practice in Rented Housing as it applies to the services provided by the TMO.

The TMO as an Employer

Reference may be made to the Schedules to Chapter 7. These include the TMO's recruitment policy and employment practices for both directly employed and seconded staff, disciplinary procedure and standard terms and conditions.

The TMO as a Democratic Organisation

Reference may be made to the TMO's Constitution [Annex A], the Code of Governance (including a Code of Conduct) and Code of Confidentiality the TMO is required to publish [See Chapter 1 Clause 9.4, 16.3] and the Training Plan [Chapter 1 Clause 11]. The TMO will need to develop its Code of Conduct for members. This will define the duties of members and how breaches are to be dealt with. This should link to the Code of Confidentiality.

The procedures should ensure that all residents are informed about the TMO and consulted about its activities.

3

Breaches of procedures

This must describe how breaches will be investigated and dealt with. Reference should be made to the procedures for dealing with disputes and complaints [Chapter 7 Schedule 4]

4

Monitoring and review of equal opportunities policies and procedures

This paragraph must describe what data will be collected, and how it will be collected and reported.

The TMO may wish to consider a range of methods for collecting information in relation to Equal Opportunities. In addition to the summary of formal records, consideration might be given to regular sample household questionnaire surveys and focus group meetings, targeted at disadvantaged groups.

SCHEDULE 3:

SUPERVISION NOTICE POLICY AND PROCEDURE

clause 19

1

Definition of serious failing

This paragraph must set out the circumstances and criteria in which a Supervision Notice may be served by the Council on the TMO. A Notice must not be served unless the Council is satisfied that there are serious failings in the financial performance, management or organisation of the TMO and there is no realistic prospect of remedying the situation by taking action under any other provision of the management agreement.

This should describe the range of circumstances and at what point problems in the TMO are sufficiently serious for a Supervision Notice to be served by the Council. The council should first seek to agree an Improvement Plan [Chapter 1 Clause 19] and use the Supervision Notice Procedure only as a last resort.

This should set out what steps the Council must reasonably take to satisfy itself and to formally demonstrate that the situation and circumstances warrant this course of action.

The circumstances which may trigger service of a Notice include the following:

- An adverse Annual Review [Chapter 8 Clause 4];
- An adverse Five Year Review [Chapter 8 Clause 7]; or
- An adverse Special Review [Chapter 8 Clause 7].

The information obtained in a review should inform the content of the proposed Supervision Notice.

Serious failings may fall within one of more of the following categories:

- Where the TMO committee has ceased to operate in a lawful or meaningful way and has no immediate plans to remedy the situation quickly;
- Where the TMO has mismanaged its housing management functions so that even most basic services are not being provided to tenants, and it has no immediate plans to remedy the situation (for example; where there is a significant increase in the level of complaints from tenants about services provide by the TMO);
- Where the TMO is taking decisions that are outside its powers and/or unlawful, and/or appears to be trading whilst insolvent;
- Where the TMO has consistently and over a long period of time failed to remedy problems which have been identified and agreed as needing action and as a result the service to tenants is being materially affected;
- An adverse annual external audit, an adverse internal audit report by the council or TMO failure to produce audited accounts within the specified timeframe in the TMO's constitution;
- Serious performance failures identified as a result of the regular monitoring visits or meetings and through performance indicator information provided by the TMO to the council;
- Consistent, continuing TMO failure to provide agreed monitoring information, provide agenda sets or allow council representatives to attend committee meetings; and
- Failure to allow the council to carry out a review under the management agreement [Chapter 8 Clause 7].

2

Service of Supervision Notice procedure

This paragraph must set out the procedure for the council to propose serving a Notice and for the service of Notice.

This must set out the procedure for the TMO to require the Council to appoint an independent person to advise on the reasonableness of its proposed actions and make recommendations on the content of the proposed Notice. The TMO's consent must be obtained to the person proposed by the Council to provide advice.

This must set out a procedure and timetable. It must state which Council Officer will be responsible for serving a Supervision Notice and the TMO Officer on whom the Notice will be served.

This must set out the procedure for appointing the independent person. **It must** set out the role of the independent person and the procedure to be followed by that person.

The independent person should be able to provide external scrutiny and act as an external monitor when the Supervision Notice Procedure is being used. The independent person should advise on the reasonableness of the Council's action and make recommendations on the content of the proposed Notice. The recommendations should be clear, realistic and achievable within a reasonable time-scale, having regard to the circumstances of the case and financial and any other relevant constraints.

Suitable persons may be identified locally from a list of people with relevant knowledge and experience, drawn from another council or a TMO; or a voluntary panel of council or TMO officers, tenants or other individuals, identified through locally-agreed arrangements. Alternatively arrangements could be based on existing council-tenant scrutiny panels or formal council complaints procedures.

The advice should be made available to the Council and the TMO and both parties should be prepared to accept the recommendation made by the independent person.

3

Content of the Supervision Notice

The Supervision Notice must include the following:

- A description of the serious problem or failing;
- The date on which the Notice is to come into effect, specifying the period of the operation of the Notice (the initial period must not exceed 6 months but may be extended for an additional period not exceeding 3 months. When that period expires it may be extended by a further additional period not exceeding 3 months);
- A description of action already taken by the Council or the TMO to remedy the problem or failing;
- Specific action, by the Council or the TMO, which is reasonably required to resolve the problem or remedy the failure;
- The timetable for implementing the proposed action;
- How progress will be monitored and reviewed; and
- How decisions on termination or extension of the Notice are to be determined and implemented.

The effect of the Supervision Notice should be to allow a time-limited intervention by the Council to provide extra support to the TMO to remedy serious problems. During the period of the Notice the TMO should normally be able to continue its management functions under the management agreement under the direction of the Council.

Actions which may be specified in the Supervision Notice to remedy serious failings include (but are not limited to) the following:

- Providing additional information, advice, training and help to the TMO;
- Strengthening the TMO's monitoring arrangements;
- Reviewing and strengthening the TMO's financial and reporting systems and procedures;
- Providing time-limited additional management support to the TMO; and
- Strengthening the TMO Board.

4

Reviewing progress and terminating the Supervision Notice

This paragraph must set out how progress on implementing action specified in the Supervision Notice will be monitored, reviewed and reported and who in the Council and the TMO is responsible for taking action at each stage of the procedure.

It must describe how decisions will be taken on whether the Supervision Notice will be terminated by service of a Supervision Termination Notice or extended; or whether other action will be taken by either the TMO or the Council under other provisions of the management agreement, including ending the agreement [Chapter 1 Clause 20].

If it is decided to end the agreement in accordance with Clause 20.2.6, the Council must give the TMO at least 3 months notice in writing that a Supervision Termination Notice is not to be served at the end of the initial period of the Notice, or the first additional period.

It must set out how decisions are to be communicated and reported.

Monitoring arrangements should include regular (monthly) review meetings to monitor progress. Pre-arranged standards at the outset should set targets for what is required to be achieved in order to terminate the Supervision Notice. Progress against these targets should determine whether the Supervision Notice is to be extended or terminated.

Arrangements should be agreed for giving formal notice of a decision on the Notice.

GUIDANCE ON INSURANCE RISKS

clause 7

Under Clause 7 the Council and the TMO should draw up a list of the insurance risks against which each party will insure.

The risks against which the Council may consider it appropriate to insure include the following:

- Damage to the structure of the Property (buildings insurance);
- Claims by third parties arising out of risks in or on the Property (public liability insurance);
- Claims by employees of the council working in or on the Property (employer's liability insurance);
- The loss though fire or theft of property belonging to the council in or on the Property (contents insurance); and
- Such other risks as the council may from time to time determine.

The risks against which the TMO may insure, arising out of its responsibilities under the Agreement, may include:

- Claims by third parties (public liability insurance);
- Claims by the TMO's staff (employer's liability insurance);
- The dishonesty of the TMO's staff or the TMO's officers (fidelity guarantee insurance);
- The loss through fire or theft of property belonging to the council in or on the Property which the TMO has custody of because of its obligations under the agreement; and
- Such other risks in respect of the TMO's obligations under the Agreement as the council may from time to time reasonably require.

Chapter 2: Schedules

SCHEDULE 1: FUNCTIONS AND PERFORMANCE STANDARDS OF THE TMO AND THE COUNCIL IN RESPECT OF REPAIRS **clauses 1 & 2**

- 1** **Responsive and Planned Maintenance Repairs**
This must describe how responsibility is divided between the TMO and the Council for all Responsive and Planned Maintenance Repairs. It must also describe the division of responsibility for the range of tenure types of dwellings included in the agreement.
- The TMO's responsibilities for specific classes of Responsive and Planned Maintenance Repairs must be listed in Annex A to this Schedule.
- The Council's responsibilities for specific classes of Responsive and Planned Maintenance Repairs must be listed in Annex B to this Schedule.

The TMO will normally carry out the classes of repairs for which an allowance has been provided. Any cost ceiling on repairs carried out by the TMO should be included.

A description should be given of any repair function exercised by the Council, on the grounds that it would not be practicable for the TMO to exercise that function, even though the TMO wishes to do so.

Clear reference should be made to repair functions retained by the Council because of cost considerations.

Where practicable, Annexes A and B should include a list detailing specific repair responsibilities in respect of different tenures.

Tenures will include periodic secure tenancies (i.e. most secure tenancies), long leases and freeholds.

- 2** **Management of Repairs**
The TMO and the Council must describe arrangements in respect of the following:
- Reporting repairs;
 - The priorities, time scales and standards for completing each category of repair;
 - Planned maintenance;
 - Re-servicing of void properties;
 - Upkeep of communal areas;
 - A code of conduct for repair staff and contractors;

- Compliance with health and safety requirements;
- Compensation; and
- Arrangements for monitoring the quality of the repair service.

The TMO and the Council should agree the arrangements for reporting responsive repairs, whether they are the responsibility of the TMO or the Council. This is especially important in respect of emergencies reported out of office hours.

Time scales should reflect the urgency of the repair to be carried out. There will be circumstances in which additional priority should be given to vulnerable groups such as the elderly. Repairs arising from harassment, domestic violence or offensive graffiti should also be prioritised.

This should set out the arrangements for identifying and dealing with repairs outstanding when the TMO takes on its management function. This may involve a survey of the property. This should also set out how the life expectancy of new components is to be determined at installation stage.

The procedure for dealing with Insurance Repairs is set out in Schedule 5.

The arrangements for identifying and undertaking planned maintenance programmes should be set out. These should set out how tenants and residents will be informed and consulted.

The TMO and the Council should agree the respective responsibilities in respect of void properties where there is substantial disrepair. As with repairs, it may be appropriate to fix a cost ceiling for the TMO.

Agreement should also be reached concerning the number of voids the TMO will be expected to re-service without an increase in Allowance.

The TMO and the Council should agree to undertake regular joint inspections of the communal areas.

The TMO and Council should agree a Code of Conduct for all those undertaking repairs.

The TMO and council should agree arrangements to ensure compliance with health and safety requirements, including training for the TMO, staff and contractors, risk assessment audits and handling of incidents.

The circumstances should be set out in which tenants can apply for compensation where their personal belongings have been damaged as a result of a defect in the repair. The compensation arrangements should describe criteria for qualification together with the timetable for dealing with claims, the basis for calculating claims, the arbitration/appeal procedures and the information on entitlement to compensation provided to tenants.

The TMO and the Council should agree the arrangements for monitoring the repair service provided by both parties and reporting this to the TMO Committee and residents. This might include quarterly or 6 monthly reports of work in progress, pre and post inspection of work, reports on tenant satisfaction, response times and the quality of work achieved.

SCHEDULE 2:
PROCEDURE FOR CONSULTATION ON MAJOR WORKS **clause 6 option A**

This schedule must set out the arrangements for the Council to consult the TMO during the following stages, where it intends to undertake Major Works:

- 1) Programming of the works
- 2) Development and implementation of the scheme

The TMO should be fully consulted and involved at all stages, from the pre-planning stage through to the final hand-over of the completed works. This includes the TMO being involved in agreeing the design of the scheme, resident consultation arrangements, the specification and selection of contractors and monitoring of work in progress and handover arrangements.

SCHEDULE 3:
**PROCEDURES AND PERFORMANCE STANDARDS FOR ENTERING INTO
AND SUPERVISING MAJOR WORKS** **clause 6 options B and C**

This Schedule applies where the Council enters into Major Works but the TMO agrees to supervise them (Option B) or where the TMO, with the Council's agreement, enters into Major Works contracts and supervises them (Option C).

1 **Appointment of appropriate consultants**

The Council or the TMO Manager should provide a brief of the work to be undertaken and an outline budget, together with a description of consultation arrangements with residents, the requirements for Council and TMO approval and for appointing an external consultant to supervise any work.

Appropriate officers of the Council and the TMO should be invited to advise on the consultant's brief and serve on the selection panel.

2 **Liaison with Council**

The Council should be closely involved in the development and implementation of the scheme. The Schedule should set out the circumstances in which Council and TMO approval is required. Approval cannot be withheld by either party without good reason.

3 Arrangements for tendering and selection of contractors

The consultant will advise on the arrangements for tendering, including drawing up the tender list, the tendering process and assessment. These will comply with the Code of Procedure contained in the appropriate Joint Contracts Tribunal (JCT) Standard Form of Building Contract.

In selecting a suitable contractor the TMO must also comply with Clause 3 Chapter 7 of the Agreement

4 Contract management

The main terms will be included in the JCT contract. The issues which should be included are site supervision requirements, information to residents about the works and reporting complaints, procedures for making payments under the contract, procedures for dealing with unsatisfactory performance or cost overruns, handling defects, covering disputes and for agreeing the final account.

5 Procedures for handover and subsequent maintenance and repair

This should include procedures for checking works prior to handover by the contractor, including authorisation, handling outstanding defects or defects arising after handover, and future maintenance requirements

SCHEDULE 4:

THE TMO'S MAJOR WORKS FUNCTIONS

clause 6 option C

This must specify the Major Works the TMO is responsible for. The Allowances must contain a budget for the works specified.

Major works may include planned maintenance. The schedule should therefore be consistent with Schedule 1.

SCHEDULE 5:

PROCEDURE FOR REPAIRS ARISING FROM EVENTS COVERED BY THE COUNCIL'S BUILDING INSURANCE

clause 9

This Schedule must include a summary of the Council's Insurance Policy and a summary of any additional risks for which it remains liable.

This Schedule must also include the procedure for making Insurance Repair claims, a description of the division of responsibilities between the TMO and the Council for Insurance Repairs and, where appropriate any emergency repair which needs to be carried out, and a procedure for resolving disputes between them.

1 The procedure for making insurance repair claims

This must include a quick procedure for agreeing that a particular repair should be dealt with as an Insurance Repair.

The Schedule should also include a summary of the process of making an Insurance claim, including the time scales described in the policy, for pursuing claims, dealing with disputes and settling any invoices for Insurance Repairs carried out.

2

Repair Responsibilities

If Option C is chosen, this must describe the respective repair responsibilities, including any authorisations needed.

SCHEDULE 6:

FUNCTIONS AND PERFORMANCE STANDARDS OF THE TMO

AND THE COUNCIL IN RESPECT OF ESTATE SERVICES, clauses 10 & 11

The schedule must include the following information:

1

Estate Services

This must describe how responsibility is divided between the TMO and the Council for all Estate Services. It must also describe the division of responsibility for the range of tenure types of dwellings included in the agreement.

The TMO's responsibilities for specific services must be listed in Annex A to this Schedule.

The Council's responsibilities for specific services must be listed in Annex B to this Schedule.

A description should be given of any Estate Service function exercised by the Council on the grounds that it would not be practicable for the TMO to exercise that function, even though the TMO wishes to do so.

Where appropriate the division of responsibility for different areas should be shown on the Plan of the Property.

The main services would normally include cleaning the common internal and external parts of the property, removing rubbish, management of garages and parking spaces and maintenance of grassed areas, flower beds, trees and shrubs.

2

Management of Estate Services

The TMO and Council must describe arrangements for the following:

- The Performance Standards for each Service; and
- The arrangements for monitoring the quality of the services undertaken.

SCHEDULE 7:
IMPROVEMENTS POLICY AND PROCEDURE

clause 13

This must state whether the Council or the TMO is responsible for receiving Improvement Notices and deciding on requests to make improvements, and set out the procedure and criteria for making a final decision and for informing residents on how to exercise their statutory rights.

There should be clear criteria for consent to be granted with or without conditions. These should be consistent with the terms of the tenancy agreement or lease, and where applicable, the provisions of the Housing Act 1985.

SCHEDULE 8:
RIGHT TO REPAIR POLICY AND PROCEDURE

clause 14

This must state whether the Council or the TMO is responsible for administering the Right to Repair and set out the procedures for receiving Right to Repair Claims and deciding such claims, and for informing tenants on how to exercise their statutory rights.

Chapter 3: Schedules

SCHEDULE 1:

- 1** **Rent Collection and Arrears Control Procedure** **clause 2 and 6**
- This paragraph must describe how tenants will pay rent. It must also define the period for which the TMO or the Council will provide a statement of rent due and rent collected. This must include a statement of any Housing Benefit due to tenants.
- The arrangements for handling Housing Benefit claims and payments must be set out.
- This paragraph must describe the arrangements for the maintenance of rent accounts.

This paragraph should describe the acceptable methods of paying rent, and the information which will be provided to tenants on rent balances, changes in rent, and on arrangements for handling enquiries from tenants.

The Rent period will normally be weekly or fortnightly.

The arrangements for handling Housing Benefit should describe the liaison arrangements with the Housing Benefit section and relevant agencies, and how any errors in statements or entitlement calculations will be prevented or dealt with.

Maintenance of rent accounts will include amendments to reflect new lettings, mutual exchanges, successions, assignments and voids.

- 2** **Rent Arrears Control Procedures** **clause 3**
- This paragraph must describe the arrangements for preventing, managing and collecting arrears and clearly demarcate responsibility between the Council and the TMO. It must describe the actions which will be taken to minimise rent arrears and to deal with various levels of arrears, and set out financial incentives and penalties where the TMO manages arrears control.

The arrangements should have regard to ODPM guidance on managing rent arrears being published in 2005.

Specifically, this paragraph must set out the procedures to be followed prior to issuing a Notice Seeking Possession, applying to the court for a Possession Order, and prior to eviction.

Use of possession action should be minimised and eviction should only be pursued once all other reasonable steps to recover debt have been taken.

This should set out the arrangements for giving tenants in arrears information and advice about welfare rights, entitlement to benefits, and income and debt management and collection.

It should describe the procedures to be followed when a tenant first goes into arrears and the levels of arrears when specific action must be taken. If the TMO is responsible for Arrears Control, this paragraph should describe at what point a case becomes a serious arrears case, and how the Council will be involved in any action to seek possession, obtain a Possession Order or carry out an Eviction. It should set out the circumstances in which the Council may withhold consent to the TMO to take legal proceedings or enforce a court order for possession to recover arrears.

This paragraph should set out the incentives for the TMO to collect arrears and the penalties for failing to meet agreed targets.

- 3 Arrears due at the Starting Date clause 4**
The Council must include the information required for the TMO to undertake its responsibilities under options B and C of Clause 4.
- This must include arrangements for the repayment to the Council of a proportion of Arrears due at the Starting Date.

- 4 Former Tenants' Arrears, Bad Debts and Write-offs clauses 5 and 11**
This must include details of Former Tenants owing arrears at the Starting Date. It must describe the procedure the TMO must undertake to recover any arrears and to apply for write-off of debt.
- If the TMO has 'bought' former tenants' debts (Clause 5 Option D), this paragraph must state the sum the TMO has agreed to pay the Council in lieu of any other liability for those arrears.

This paragraph should describe arrangements for monitoring the management of Former Tenants' Arrears.

This paragraph should set out the procedure for dealing with bad debts and write-offs. This should state the level of debt which triggers the process, the tasks involved in administering and investigating such cases, and for applying for write-off.

- 5 Monitoring and Review Arrangements**
This paragraph must describe the arrangements and information requirements to enable the monitoring of arrears and recovery action taken.

This should include reviewing the effectiveness of procedures, and actions taken to prevent, manage and collect rent arrears.

SCHEDULE 2:
TENANT SERVICE CHARGE PROCEDURE

clause 7

This must set out the procedure for the TMO to request the council to vary the tenant service charge element of the Total Rent.

This must describe arrangements for the TMO to consult tenants on proposed changes to services paid for through tenant service charges and for the TMO to request the council to make appropriate adjustments in the Rent to reflect these changes.

This should describe the information the council will provide to the TMO, including a breakdown of tenant services for which it charges (such as caretaker, warden or concierge services). The TMO cannot set the core rent but may consult tenants on changes to services, including proposals to reduce services or provide additional estate services, and may seek an increase in charges, where appropriate. This may include requesting increased service charges to cover the provision of additional estates services.

This should set out the factors which the TMO and the council will take into account in considering changes to services and the effect of such changes (including the impact on housing benefit payments) and should set out the grounds for conditional consent or for refusal by the council.

Chapter 4: Schedule

THE SCHEDULE: SERVICE CHARGES PROCEDURE

- 1** **Calculation of Charges** **clause 3**

This paragraph must set out the services provided to leasehold and freehold dwellings and show how charges are calculated in accordance with provisions of the lease or transfer.

This paragraph must also describe the procedures to ensure that the TMO and the Council have proper records and audit trails for all invoices and credit notes relating to the services provided.

The timetable for calculating the charges and providing a schedule of all charges and calculations must be shown.

The Calculation should show the charge for the administration of the service and the contribution to the TMO's or Council's overheads in respect of the services provided.

- 2** **Billing and Collection Arrangements** **clause 3**

This paragraph must set out the timetable for sending out service charge demands, the dates when service charges are due, the range of acceptable methods for paying charges, and the information to be provided to tenants on service charges and service charge balances.

The above arrangements must be consistent with the terms of the lease.

- 3** **Arrears procedures** **clause 5**

This paragraph must describe the arrangements for preventing, managing, collecting and monitoring arrears. It must describe the actions which will be taken to minimise arrears and to deal with various levels of arrears.

Specifically, this paragraph must set out the procedures to be followed prior to taking court action. Action involving the courts should only be pursued once all other reasonable steps to recover debt have been taken.

This should set out the arrangements for giving tenants information and advice about welfare rights, entitlement to benefits, and income and debt management and collection.

It should describe the procedures to be followed when a leaseholder first goes into arrears and the levels of arrears when specific action must be taken.

If the TMO is responsible for managing arrears, this paragraph should describe at what point arrears become serious and how the Council will be involved in any action to recover arrears. It should set out the circumstances in which the Council may withhold consent to the TMO to take recovery action and to the issue of forfeiture proceedings.

This paragraph should list the monitoring information required by the Council throughout the arrears procedure and how the effectiveness of Service Charge Procedures, including action taken to prevent, manage and collect arrears, are to be monitored and reviewed.

4

Financial Incentives and Penalties

clause 10

This must set out the incentives for the TMO to collect arrears and the penalties for failing to meet agreed targets.

Chapter 5: Schedules

SCHEDULE 1: CALCULATION AND PAYMENT OF ALLOWANCES

clause 1

1

Calculation of Allowances

This paragraph must demonstrate that the Allowances are calculated in accordance with the Statutory Guidance set out in *Calculating Allowances for Tenant Management Organisations*.

This Paragraph should provide a summary of the principal elements of the Allowances.

Annex	Element or Activity	Allowance
Annex A	Insurance	
Annex B	Responsive and Planned Maintenance Repairs	
Annex C	Allowance for Major Works	
Annex D	Estate Services	
Annex E	Rent Collection	
Annex F	Leaseholder Service Charges	
Annex G	Tenancy management administration	
Annex H	Finance	
Annex I	Staffing and Overheads	
Annex J	Office Costs	
Annex K	TMO Costs	
	Total	

There should be a summary of the property and facilities used in calculating apportionments and the source or reference from which the information was obtained.

Stock	Tenancies	Leases	Total	Source and Date
In HRA				
In Area				
In TMO				

The Annexes (A to K) or similar should be attached to this Schedule.

The layout of the annexes should show how each element of the methodology described in *Calculating Allowances for TMOs* has been addressed, based on the checklist in that guidance.

Key considerations are:

- Inclusion of the costs of non-strategic services provided by council staff, however indirectly, which will be undertaken by the TMO;
- The separation of costs, where applicable, between tenants and lessees;

- Ensuring that the estimate for Responsive and Planned Maintenance Repairs is reasonable and that the Agreement takes account of unexpectedly high expenditure due to unforeseen repair costs or an above average numbers of voids requiring reservicing;
- Ensuring that the TMO has sufficient to cover overheads such as office accommodation; and
- The inclusion of the full range of relevant corporate support services. This could include Building (Office) administration, Environmental Health, Finance, Legal Services, Personnel and IT.

2

Adjustments to Allowances

This paragraph must describe how the allowance will be adjusted annually in line with overall variations to the HRA as set out in the guidance and to take into account changes in the number of dwellings managed by the TMO, or other changes in costs or income. Adjustments must be made in accordance with *Calculating Allowances for Tenant Management Organisations*.

The Council must give the TMO at least three months notice of any change in the amount of the allowance for the following financial year and agree a procedure and timetable with the TMO for implementing any change.

This paragraph should set out the procedure and timetable for annual adjustment of allowances, including information on which this is to be based. The timetable should allow a sufficient period for negotiation with the TMO on the proposed change and for agreement to be reached how it will be implemented.

Reasonable timescales for implementing changes to allowances could be based on the following thresholds:

- Changes in the amount which are less than 5% of the total allowance could be introduced from the following quarter unless the TMO shows that this may cause serious problems; and
- Changes in the amount which are 5% or more of the allowance could be phased in over a longer period, taking into account the degree of impact of change on the TMO's operations and effectiveness.

3

Review of Allowances

This paragraph must describe how and at what intervals the allowances will be reviewed to take account of significant changes in costs. Allowances must be reviewed and varied in accordance with *Calculating Allowances for Tenant Management Organisations*.

This paragraph should set out the procedures by which either party will seek a review of allowances, for carrying out the review and implementing any resultant changes in allowances.

4 Payment of Allowances

This paragraph must state if the agreed method of payment of allowances (unless these are retained from collected rent) is monthly or quarterly in advance.

This paragraph should set out how the allowance will be invoiced and the arrangements in respect of VAT.

It should also set out arrangements for paying an advance to the TMO for services to be recharged from leaseholders and how this amount will be adjusted to reflect actual expenditure.

5 Start-up costs

This paragraph must demonstrate that provision has been made for starting up the TMO and for other support and resources for the TMO in accordance with the Statutory Guidance set out in *Guidance on Start-up Costs for Tenant Management Organisations*.

Provision should include people and resources to provide support and assistance; fully furnished and equipped premises; and information and information systems in order for the TMO to function effectively on the due date.

**SCHEDULE 2:
FINANCIAL PROCEDURES**

clause 2

1 Principles of Financial Control by the TMO

clause 5

This paragraph must set out the main objectives of the Financial Procedures, and identify the TMO committee officer who will have the main responsibility for ensuring high standards of probity and security.

This paragraph must set out how any financial procedures will be changed.

The main objective of these procedures will be to ensure that the finances of the TMO are fully recorded, payments only made within guidelines approved by the committee, and that monies put aside for specific purposes are used for that purpose.

Controls should be developed and applied to minimise the possibility of error, fraud or embezzlement.

Procedures should not be changed without the approval of the TMO committee. The Council should be informed of any changes.

The Treasurer of the TMO Committee will have overall responsibility for ensuring that any controls are suitable and applied. This does not absolve the TMO committee from responsibility for ensuring that proper controls and procedures are used.

- 2** **Banking Arrangements, Borrowing and Investments** **clause 4**
This paragraph must include full details of the TMO's bank accounts, the number and designation of cheque signatories and any financial limits.
- All accounts must be in the name of the TMO.
- It must set out the procedure for informing the Council of any changes in the above arrangements.
- It must set out the procedure for managing the bank accounts to ensure value for money.
- This paragraph must set out the procedure for any borrowing or investment undertaken by the TMO. This will include the procedure for obtaining committee authorisation.
- The council must be informed when a borrowing facility or investment is being negotiated.

- 3** **Budgetary Control** **clause 5**
This paragraph must set out the procedures for setting the budget, maintaining control and making changes as necessary
- Procedures for budgetary control should set out when the budget is to be set and the procedure for agreeing the budget. The annual budget should normally be presented at the Annual General Meeting, following scrutiny by the TMO committee.
- Significant changes to the budget should be agreed at a General Meeting of the TMO but the Procedures should allow for minor changes to require only committee approval.
- Budget Reports should be made to the committee at least quarterly. These reports should compare expenditure with the budget forecast and indicate any variance or need for adjustment.
- 4** **Members' Expenses** **clause 3**
This paragraph must set out agreed entitlement and procedures for reimbursing members' costs, including how such payments are to be authorised.

Reimbursements should only be for costs actually incurred for expenses approved in advance by two or more officers of the committee. The type of activity for which expenses may be paid should be described. They can only be for activities which fall within the constitutional aims of the TMO. Where possible, the amount of expenses for particular activities should be specified and subject to regular review.

A time limit should be specified for submitting claims.

No general allowances should be given.

5 Orders and Payments

This paragraph must set out the procedure for ordering work or materials and making payments. All orders must be in writing and authorised in the manner described in this paragraph

A table should be prepared showing who may place orders, the number of quotations and level of authorisation required for various levels of expenditure. Authorisation should not be given by someone who obtains a direct benefit from the work or who places the order.

The procedure for making payments should be sufficiently detailed to ensure that payments are not made without adequate documentation showing that the goods were received or that the service provided was to a satisfactory standard.

6 Payroll

This paragraph must set out the arrangements for paying staff and for ensuring that proper records are kept.

This should include the payment cycle, how timesheets and overtime claims will be certified, the verification of payroll before payment, and the appropriate deductions of tax.

7 Petty Cash

This paragraph must set out the procedures for authorising and managing petty cash.

This should specify the size of petty cash floats and who should hold the floats.

Procedures for making and authorising claims should be described.

8 Rent Accounting and Other Income

This paragraph must set out the procedures for rent and service charge accounting and other income.

This should reflect rent collection arrangements and billing arrangements for Allowances, where appropriate, and authorisation arrangements for bad debts which need to be written off.

SCHEDULE 3: ACCOUNTS AND AUDIT

clause 5.2

1

Annual Accounts

This paragraph must identify the level of analysis to be maintained to facilitate management accounting and final accounts preparation.

It must specify the key elements of the preparation and presentation of Annual Accounts.

Accounting information should be sufficiently detailed to provide the level of analysis required for management accounting, final accounts preparation and for calculating Service Charges.

A key element of the preparation and presentation of Annual Accounts should include the procedure and timetable for drawing up draft accounts which meet the timetable requirements of the Agreement and the TMO's constitution.

This paragraph should specify in detail the information to be provided in the accounts or the accompanying notes

2

Audit

This paragraph must refer to the procedure for the selection and appointment of auditors, contained in the TMO's constitution.

The Audit Report must be in accordance with the requirements of the TMO's constitution.

This paragraph should provide details of the current auditor.

It should specify who is responsible for communication with the auditor and for ensuring that the accounts are presented for audit each year in time to meet statutory deadlines.

The same person should also be responsible for ensuring that all members are sent an abridged version of the accounts and audit opinion.

3

Provision of Information

This paragraph must set out how and when the TMO and the Council will provide financial information to enable the other party to carry out its responsibilities under the Agreement.

This should include information to enable the Council to assess the TMO's financial performance, and information on rechargeable costs of services to leaseholders. It may include a timetable.

4

Surplus Fund

This paragraph must set out the procedure for the TMO to manage and use its Surplus Fund and how this is to be decided and reported.

This should describe how decisions will be made on how the Surplus Fund is to be used. This process should link with the TMO's forward planning in its Business Plan, where it has one. The Fund should be used for the benefit of tenants and in accordance with the TMO's Constitution or Memorandum and Articles.

The Business Plan can help the TMO with its forward planning and to decide how best to use its Surplus Fund to achieve its aims. The Business Planning process should help the TMO to analyse its strengths and weaknesses as an organisation, where the organisation is currently and where it wants to be, and how to get there. It can also be used to co-ordinate existing practices, eg, budget setting, quality improvement, resident involvement and performance review.

The Plan should be regularly reviewed to make sure it is still relevant to the organisation.

A Business Planning Guide for TMOs by the National Federation of TMOs is being published in 2005 and will be available on www.tmonatfed.com.

Chapter 6: Schedules

SCHEDULE 1:

INTRODUCTORY MEETINGS FOR HOUSING APPLICANTS

clause 1

This schedule must describe the arrangements in respect of introductory meetings for housing applicants.

The arrangements should include the following:

- Responsibility for contacting applicants and arranging meetings;
- Whether the council will be represented at meetings and the council's role at meetings; and
- Exchanging information to facilitate the above.

SCHEDULE 2:

SELECTION OF TENANTS POLICY AND PROCEDURE

clause 3

This Schedule must describe the respective roles and responsibilities of the Council and the TMO in the selection of tenants for vacant TMO properties.

1

Principles involved in allocating tenancies

The allocation of housing accommodation must be in accordance with the Council's allocation scheme under Part 6 of the Housing Act 1996 and the ODPM's Code of Guidance on Allocation of Accommodation. It applies to the selection of any person to be a secure or introductory tenant. Any existing council tenant who wishes to apply to transfer to other social housing accommodation in the area must be treated on the same basis as other applicants in accordance with the provisions of the scheme.

This paragraph must describe the principles on which decisions are made about the priority given to housing applicants, and the allocation of offers of vacant dwellings.

2

Selection procedure where the council provides a list of eligible persons clause 3 options B and C

This paragraph must set out the procedures and criteria for the TMO to select tenants of vacant TMO property from a list of eligible persons for council housing accommodation provided by the Council.

This must set out the timescale in which the council must provide a list to the TMO and the relevant information to be provided to the TMO about eligible tenants by the Council.

It must set out the timescale within which the TMO must make its recommendation to the Council or select a tenant of vacant TMO property. It must describe the criteria that will inform the TMO's choice of tenant.

It must also describe how the TMO will ensure that the selection process is consistent with its Equal Opportunities Policy and how decisions will be recorded and monitored.

The council should provide the TMO's nominated officer with all information to which its own allocation officers would have access in making a decision about an offer of accommodation. This would include any information in the eligible tenant's tenancy or re-housing file.

This paragraph should list any additional criteria that will be taken into account by the TMO in deciding between eligible persons of a similar priority. This should include any local lettings priorities, where there is a Local Lettings Policy which applies to the TMO area as part of the Council's allocation scheme.

Where the TMO is making a recommendation under Option B this should describe the timetable and procedure for this and for making representations to the council where it considers that none of the persons on the list should be listed.

This paragraph should set out the timetable for considering and assessing who should be selected as a tenant of a vacant TMO property under option C and arrangements for recording the basis of decisions.

It should set out how persons on the list will be informed of progress and decisions, and identify the administrative tasks the TMO is authorised to carry out prior to grant of tenancy (ie providing information on the property and tenancy agreement, signing up, arranging outstanding repairs etc).

3 Exceptional circumstances

This paragraph must describe the circumstances under which the council may overrule the TMO's selection of tenant procedure.

The council should only overrule the TMO's selection procedure where it believes that:

- the TMO has made an incorrect decision on the basis of the agreed criteria; or
- the TMO has failed to make its selection within the agreed timescale in circumstances which were avoidable; or
- where there are exceptional circumstances. These might include the following:
 - The vacant property is required for a person with urgent housing needs and there is no suitable alternative accommodation, for example, victims of domestic violence or racial harassment amounting to violence or threats of violence.
 - A person has been identified with a particular need for the vacant property, for example, a disabled person who needs a ground floor flat.
 - New information becomes available about the housing circumstances of someone selected for a vacant property which no longer makes it appropriate for them to be allocated that property.

4

Selection of tenants where there is a Local Lettings Policy

clause 3 option D

This paragraph must describe the principles on which decisions are made about the selection of tenants in accordance with the council's allocation scheme. This option only operates where there is a Local Lettings Policy for the TMO area included in the scheme.

It must describe the TMO's role in and procedures for assisting the Council in the allocation process. It must describe how the TMO will ensure that the process complies with the allocation scheme and its own Equal Opportunities policy. These procedures must be updated, where necessary, where the council has reviewed and revised its allocation scheme.

It must describe the arrangements for the council to authorise TMO staff to assess applications for eligibility in the same way as a council officer.

Under these arrangements, the Council must ensure that, overall, reasonable preference is given to applicants in the Reasonable Preference categories and that it has arrangements in place to monitor these procedures.

Potential tenants may come forward either via the council or direct to the TMO.

The basis on which applicants are selected must be agreed by the TMO and the Council. This includes the following:

- the criteria on which decisions are to be made. The principles must conform with the allocation scheme and Local Lettings Policy;
- reasonable Preference categories and the council's monitoring procedures in relation to these;
- information, help and advice to be provided to applicants;
- how applications will be logged and checked;
- assessment procedures, including arrangements for home visits, interviews, liaising with and informing applicants of progress and investigations to ensure applications are genuine; and
- the council's role in assessment procedures.

5

Decisions and rights to a review of a decision

This paragraph must set out how decisions will be made on applications, and how decisions will be recorded, communicated to applicants and reported to the TMO and council.

This must set out the rights of applicants and how they will be informed of their right to a review of a decision.

This should describe how decisions will be made, who is responsible, and how they will be communicated to applicants. This should include the information to be given to unsuccessful applicants. It should describe the procedure for a review of a decision.

It should also set out what an applicant can do if they are unhappy with the service they have received from the TMO.

It should also identify the administrative tasks the TMO is authorised to carry out prior to grant of tenancy.

6

Monitoring

This paragraph must set out how decisions and procedures for assessing applications will be monitored by the TMO and the council.

It should describe what data will be collected and recorded relating to decisions and reviews of decisions, and how decisions and procedures will be monitored and reported to the TMO board to ensure that the TMO has complied with these and that they are operating effectively. Monitoring may include the following:

- how the reasonable preference requirement has been met;
- cases involving exceptional, urgent cases;
- numbers and types of applications received;
- decisions made;
- numbers of and information about applicants selected for vacant TMO property;
- timescales achieved; and
- equal opportunities data.

The procedures and information should enable the council to:

- inspect assessments of housing need;
- ensure confidentiality of personal details; and
- ensure that all persons in the TMO authorised to carry out these functions have undertaken initial and continuing training, including training on current legislation, policy and good practice in relation to assessment of applications and the allocations process.

7

Termination of Clause 3 options C or D

This paragraph must set out the procedure to be used where the council is satisfied, through monitoring, that the TMO selection of tenants under Clause 3 options C and D is not being carried out in a fair and proper way.

Where the council is satisfied that this is happening and can fully demonstrate that the TMO is not selecting tenants in a fair and proper manner, this paragraph should set out the procedure and timetable for the council to request the TMO to change its procedures and for dealing with continuing default in TMO performance.

Default should be dealt with by terminating the operation of Clause 3 options C or D, as appropriate, and varying the Agreement under Clause 18 of Chapter 1 to enable reversion to either Clause 3 options A or B under Clause 3.

8

Choice-based Lettings

Where Choice-based Lettings are operated at Council-wide level or locally in the TMO area, this paragraph must describe the respective roles and responsibilities of the Council and the TMO in administering the system.

This should outline the administrative tasks to be carried out either by the Council, or the TMO in delivering Choice-based Lettings. This should include the following:

- Advertising available property and enabling customers to respond to advertisements;
- Feedback to customers on their responses to advertisements and on lettings outcomes;
- Marketing housing and feedback on successful lettings;
- Nature of information on advertised properties;
- Neighbourhood information;
- Labelling of advertisements and selection criteria;
- Meeting the needs of vulnerable groups, for example, by providing housing advice and support, or linking with health and social care initiatives;
- Quality of communications, including use of paper-based and ICT systems; and
- Providing advice and support to customers on using the system, responding to adverts, information on other housing options.

SCHEDULE 3: INTRODUCTORY TENANCIES

clause 5

This schedule must describe the Council's policies and procedures in respect of Introductory Tenancies in its area.

It must set out the arrangements for monitoring Introductory Tenancies in TMO property, including what information is to be provided and reported.

The policies and procedures should include the following:

1

Information to those with an Introductory Tenancy

This paragraph must set out how information will be provided to new tenants about Introductory Tenancies.

This information should include the Council's Introductory Tenancy Agreement which will set out the tenant's rights, obligations and the date at which a secure tenancy will be granted, assuming the period of the introductory tenancy is successfully completed.

The information must include the tenant's right to an internal review of a decision to take possession.

This paragraph should outline any additional action to be taken to ensure that the new tenant is fully aware of their rights and obligations. This might include a home visit by an Officer and an explanatory leaflet.

2 Procedure if there is a breach of conditions of tenancy

This paragraph must set out the procedure to be used when there is a breach of the Agreement which could result in a decision to seek possession.

This paragraph should set out the following information:

- The circumstances under which action would be commenced to seek possession;
- The steps to be taken prior to serving a Section 128 notice informing the tenant of their right to request an Internal Review;
- The responsibility for the decision to seek possession and any liaison arrangements between the TMO and the council; and
- Arrangements for an Internal Review.

3 Monitoring of Introductory Tenancies

This paragraph must set how Introductory Tenancies are to be monitored including the information to be provided and reported to assist monitoring.

SCHEDULE 4:

TENANCY AGREEMENT CHANGES PROCEDURE

clause 6

1 Tenant consultation

This paragraph must set out the arrangements for initiating changes to the terms and conditions of a Tenancy Agreement and for consulting secure tenants on the proposed changes prior to, and after, the service of a Preliminary Notice of Variation.

This paragraph should set out the main elements of the consultation. This should cover non-statutory consultation with tenants on proposed changes, and statutory consultation carried out in accordance with section 103 of the Housing Act 1985. This should include arrangements in respect of the following:

- Proposals and information. This should describe how tenants will be informed about the proposed changes and subsequent amendments, and how they can obtain further information.

- Response from tenants. This should state to whom tenants may make comments or objections and the process for dealing with these. It should describe any proposed formal consultation such as public meetings or surveys.
- Forums and decision making process. This should describe the various stages of the decision-making process at which the proposals will be discussed and finalised and the rights of tenants to attend and speak.

This paragraph does not include statutory consultation carried out with tenants under section 105 of the Housing Act 1985 (Consultation on matters of housing management) which is dealt with under Clause 15 of Chapter 7.

2

Service of notices

This paragraph must set out the procedure for the service of a Tenancy Variation Notice by either the TMO or the Council; the service of a Preliminary Notice of Variation and the Notice of Variation on tenants.

This paragraph should include the following:

- A description of the Council's procedure and the TMO's procedure prior to serving a Tenancy Variation Notice; and
- Content of notices. This should state the information to be included in each of the notices and, where applicable, must comply with the provisions of section 102 and 103 of the Housing Act 1985. This will include the consultation arrangements described in paragraph 1.

SCHEDULE 5:

BREACH OF TENANCY AGREEMENT, TERM OF A LEASE, OR COVENANT IN A FREEHOLD TRANSFER

clause 7

This Schedule must be consistent with the Council's policies and procedures for dealing with breaches of tenancy.

1

Definition of Breach

This paragraph must describe the circumstances in which this procedure will be used.

It should outline what constitutes a breach of tenancy and the various courses of action available to remedy the breach and the procedures for serving any relevant notices.

It is important that appropriate courses of action are available to deal with different types of breach and that all reasonable steps should be taken to remedy the breach, before possession action is pursued. Other courses of action may include providing additional support or help to tenants who are vulnerable or the use of dispute resolution or mediation procedures.

Use of possession action should be minimised and eviction should only be pursued once all other reasonable steps have been taken.

2 Investigation of allegations

This paragraph must describe the timetable and procedure for initiating action against the alleged breach and investigating the allegation, including service of relevant notices.

This paragraph should describe the support that will be provided to help any victims of the Breach or those providing witness statements.

It should identify the officer responsible for ensuring that the allegation is dealt with according to these procedures.

It should set out the method and timetable for investigating the allegation, and making decision, including identifying whether other support is available to help resolve the problem.

It should set out how and at what stages the TMO or the Council will inform each other of any actions they have taken to remedy the breach. This includes describing the circumstances in which it is not reasonably practicable to remedy the breach without involving the courts.

It should list the monitoring information required by the Council throughout the procedure to remedy the breach or to take court action.

It should set out how the person on whom the notice is served, and any victim or witness, will be informed of any action the TMO will initiate.

3 Rights of persons where an allegation is made or notice served

This paragraph must set out the rights of the alleged perpetrator and other parties and how the TMO will help ensure these rights are respected as far as possible.

Rights include confidentiality, representation, the right to be accompanied during an interview by a friend, witness or advocate and the right to be supported by a translator or interpreter. The alleged perpetrator and any victim of the alleged breach should be informed of their right to appeal against the TMO's decision. This paragraph should describe the appeals procedure.

4 Role of Council

This paragraph must include the procedure for informing and involving the Council at different stages of the procedure to remedy the Breach. It must describe at what stages and in what form the Council will authorise, give consent, or instruct that certain actions be taken or not taken.

**SCHEDULE 6:
ANTI-SOCIAL BEHAVIOUR AND HARASSMENT POLICY
AND PROCEDURE**

clause 8

This schedule must be compatible with the Council's Statement of Policies and Procedures on Anti-Social Behaviour as required by section 218A of the Housing Act 1996, and in accordance with the ODPM's Code of guidance on Anti-Social Behaviour: Policy and Procedure. It must therefore be updated, where necessary, where the Council has reviewed its Statement of Policies and Procedures.

It is important that the TMO's Officers are clear about their roles and responsibilities under the Council's Statement of Policies and Procedures.

The schedule should specify the respective roles and responsibilities of the Council and the TMO in relation to the following paragraphs.

1

Definition of anti-social behaviour

This paragraph must state a definition of anti-social behaviour. For the purposes of the duties imposed by section 218A of the Housing Act 1996 anti-social behaviour is any conduct to which sections 153A(1) and 153B (2) of the 1996 Act apply. These sections apply to conduct which:

- Is capable of causing nuisance or annoyance to any person; and
- Directly or indirectly relates to or effects the housing management functions of a relevant landlord; or
- Consists of or involves using or threatening to use housing accommodation owned or managed by a relevant landlord for an unlawful purpose.

This paragraph should include, but need not be limited to, the following:

- noise nuisance (for example, loud parties, shouting, noise from TVs, loud music and burglar alarms);
- intimidation and harassment;
- local environmental quality issues (for example, litter, dog fouling, graffiti, fly tipping and nuisance vehicles);
- aggressive and threatening language and behaviour;
- actual violence against people and property;
- hate behaviour that targets members of identified groups because of their perceived differences (for example, race and ethnicity, gender, age, religion, sexual orientation, mental health or disability); and
- using housing accommodation to sell drugs, or for other unlawful purposes.

2 Procedure for making a complaint of ASB

This must describe the procedure for any lawful resident of the TMO to make a complaint.

This should identify the person to whom an initial complaint should be made, the help or support which will be given by the TMO to those needing help in making a complaint, and should describe when it may be appropriate for a complainant to contact other agencies, for example the police and what will be done to facilitate this.

3 Procedure for processing a complaint of ASB

This paragraph must describe who will be responsible for processing the complaint, the procedures for handling specific types of complaint, such as racial harassment, the timetable to ensure that the process is prompt, and how the complainant will be kept informed of progress.

This paragraph should set out the information and advice that will be provided to the complainant when they make a complaint and the role of the complainant in the determination of an action plan.

It should also set out what the complainant can do if they are unhappy with the service they have received from the TMO.

4 Support for complainants and witnesses

This paragraph must describe how the support needs of complainants and witnesses will be assessed, and the arrangements for and types of support available to provide support in particular types of case.

Assessment of support should include assessment of any special needs/translation services etc and a risk assessment of home environment and installation of appropriate witness protection measures.

Support arrangements should include the following:

- Referral arrangements with other partners or agencies to ensure complainants are provided with practical, specialist or emotional support and advice as appropriate;
- Arrangements for regular visits or patrols by officers or other agencies (for example, Community Support Officers or Neighbourhood Wardens); and
- Provision of support to complainants and witnesses preceding, during and following any court proceedings.

5 Procedures for addressing cases of ASB

This paragraph must set out the various types of legal and non-legal interventions that may be used in addressing cases of ASB and the circumstances in which they might be appropriate.

It must describe arrangements for gathering evidence and preparing a case to go to Court and arrangements for representation of the landlord in Court (which may vary by type of intervention).

It should also describe referral arrangements with other partners or agencies where appropriate (such as specialist mediation services).

Types of intervention should include the following:

- Mediation;
- Acceptable Behaviour Contracts;
- Anti-Social Behaviour Orders;
- Injunctions and exclusions orders under sections 153A, 153B, 153C or 153D of the 1996 Act;
- Injunctions under section 222 of the Local Government Act 1972;
- In connection with any of the injunctions above, applications for powers of arrest;
- Possession proceedings;
- Demoted tenancies; and
- Any other legal action which could be taken with the support of the police or local authority, for example, Environmental Protection Act (1990) action or criminal prosecution.

Some interventions may go wider than the housing management function but the Council and the TMO may agree that the TMO has a role in assisting the Council in such cases. The Council and the TMO may also agree procedures for the TMO to monitor the use of different types of intervention, specifically use of demoted tenancies.

6

Racial and other harassment policies and procedures

This paragraph must describe specific policies for dealing with racial and other harassment. It must set out how the TMO will ensure that it has complied with its own procedures and that its actions have been effective in preventing further acts of harassment.

This must set out the rights of the parties to the allegation and how the TMO will help ensure these rights are respected as far as possible.

This paragraph must be consistent with the Council's Statement of Policies and Procedures on ASB and in accordance with its Race Equality Scheme.

It should also be consistent with the Council's policies for dealing with other forms of harassment, including domestic violence.

This paragraph must set out the actions the TMO will take to ensure appropriate support, protection and advice for victims and witnesses, including any actions which require the assistance of the Council, police and other agencies.

This must set out how allegations of harassment should be made and the procedure and timetable for investigating allegations.

It should describe the support the TMO will provide to those that need help either in making an allegation or responding to an allegation.

This should identify the Officer responsible for ensuring that the allegation is dealt with in accordance with the procedures, the method and timetable for investigating the allegation, making a decision and informing the victim and perpetrator of the action the TMO will take.

Both parties must be informed of their right to appeal against the TMO's decision.

This paragraph should describe the appeals procedure.

This paragraph must describe how the TMO will keep records relating to the investigation of allegations of harassment and how procedures will be monitored and reported to the TMO board to ensure that the TMO has complied with these and its actions have been effective.

The procedures and their effectiveness should be regularly reviewed. Monitoring procedures should describe any joint monitoring arrangements with the council and other agencies.

7 Information exchange and data protection

This paragraph must set out which types of information which are to be shared with other persons or organisations, and the reasons for this.

This should be based on information protocols which should be in place (in accordance with the Council's Statement of Policies and Procedures in relation to ASB) to ensure effective information exchange between all relevant agencies, and should include arrangements to ensure data protection.

8 Provision of support to perpetrators and preventative work

This paragraph must describe preventative initiatives which are in place and support to be provided to tenants whose anti-social conduct is a consequence of their vulnerability (for example drug use or mental health).

9 Monitoring and review arrangements

This paragraph must describe how ASB is to be monitored and how measures to deal with ASB are to be evaluated and reviewed.

Monitoring arrangements should enable an understanding of the nature of ASB, and help identify areas where ASB is prevalent. The effectiveness of specific initiatives, for example the use of legislative measures, should be reviewed as part of evaluation. These arrangements should include internal and external monitoring of the ASB service.

10 Sharing information with tenants and the wider community

This paragraph must describe how action taken to tackle ASB will be publicised to reassure tenants and the wider community, and to provide tenants with the information they need to report any breaches of injunctive measures which may have been served upon perpetrators.

SCHEDULE 7: RESIDENTS' DISPUTES POLICY AND PROCEDURE

clause 9

1

Scope of the policy

This paragraph must state who is eligible to complain and the type of complaints covered by this policy.

The Tenancy Disputes Procedure is available to any lawful resident of the TMO who has a complaint about another resident of the TMO which does not involve allegations of threats of violence, intimidation or abuse, where the ASB and Harassment Policy and Procedure may be more appropriate.

It should also refer to the Council's own Disputes Policy and Procedure or alternative dispute resolution procedures such as a local mediation service, which may offer a more appropriate way of dealing with complaint in particular types of case.

2

Procedure for making a complaint

This paragraph must describe how complaints should be made, the support the TMO will provide to those who need help in either making or responding to a complaint.

This paragraph should describe the support that will be provided to help a resident make their complaint, including what information needs to be provided by the complainant, and where and to whom the complaint should be sent. A similar level of support should be provided to those responding to a complaint. It should identify the officer responsible for ensuring that the complaint is dealt with according to these procedures.

3

Procedure for investigating and deciding complaints

This paragraph must describe who will be responsible for investigating the complaint, the procedure and timetable for investigation, how decisions will be taken, reported and communicated, including any action the TMO will initiate, and the procedure and timetable in respect of appeals.

4

Rights of both parties to the complaint

This paragraph must set out the rights of the parties to the complaint and how the TMO will help ensure these rights are respected as far as possible.

Both parties to the complaint have rights in respect of confidentiality, representation, the right to be accompanied during an interview by a friend, witness or advocate and the right to be supported by a translator or interpreter. Both parties should be informed of their right to appeal against the TMO's decision.

Either party should have the right to request independent mediation of the Dispute. Both parties should be informed of this possibility.

5

Record keeping and monitoring requirements

This paragraph must describe how the TMO will keep records relating to the investigation of complaints and how procedures will be monitored and reported to the Board to ensure that the TMO has complied with these and that its actions have been effective in resolving the dispute.

There should be regular reports to the board outlining progress in dealing with Disputes.

The procedures and their effectiveness should be regularly reviewed.

SCHEDULE 8: MUTUAL EXCHANGES POLICY AND PROCEDURE

clause 12

1 Responding to requests for a mutual exchange

This paragraph must set out the procedure for responding to requests for a mutual exchange.

This paragraph should state which officer will be responsible for dealing with applications.

This officer should, in acknowledging receipt of applications, inform applicants of their rights. This includes their right to a written decision within 42 days, the grounds on which the application might be refused, and the means of appeal to the council and the County Court.

2 Grounds for refusal

This paragraph must set the grounds for refusal.

The grounds for withholding consent to an exchange include the following:

- That the applicant will be moving to accommodation inadequate to their needs;
- That the applicant will be moving to accommodation more than one bedroom in excess of their needs;
- That there is a current order for possession agreed by the court in respect of at least one of the tenancies involved;
- That at least one of the properties has been adapted for elderly or special needs and that the applicant does not qualify for this type of accommodation;
- That the accommodation is tied;
- That the landlord is a charity and the proposed tenant's residence would conflict with the aims of the charity; and
- That at least one of the applicants has been issued with a Notice of Intention of Seeking Possession.

3 Grounds for conditional consent

This paragraph must set out the grounds for conditions which may be attached to consent.

Conditions include the discharge of rent arrears or other outstanding breaches of tenancy obligations which are to be remedied.

4

Notification requirements

This paragraph must set out the procedure for processing applications and notifying the exchanging authority and applicants of the decision within the 42 day period.

SCHEDULE 9:

VOLUNTARY ASSIGNMENTS POLICY AND PROCEDURE

clause 13

1

Responding to requests for a voluntary assignment

This paragraph must set out the procedure for responding to applications for voluntary assignments of secure tenancies.

This paragraph should state which officer will be responsible for dealing with applications.

This officer should, in acknowledging receipt of applications, inform applicants of their rights.

2

Grounds for refusal

This paragraph must set out the grounds for refusal.

3

Grounds for conditional consent

This paragraph must set out the grounds for conditions which may be attached to consent.

4

Notification requirements

This paragraph must set out the procedure for processing applications and notifying applicants of the decision.

SCHEDULE 10:

SUBLETTING POLICY

clause 14

1

Applications to sub-let

This paragraph must set out the procedure to be followed by tenants who wish to apply to sub-let part of their dwelling.

The procedure should state how and to whom applications should be made and what information should be submitted in support of any application. This will include the number of people who will be living in the dwelling and the terms of the proposed sub-tenancy.

2

Dealing with requests to sub-let

This paragraph must set out the process for dealing with applications.

This paragraph should set out the timetable for replying to applications and in what form this will be done.

It should also set out the grounds on which requests may be refused. Permission can only be refused where it will lead to overcrowding within the meaning of the 1985 Housing Act or where works are planned to the dwelling which would affect the accommodation occupied by the sub tenant.

This paragraph should state what information, if any, should be passed on to the Council.

SCHEDULE 11: GIVING CONSENTS

clause 16

1 Areas for which consent is required

This paragraph must set out the areas for which tenants, leaseholders and freeholders must obtain the consent of either the TMO or the Council.

This paragraph should provide a comprehensive list of the areas for which consent is required. It should state whether the TMO or the Council is responsible for giving consent. If an area is not listed here, the Council and the TMO will agree who should give consent and the list will be updated.

2 Applications to obtain consent

This paragraph must set out the process to be followed by those applying for consent.

The procedure should state how and to whom applications should be made and what information should be submitted in support of any application.

3 Dealing with applications

This paragraph must set out the process and timetable for dealing with applications and the form in which a response will be given.

It should also set out the grounds on which requests may be refused.

This paragraph should state what information, if any, should be passed on to the Council.

SCHEDULE 12: RIGHT TO BUY: ENQUIRIES BEFORE EXCHANGE OF CONTRACTS

clause 18

This schedule must set out the procedure to be followed by the TMO in dealing with enquiries prior to the exchange of contracts.

1 Making enquiries

This paragraph must set out the procedure to be followed by those making enquiries.

This should state how and to whom enquiries should be made and what information is required to respond to the enquiries

2 Responding to enquiries

This paragraph must set out the procedure for dealing with enquiries.

This paragraph should set out the timetable for responding to enquiries. It should also set out the information that will be provided by the Council and the TMO.

3 Charges

This must set out the basis on which charges, if any, will be made for the service.

Chapter 7: Schedules

SCHEDULE 1: STAFF TRANSFERRED UNDER THE TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 1981 (TUPE) clause 1

This paragraph must list all staff transferred from the Council to the TMO by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE).

This paragraph must include a summary of the terms and conditions of transferred staff.

This paragraph must include any requirements on the TMO or the Council in respect of pension arrangements for transferred staff.

Appropriate safeguards should be provided for the pensions of all TMO staff and specifically for staff transferring to the TMO under TUPE. The council and the TMO should agree the position on pension entitlements and ensure that staff are fully informed and consulted on such arrangements.

SCHEDULE 2: THE SECONDMENT ARRANGEMENTS FOR COUNCIL STAFF clause 3

- 1 Principles of the secondment**
This paragraph must set out the main objectives of secondment for the TMO and the Council.
- 2 Posts to be filled by seconded staff and period of secondment**
This paragraph must identify the posts that are to be filled by seconded staff and the period of the secondment.

For a fixed period of secondment, the start and end dates should be set out for the relevant posts together with procedures for ending the secondment.

However, provision should be made for changing, shortening or extending the secondment arrangement by agreement of both parties.

- 3 Recruitment and selection of seconded staff**
This paragraph must include a summary of the arrangements for the recruitment and selection of seconded staff, including how decisions will be taken.

This paragraph should also include the following:

- Arrangements for advertising and promoting the secondment opportunities within the council.
- Arrangements for external advertising where internal applicants do not meet the requirements of the person specification.
- Procedures for filling posts that become vacant during the secondment period.

4 Management and supervision of seconded staff

This paragraph must include a summary of the terms and conditions of seconded staff.

This paragraph should also include arrangements in respect of the following:

- Reviewing terms and conditions of seconded staff;
- Providing cover during periods of extended leave or absence;
- Grievance and disciplinary procedures, including respective roles of the TMO and the Council;
- Provision for continuing Council support for seconded staff, including personal and professional development;
- Procedures for changing the TMO's staffing structure; and
- Return of individual staff, including arrangements for seconded staff to apply for vacant Council posts during secondment.

5 Costs of secondment

This paragraph must set out the agreed costs that will be charged by the Council to the TMO for the provision of seconded staff.

This should include details of any costs the TMO will be expected to meet over and above the charge made by the Council for those staff.

In preparing this schedule the TMO and the Council should have regard to the Guidance on the Secondment of Council Staff to Tenant Management Organisations (2005) published by the Office of the Deputy Prime Minister.

SCHEDULE 3:

LIAISON OFFICER ROLE AND RESPONSIBILITIES

clause 6

1 The role of the Liaison Officer

This paragraph must set out the role of the Council's Liaison Officer and the functions which the Officer will perform in providing support to the TMO and acting as a point of contact between the Council and the TMO.

This should identify the person responsible for providing liaison and support to the TMO and the type and level of support that will be provided. The Council and the TMO should agree the Liaison Officer's role as the first point of contact for the TMO, and the Officer's responsibilities in carrying out specific tasks, such as renegotiating the TMO's allowances or the management agreement.

The Liaison Officer should have sufficient detailed knowledge of the TMO and the appropriate level of authority within the Council to carry out the tasks agreed by the Council and the TMO.

This should describe the extent of the Liaison Officer's responsibilities in relation to strategic and policy matters as well as day to day contact and support for the TMO. Where other parts of the Council are responsible, for example, for dealing with specific problems or monitoring of the agreement, there should be a procedure for the TMO to contact the relevant person in the Council.

There should be clear reporting lines between the TMO and the Liaison Officer, and the TMO and other parts of the Council,

2

Council functions under the agreement

This paragraph must describe the parts of the Council responsible for carrying out specific functions, such as monitoring, under the management agreement and identify the person in the Council with the authority to carry out those functions.

This should identify relevant Council sections such those dealing with housing finance, personnel, environmental and leisure issues.

This paragraph should set out, where appropriate, any relevant Council functions under the agreement which have been delegated to other organisations such as an Arms Length Management Organisation or contractor, and the procedures for the TMO to contact and liaise with these in order to carry out its functions under the agreement.

3

Monitoring

This paragraph must describe how liaison arrangements between the Council and the TMO will be monitored and reported to ensure that these continue to be effective.

SCHEDULE 4:

MANAGEMENT COMPLAINTS POLICY AND PROCEDURE

clause 16

1

Scope of Complaints Policy

This paragraph must explain who is able to use the Complaints Procedure and the type of complaint covered.

The Complaints Procedure is available to any lawful resident of the TMO who has a complaint against the TMO or those acting on its behalf and who has been unable to resolve the issue after discussion or correspondence with TMO staff.

This paragraph should set out the respective responsibilities of the TMO and the Council for dealing with the complaint. Any resident who has a complaint against the Council or those acting on its behalf should use the Council's own complaints procedure. However, complaints about the Council, which are made to the TMO, should be passed to the Council with an agreed period.

This paragraph should provide examples of the circumstances in which the complaints procedure is appropriate. These include complaints about the quality of services provided by the TMO, the behaviour of staff or those acting on behalf of the TMO and TMO board members.

2 Procedure for making a complaint

This paragraph must describe the procedure for making a complaint.

All complaints should be in writing and addressed to either the manager of the TMO or an officer of the board.

This paragraph should describe the help which will be given to those who require help in writing or formulating their complaint.

3 Complainant's Rights

This paragraph must set out the complainant's rights in respect of confidentiality, representation and support and appeal.

4 Procedure for investigating and deciding complaints

This paragraph must describe who will be responsible for investigating complaints, the timetable to ensure the process is prompt, how decisions will be taken, reported and communicated, and the procedure and timetable in respect of appeals.

This paragraph should identify the person responsible for undertaking the investigation of a complaint. This will normally be the TMO's manager unless the complaint relates to that person. Investigation may involve face to face interviews, consideration of relevant TMO policies, use of other evidence and, where appropriate, referral to other authorities.

The timetable should commit the TMO to making a decision within a reasonable period, ideally, no longer than a month.

The investigating officer's report should state whether or not the complaint has been upheld.

If the complaint has been upheld, the report should state:

- What action will be recommended to the board to rectify the cause of the complaint;
- What compensation, if any, will be recommended to the board;

If the complaint is not upheld, the report should state:

- The main grounds on which the complaint or claim for compensation has not been upheld;
- The procedure for appealing against the decision or any part of it.

5 Record keeping and monitoring

This paragraph must describe the arrangements for the safekeeping of any documents relating to the investigation of complaints, and how complaints will be monitored and reported to the Board.

SCHEDULE 5:

ALTERNATIVE DISPUTE RESOLUTION PROCEDURE

clause 18

This schedule must set out the procedure for disputes to be referred to mediation or other forms of dispute resolution (other than arbitration which comes under Schedule 6).

It must describe the procedure for the council or the TMO to request that the dispute be settled by mediation or other form of Alternative Dispute Resolution (ADR), including how to instigate the procedure.

It must describe arrangements, agreed by the parties, for referring disputes under the Agreement to dispute resolution, including mediation, the dispute resolution procedure or service which is to be used to deal with such disputes, and the process by which this will be carried out.

There may already be an existing dispute resolution or mediation service available locally or regionally which could be developed or adapted for this purpose.

Alternatively a national cost-controlled procedure for mediation has been specifically developed by the Chartered Institute of Arbitrators for use by TMOs and Councils to deal with disputes under the Agreement. Applications should be made to the Chartered Institute of Arbitrators in accordance with the “Mediation Procedure for Local Housing Authorities and Tenant Management Organisations (2005 Edition)”. Details of the scheme, including guidance notes and application forms, are available from the Chartered Institute of Arbitrators on www.arbitrators.org.

Organisations like the Centre of Effective Dispute Resolution (CEDR) – an independent not for profit organisation – also provide dispute resolution and prevention services. Details of CEDR’s services are available on www.cedrsolve.com.

SCHEDULE 6:

ARBITRATION PROCEDURE

THE CHARTERED INSTITUTE OF ARBITRATORS

ARBITRATION SCHEME FOR LOCAL HOUSING AUTHORITIES AND

TENANT MANAGEMENT ORGANISATIONS RULES (2004 EDITION) clause 18

1

Introduction

1.1

This scheme, which has been approved by the Office of the Deputy Prime Minister (ODPM), applies to disputes between a Local Housing Authority (Authority) and a Tenant Management Organisation (TMO) arising under either:

- a) regulation 4 of the Housing (Right to Manage) Regulations 1994; or
- b) an agreement entered into pursuant to regulations 1 to 10 or regulation 11 (agreements entered into voluntarily) of those Regulations.

1.2 Arbitrations under these rules may be conducted –

- a) Using written submissions and documentary evidence only without a hearing; or
- b) With both written submissions and an oral hearing.

2 Scope of the scheme

2.1 The scheme uses arbitration as a method of resolving disputes between an Authority and a TMO under regulation 4 of the Housing (Right to Manage) Regulations 1994 or an agreement entered into pursuant to regulations 1 to 10 or regulation 11 (agreements entered into voluntarily) of those Regulations.

2.2 Applications for arbitration under the scheme in respect of a dispute do not relieve any party from any obligation it may have to pay the other party or parties any other amounts which are due and are not in dispute.

2.3 The scheme is intended to allow the parties to present their case without the need for legal representation, although parties may be represented by a third party of their choosing at their own expense if any, and after notification to the other party or parties to the dispute.

2.4 The arbitrator will have the right to call for additional evidence on any relevant matter, from any party, in writing or orally, if he / she deems it necessary to do so in order to reach a resolution of the dispute in accordance with relevant law, the 1996 Arbitration Act and any contract or agreement in existence between the parties.

2.5 The Institute administers the scheme independently and the appointment of the arbitrator under the scheme is within the Institute's exclusive and unfettered control. Arbitrators chosen for appointment have been approved by the Secretary of State for the purpose of acting as an arbitrator in connection with the Housing (Right to Manage) Regulations 1994.

3 Making an application

3.1 Applications for arbitration must be made on the designated application form, available from The Chartered Institute of Arbitrators, The International Arbitration and Mediation Centre, 12 Bloomsbury Square, London, WC1A 2LP. Telephone 020-7421-7444; Fax 020-7404-4023; email drs@arbitrators.org.

3.2 The Institute will appoint an arbitrator from its panel of arbitrators specifically created for this scheme, and inform the parties at an appropriate time in the proceedings.

3.3 Whilst making the application either party can elect for it to proceed under a documents-only procedure designed to offer quick and cost-effective decisions where the matters are not too complex.

- 3.4 Alternatively, either party can request an oral hearing.
- 3.5 Both parties will submit with the application form a case fee the amount of which is specified on the application form.
- 4 The arbitration procedure**
- 4.1 In making an application the party making the application (the claimant) will submit its application and full claim with supporting evidence with the application form.
- 4.2 Upon receipt of the application and full claim the Institute will forward a copy to the other party (the respondent) who will be given 21 days by the Institute to set out its defence.
- 4.3 The claimant will be sent a copy of the defence and will be allowed a 14 day period in which to submit comments on the defence.
- 4.4 No extensions of time are allowed under the documents-only arbitration process, except by consent of both parties and the arbitrator (if appointed at that stage).
- 4.5 If it was indicated on the application form that the matter would be dealt with under documents-only arbitration, the arbitrator will make his / her award within 14 days of receipt of all relevant case papers. The Institute will publish the award to the parties.
- 4.6 If it was indicated on the application form that an oral hearing is required, the Institute will forward the complete case file to the arbitrator and arrange an oral hearing with the parties.
- 4.7 The oral hearing will be held at the premises of the Authority or other mutually agreed location, and is limited to and will not exceed 4 hours in duration. The arbitrator shall determine all matters of procedure and evidence in relation to the hearing.
- 4.8 If the arbitrator requires further information in order to reach an award, he / she may require the provision of any further documents, information or submissions that he / she considers would assist him / her in the decision and will use the most timely and appropriate form of written or verbal communication to seek and obtain such evidence. If the party or parties do not make that additional evidence available within the time prescribed by the arbitrator, he / she may proceed on the basis only of the evidence already before him / her.
- 4.9 The Institute will publish the arbitrator's award, with reasons, after the arbitrator has considered all submissions and evidence, including oral evidence, if any.

5 The award

5.1 Any award made under the scheme is legally binding on all parties, and can only be challenged within the statutory time limits on the following grounds –

- a) a challenge to the substantive jurisdiction;
- b) a claim of serious irregularity;
- c) an appeal on a point of law.

Legal advice should be sought if further information about these grounds and the procedures for challenging an award are desired.

5.2 Any payment indicated in the award must be made directly between the parties within 21 days of its publication and not through the arbitrator or the Institute.

6 Arbitrator's powers

6.1 The arbitrator shall be and remain at all times during the arbitration independent of the parties, and have regard only to the relevant law, statutory guidance given by the Secretary of State and the agreement between the parties.

6.2 The arbitrator should also act expeditiously, and in a way that provides a fair award in resolution of the dispute.

6.3 The arbitrator may, in his / her absolute discretion, refuse to consider documents or other evidence not submitted within timescales set down by the scheme or given by him / her in direction to the parties.

6.4 The arbitrator shall have full jurisdiction to decide his / her jurisdiction in the event of a dispute about jurisdiction arising.

6.5 In addition to the arbitrator's powers mentioned in 6.1 to 6.4 above, the arbitrator shall also have the power to:

- a) allow submission of further evidence and the amendment of the claim or defence;
- b) order the parties to produce goods, documents or property for inspection;
- c) conduct such enquiries as may appear to the arbitrator to be desirable;
- d) receive and take into account any oral or written evidence as the arbitrator shall decide to be relevant;
- e) at the expense of the Authority, appoint an expert to report on specific issues or take legal advice;
- f) award interest whether or not claimed;

- g) proceed with the arbitration if either party fails to comply with these rules or with the arbitrator's directions, or if either party fails to attend any meeting or inspection ordered by the arbitrator but only after giving that party written notice;
- h) terminate the arbitration if the arbitrator considers the case to be incapable of resolution under the scheme or if the parties settle their dispute prior to an award. If the case is settled the parties must immediately inform the Institute in writing of the terms of the settlement and the arbitrator shall record them in an agreed award enforceable under the 1996 Arbitration Act; and
- i) determine any question of law arising in the arbitration.

6.6 In addition to the powers conferred by these rules, the arbitrator shall have the widest discretion permitted by law to resolve the dispute in a fair, just, speedy, economical and final manner in accordance with natural justice.

7 Arbitration costs

7.1 The parties will pay the arbitrator's fees to the Institute as determined by the arbitrator in the award.

7.2 The Institute's administration fee is the registration fee paid by the parties when an application for arbitration is submitted. Details of the level of registration fee are available on the scheme application form.

7.3 The arbitrator's fee is £500 plus VAT for a documents-only arbitration, and £1,000 plus VAT where there is an oral hearing. Where there is an oral hearing the arbitrator will have considered the papers submitted to-date in the arbitration prior to the hearing.

7.4 The arbitrator shall have a discretion to order one party to reimburse all or part of the other party's registration fee to that party.

7.5 No legal proceedings may be brought by one party against the other for recovery of costs incurred during the arbitration.

8 Confidentiality

8.1 No party involved in any arbitration under the scheme, nor the Institute or the arbitrator shall disclose explicit details of the proceedings, award, and reasons for the award to any third party to the case.

8.2 Notwithstanding 8.1, all parties, in agreeing to the resolution of disputes under the scheme, give permission to the Institute to gather, retain and publish statistical and other information on such disputes whilst preserving the anonymity of parties.

9 Reservation of service

- 9.1 The Institute reserves the right to decline an individual request to appoint an arbitrator.

10 Miscellaneous

- 10.1 With reference to section 57 of the 1996 Arbitration Act, the arbitrator may on his own initiative, or on the request of one of the parties:
- a) correct an award as to remove any clerical mistake or error arising from an accidental slip or omission or clarify or remove any ambiguity in the award; or
 - b) make an additional award to deal with any claim (including a claim for interest or costs), which was presented to the arbitrator but was not dealt with in the award.
- 10.2 Nothing herein shall prevent the parties agreeing to settle the differences or dispute arising out of the agreement without recourse to arbitration.
- 10.3 Nothing herein shall prevent the parties from appealing the award to the High Court in terms of the 1996 Arbitration Act, should the need arise.
- 10.4 If necessary the Institute shall appoint a substitute arbitrator and shall notify the parties accordingly.
- 10.5 The scheme is subject to revision and amendment from time to time. The edition of the scheme in force at the time the dispute arises shall govern any arbitration under the scheme.
- 10.6 Neither the Institute nor the arbitrator can enter into any correspondence regarding an award issued under the scheme.
- 10.7 Neither the Institute nor the arbitrator shall be liable to any party for any act or omission in connection with the arbitration conducted under these rules.

APPLICATION FORM
ARBITRATION SCHEME FOR LOCAL HOUSING AUTHORITIES AND TENANT
MANAGEMENT ORGANISATIONS (2004 EDITION)

Please read the scheme's rules carefully before you fill in and return this form.

1 TMO's contact details

Full name of TMO:

Address:

Postcode:

Daytime Phone no: Mobile:

Email: Fax:

2 Authority's contact details

Full name of TMO:

Address:

Postcode:

Daytime Phone no: Mobile:

Email: Fax:

3 Dispute details

In the space below please give us brief particulars of the nature, circumstances and location of the dispute, stating the issues for arbitration and amount in dispute. **The party making the application (the claimant) must also submit to the Institute two copies of their full claim when the application is submitted.**

4

Registration Fees

In the event of the application being for a documents-only arbitration:

- A cheque for the sum of £125 plus VAT is attached from each party

In the event of the application being for an oral hearing:

- A cheque for the sum of £200 plus VAT is attached from each party

5

Declaration

Please read the statements below before signing this form.

We have read and understood the Arbitration Scheme for Local Housing Authorities and Tenant Management Organisations.

We are applying for you to appoint an independent arbitrator ?, in accordance with the rules of the Arbitration Scheme for Local Housing Authorities and Tenant Management Organisations.

We understand that the independent arbitrator's award is legally binding.

We have attached the relevant registration fees in accordance with section 4 above.

TMO's signature:

Date: / /

Authority's signature:

Date: / /

Now return this form to:

Dispute Resolution Services
The Chartered Institute of Arbitrators
12 Bloomsbury Square
London WC1A 2LP

The complete Tenant Management Organisation boxed pack is available,
priced **£40**, ISBN 1-85112-800-X.

ISBN 1-85112-802-6

Price **£7** (when sold separately from pack)

ISBN 1-851128-02-6



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