

National Federation of Tenant Management Organisations

A Tenants Guide to the Right to Manage





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Introduction

Housing law in England gives local authority tenants a collective right to take on the management of the council housing where they live. This may happen where a local tenants' group believe that they could provide a better or more cost effective service, like arranging repairs or estate cleaning, if they were to have direct control of the money that the council spends on that service.

When tenants join together to manage their own homes they set up a 'tenant management organisation'. Tenant management organisations, in different shapes and sizes, have been managing council housing around the country for nearly fifty years.

As you would expect, there are safeguards built into the law to make sure that a tenants' group can only take on housing management functions if they have the support of tenants in the homes and if they can show they have the skills and knowledge that will be needed to be successful.



'Tenants' in the Right to Manage means secure and other council tenants – including leaseholders.

The 'Right to Manage', as the law is called, has been improved to make the process quicker and less complex for tenants who want to set up a tenant management organisation. This guide tells you more about tenant management organisations and explains how the Right to Manage works. The guide also tells you where you can get more information and advice.

What is a Tenant Management Organisation?

Tenant Management Organisations are often called ‘TMO’s for short. A TMO is a means by which council or housing association tenants and leaseholders can collectively take on responsibility for managing their homes. Those resident members of the TMO create an independent legal body and usually elect a tenant led management committee to run the organisation. The TMO can then enter into a legal contract, the management agreement, with their landlord. The TMO gets an annual management and maintenance budget to pay for the management and repair duties that they take on. This is based on what the council spends on the same functions.

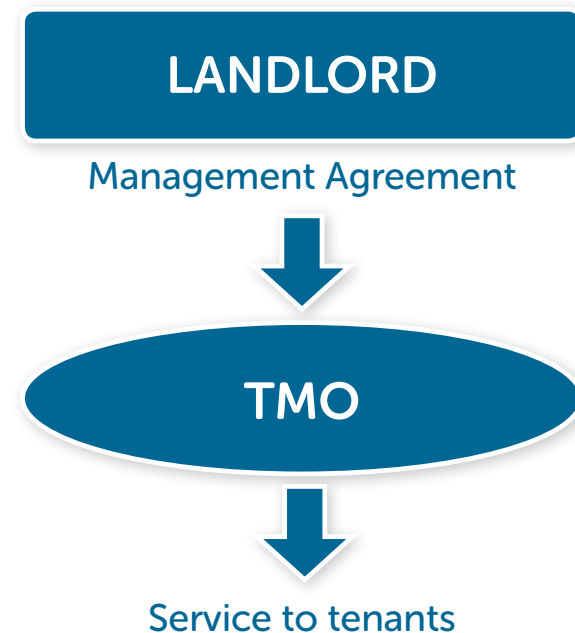


If you are a housing association tenant then you can explore the Voluntary Route, Community Cashback and Local Management Agreements at www.nftmo.com.

TMOs take different forms and sizes. Some TMOs manage a handful of homes while others manage large estates of a thousand homes or more. Very small TMOs may rely mainly on voluntary effort but most employ staff such as housing managers, caretakers and repair workers.

The services managed by the TMO vary but may include day-to-day repairs, allocations and lettings, tenancy management, cleaning and caretaking, and rent collection. Some TMOs go on to provide wider community benefits such as youth centres, credit unions and social clubs.

The TMO does not affect tenancy rights. So, for example, council tenants managed by a TMO still have the council as their landlord and retain all their rights as a council tenant.



This relationship will be more complex if the Council has set up an Arms Length Management Organisation (ALMO). You can find out more in a good practice guide published by the NFTMO and the National Federation of ALMOs (available in the section entitled the ‘Right to Manage Process’ in the NFTMO’s Toolbox for TMOs at www.nftmo.com/toolbox).

Tenant Management Organisations in Action

Research into the performance and impact of TMOs has concluded that in most cases TMOs perform better than their own council, providing value for money and demonstrating what local people can achieve. Many are involved in wider social and development activities that help to strengthen their community.

TMOs have the advantage of local knowledge and small scale. Many councils and housing associations have to look after large numbers of homes spread across a wide geographical area. By contrast the staff and tenant board members of TMOs know the people and homes in their neighbourhood well and are on the spot to monitor services and respond to problems.

Some TMOs have been operating successfully for 30 years and more, a remarkable testament to the volunteers involved. As with any other sector, there are examples of failure. Good governance is vital in voluntary organisations and where TMOs have failed it has often been due to poor governance. But the overall picture is of a model for community control that works and provides great value for money, often in the most disadvantaged communities.

Would a TMO be an option in your neighbourhood?

A TMO is one of many ways in which tenants can influence their housing. It is not the right solution for every community. Success is more likely where there is a committed tenants group with a clear sense of what they want to do and strong links with the community they represent.

Setting up a TMO is a long term project, not a 'quick fix'. It works better in an identifiable estate or neighbourhood although TMOs have been set up to manage dispersed rural housing. It is important to try to get the co-operation of the landlord. Although Council tenants have a legal Right to Manage things will be smoother if the council is a willing partner in the project.

Tenants who may be interested in setting up a TMO can get free advice and may be eligible for government grants to help them find out more, explore the possibilities and test support. More information is available from the government's Department of Communities and Local Government at tenantempowerment@communities.gsi.gov.uk

'Build your own TMO' to fit local circumstances and aspirations

No two TMOs are the same. Local communities create their TMO to fit local needs. Some groups want very specific limited responsibilities, such as control of estate cleaning contracts. Others may want a more comprehensive role including repairs, tenancy management and lettings. Some may want to employ their own staff while others may prefer to operate through staff employed by the landlord. Some TMOs start with limited responsibilities and then expand their role once they have more experience. Small TMOs, particularly those managing 50 dwellings or less, may need TMO board members to have a 'hands on' role in the office. Tenant board members in large TMOs are much more likely to be at arms length from day to day service delivery.

The Right to Manage – Step by Step

The Right to Manage Regulations 2012 renewed and streamlined the right of council tenants to set up a TMO and to provide housing management services on behalf of their landlord. To exercise this right a tenants' group must follow a set procedure and show that they have the support of tenants and that they are competent to manage services properly.

When a tenants' group has explored the potential options for involvement and decided that the Right to Manage is their preferred approach, the first step is to serve a formal Right to Manage notice on the council. Once accepted the notice triggers a development period during which the group will aim to gain the skills and knowledge they will need. At the same time the group will work on a business plan and negotiate the proposed management agreement with the council. At the end of the development period the competence of the tenants group will be assessed. If successful, an offer document is sent to all tenants including information about the TMO and the services they intend to provide. Tenants are then asked to vote on the proposed delegation of functions to the TMO. If the majority of those who vote are in favour then the TMO can start preparing to manage. An office, staffing, contracts and systems need to be sorted out before the TMO formally starts to manage





Explore the Options for Involvement

Working through the Right to Manage process from start to finish will require a major commitment of time and energy from members of the tenants' group. So before serving a Right to Manage notice it is important to be confident that it will be the right approach for the community having regard to the local circumstances, priorities for action and expectations for the future.

Early questions might be; "What is it that we want to change about the management of our housing? What is our vision of how things should be? How can tenants achieve that vision through getting involved in housing management? If we go for a tenant-led approach have we got the time, energy and commitment to make it work?"

There are many ways in which tenants can get involved so it is worth checking out what options might be available locally and which of those options are most likely to enable the tenants' group to achieve their aims. More information about options for tenant involvement, including Local Management Agreements and Community Cashback can be found at www.nftmo.com/toolbox in the 'Right to Manage Process' section. Government grant may be available to help pay for advice and support when exploring the options.

It is a good idea to talk to tenants in other places to find out, first hand, how different kinds of involvement can work. Anybody wanting to make contact with an established Tenant Management Organisation or to arrange a visit to their estate can contact the National Federation of Tenant Management Organisations at www.nftmo.com.

This early stage is a good time for tenants to discuss ideas with their local authority and to find out more about how the council currently provides housing services to tenants in the area. If the council's initial reaction is cautious then tenants should not be discouraged. Although tenants do have a legal Right to Manage it is worth working patiently to seek the support of the council because the subsequent process will be much more straightforward if there is a good relationship between the parties.

The subsequent development process (see page 17) will have more focus and is likely to be shorter if the tenants' group has a pretty clear vision for their TMO before the Right to Manage notice is served. Initial ideas can be developed and modified as the negotiations proceed and more information becomes available, but early research and discussion (before the notice is served) will save time over the long term.

After exploring the options, if the group chooses the Right to Manage route then it will need to demonstrate that it is genuinely representative of the tenants whose homes would be managed by the proposed TMO. (The detailed requirements are explained in the next section). So the 'exploring the options' stage could include recruiting tenants as members of the tenants association and checking that the association's rules will meet the criteria set out in the Right to Manage regulations. If necessary the group could set up a new, unincorporated, tenants' organisation to take the Right to Manage forward.



Top tip: Right to Manage Checklist. See page 12



The Right to Manage (England) Regulations 2012 came into force on 6th August 2012 and can be viewed at www.nftmo.com/toolbox in the 'Right to Manage Process' section.



Right to manage checklist

Before serving a Right to Manage Notice a tenants' group should be able to answer 'YES' to all these questions :-

- Are we clear about what it is we want to change about the management of our housing?
- Have we got a vision of the way things should be?
- Have we checked out the different ways in which we can get involved in order to change things?
- Do we understand what a TMO is and how it will enable us to achieve our aims?
- Are we reasonably confident we can make the Right to Manage process a success?



Serving the Right to Manage Notice

In order to exercise their Right to Manage a tenants group must serve a formal written notice on the council who is their landlord. This is called 'the Proposal Notice' and the council cannot refuse to accept the notice unless either:

- a) A Right to Manage notice has already been served including the majority of the same homes or a previous notice was withdrawn in the last two years; or
- b) The Notice has not been served properly with regard to the rules set out in the Regulations.

In order to make sure that there are no needless delays it will be important to carefully check that all the requirements of the regulations are fully met when serving a Right to Manage notice. None of these requirements are particularly tough to satisfy and are mainly to do with the rules of the tenants' organisation, the membership and the test of opinion that will show members support the proposal.



The Regulations refer to the tenants group as the 'TMO' throughout the Right to Manage process. So from this point onwards this guide will also describe the tenants group as 'the TMO'.

The requirements are set out in the Regulations * and say that:-

- The TMO must have written rules which must specify the area of housing that the TMO wants to manage. This must include at least 25 homes let on secure tenancies.
- The TMO rules must specify that decisions will be taken either by a general meeting of members or by an elected committee/board.
- The TMO rules must allow as members any tenant of a home in the area to be managed and must say that the TMO will not discriminate unlawfully.
- At the time the Notice is served the TMO must have at least 20% of tenants (and at least 20% of secure tenants) as signed up members.

Before a Notice can be served the Regulations say that the TMO must do a test of opinion of the signed up TMO members showing that the majority of those voting are in favour of the proposal. The regulations say that:-

- The test of opinion can be a secret ballot of members of the TMO or a vote at a properly constituted general meeting.
- For the proposal to go ahead the majority of those members who vote must be in favour.



Top tip: The Test of Opinion.
See page 16

If tenants vote in favour then the TMO can serve a written notice on the council to include the following:-

- The Proposal Notice should call upon the council to enter into a management agreement with the TMO

- It should say the agreement will relate to homes within the TMO area and confirm that at least 25 are let on secure tenancies.
- The notice should be accompanied by :-
 - A copy of the TMO's written rules
 - Evidence that membership levels meet the 20% requirement
 - The results of the test of opinion and evidence that the vote was carried out in accordance with the regulations.
 - A list of homes to be included.

Before sending the Notice to the council the Regulations say that the TMO must first deliver a copy of the notice to every home that the TMO aims to manage. On its own this will look a very formal document to put through people's doors. A good idea might be to attach it to a letter or newsletter announcing the result of the ballot and explaining the next stages of the process.

Once the council has received the Notice they have 28 days to respond. The council can only refuse to accept the Notice if there has already been a Proposal Notice relating to the estate or if the TMO has not served the Notice in accordance with regulations.



The Council is not permitted to refuse the RTM Proposal Notice on the grounds that it opposes the TMO or has other plans for the homes. Tenants should note, however, that the service of a Notice does not of itself stop or even delay projects, such as regeneration plans or housing management changes, that the council may be working on.



The Test of Opinion

The TMO should keep all affected tenants informed of its proposals to serve a RTM Notice and encourage all tenants to become members. Only those tenants who become members can vote in the Test of Opinion.

The Regulations say that any ballot must be 'secret' so the TMO would be wise to agree with the council, in advance, how the ballot is to be organised including how votes are to be collected and counted. Failure to agree these details in advance may lead to subsequent delays and disputes about the process.



The Development Stage

As soon as the council informs the TMO that it has accepted the Proposal Notice the 'Development Stage' of setting up the TMO starts. The regulations say that within **15 months** of the acceptance date the TMO and the council must together prepare the offer to tenants. This will be the detailed TMO proposal that tenants will consider before deciding whether or not they vote for the TMO to take on management functions.

Within these 15 months a number of important activities have to be completed successfully. They are:-

Developing skills and knowledge

The TMO committee must **develop their skills and knowledge** so that, in the view of an external assessor, the TMO is competent to manage the responsibilities it plans to take on. (There is more information about how the Assessment works in the next section).

A management agreement

The TMO will confirm which services it plans to run and will negotiate the main elements of the proposed **management agreement** with the council.

A business plan

The TMO will develop a **business plan** showing how it will organise and pay for the services it plans to provide.

Establishing good governance

The TMO will develop the rules, policies and procedures needed for **good governance** – ensuring that the TMO will be properly run.

Keeping in touch with tenants

The TMO committee will **keep in touch with tenants** in their area. Making sure people are informed about the TMO and listening to their views.

Apply for funding and appoint advisors

To help plan and carry out these tasks the TMO is likely to apply for some **government grant funding** and will almost certainly need to appoint **suitable professional advisors**.



There are Top Tips for each of these activities undertaken during the development stage on **pages 20 - 27**.

These activities will need to be planned carefully so that the TMO and the council have a logical and realistic timetable – the ‘training and development

work programme’. Clearly this programme will be less complex if the TMO is planning to manage a smaller number of homes and/or aims to provide only one or two services, cleaning and caretaking for example.

If the TMO intends to apply for a Government Grant to help with the costs of



The Regulations say that time periods, such as the 15 months development stage, can be extended if the TMO and the council agree. This may be helpful if there are unavoidable delays but all parties should plan to complete the programme on time.

the Development Stage then the work programme will be carefully scrutinised by the grant administrator to make sure it is suitable and good value for money.

Advice and support will be available to help the TMO map out the work that needs to be done in this key stage. An example of a typical Training and Development work programme can be viewed at www.nftmo.com.

In the following pages there is more guidance about each of the main activities of the development stage. In each case there are also signposts to places where more detailed information can be found when needed.

It can be seen that each of these main activities in the development stage is connected to the others. The options selected in the **management agreement** should reflect the TMO aims set out in the **business plan**. In turn, working up the business plan may prompt the TMO to rethink the options it has selected. The programme for learning **skills and knowledge** will be related to the responsibilities that the TMO plans to take on. All of this should be underpinned by **good governance** and shaped by **informing and consulting** the local tenants and by being accountable to the membership.



The Council has a duty to provide support to the TMO if the Right to Manage notice is accepted. The TMO can specify what support it reasonably requires and can refer the matter to arbitration if it is not satisfied with the council's response. The support that councils give often includes training, information, a contribution to grant, help with suitable premises for a TMO base and opportunities to shadow council staff.



Developing skills and knowledge

- A TMO can get an understanding of the skills and knowledge they will need by looking at the standards in 'Common Assessment Model' (CAM) (see pages 29 - 30). A training plan will be needed to show how the TMO committee will achieve those standards – taking into account the skills and knowledge that TMO members already have.
- There will be many ways to learn. Some 'formal' training sessions may be needed but a lot can be learned from links with other TMOs, shadowing council officers, networking with other community groups etc. TMOs should 'shop around' for training opportunities from different sources. For example, courses on committee skills may be available locally through the voluntary sector network; the council may offer courses on equality and diversity; relevant courses are run by the National Tenants Organisations and the National Communities Resource Centre.
- A great way to learn is through 'hands on' experience. For example, it may be possible for the council to quite quickly delegate some limited responsibility to the TMO through a 'local management agreement' (www.nftmo.com/upload/library/LMA_Toolkit_2112.pdf) while the TMO is working through the development stage with a view to taking more management responsibilities in the future.
- As the development stage progresses the TMO should be checking

how their learning is shaping up in relation to the standards that must be achieved. People learn in various ways so if one approach is not working try another.



The management agreement

- The management agreement will be the contract between the council and TMO which sets out what powers and responsibilities are to be delegated to the TMO. The main principles of the agreement, if not all the detail, should be agreed by the end of the development stage.
- The government provides an approved 'modular' management agreement which enables TMOs to select the services they want to be involved in, and the level of that involvement in each service.



Grant may be available to fund the TMO training and development programme via the government's Tenant Empowerment Programme. More information can be obtained from the government's Department of Communities and Local Government at tenantempowerment@communities.gsi.gov.uk. The grant may be received by the TMO's appointed advisor, on behalf of the TMO, at least until the TMO is incorporated (see page 22).



At some point in the development stage the TMO will need to incorporate. This means registering the TMO as a not-for-profit Company or Industrial and Provident Society. Once incorporated the TMO will be able to enter into contracts, like the management agreement, and the personal liability of committee/board members will be limited.

- The modular agreement provides standard text for each option, but additional 'schedules' have to be written describing the specific local arrangements for each of the delegated functions. In most cases these schedules can be added at the implementation stage.
- Although the choices in the modular management agreement are underpinned by the tenants' Right to Manage it is best to approach discussions with the council as a negotiation.
- The council is required to provide information to the TMO about the likely level of allowances (the budget) that will be available for each of the delegated functions selected by the TMO.
- Early selection of preferred options in the modular management agreement will help the TMO to focus time and energy during the development stage.
- A copy of the Modular Management Agreement and more detailed guidance about its contents and use can be found at www.nftmo.com/toolbox in the 'Right to Manage Process' section.



The business plan

- Although the TMO will not be driven by profit it is, in fact, a small or medium sized business. It is what may be called a 'social enterprise'. The rewards for members are not increased share value or dividends but the TMO can generate surplus funds and invest that money in improvements to the homes or to the services provided to tenants.
- The TMO Business Plan will be a key document and will tell the council, tenants and outside world what the TMO is about, what it plans to do and how it plans to pay for the things it does.
- The TMO Business Plan is likely to include :-
 - A statement of the TMO's mission and values
 - Some information about how the TMO is run
 - A description of where the TMO is now and where it wants to be in the future
 - A first year action plan for achieving the TMO objectives
 - A 3 year financial plan showing estimated income and expenditure.
 - A plan for communicating with members, tenants and other parties such as the council and local agencies.
- Based on the services that the TMO plans to provide the Business Plan should explain how the TMO plans to deliver those services, for example with estimated staff levels and costs and any plans for using contractors.



The management and maintenance allowances payable to the TMO for the work it does are calculated in accordance with guidance provided by the government. The idea is that the TMO will get allowances no more and no less than the amount of money that is currently being spent by the council on those same functions and for those same homes.

More details can be found in government guidance, and in the NFTMO Publication “Calculating Allowances for TMOs”. Both documents can be found at www.nftmo.com/toolbox in the ‘Right to Manage Process’ section.

- The Business Plan should project forward, at least 3 years, showing how income and expenditure might change over time.
- The Business Plan might include actions that the TMO intends to take to strengthen governance – for example by recruiting more committee members or introducing new training programmes.
- The Plan should identify areas of risk. What may go wrong? What would the consequences be? Can the TMO do anything to reduce the risk?

A detailed TMO Guide to Business Planning is available in the Right to Manage Toolbox at www.nftmo.com/toolbox in the section ‘Providing an Effective Housing Service’.



Good governance

- Good governance is about the TMO being run in accordance with its rules and regulations and the laws of the land. Good governance is at the heart of successful voluntary organisations and will be a key factor when the competence of the TMO is assessed at the end of the development stage.
- The TMO will need to adopt a Code of Governance dealing with issues such as the conduct of members, procedures at board meetings, confidentiality, conflicts of interest, financial control and accountability to members.
- Although TMO committee members, in particular, should discuss and understand policies before they are adopted, there is no need to ‘reinvent the wheel’ when writing policies and procedures. Examples of what will be required and document templates that can be easily adapted are available at www.nftmo.com/toolbox under the section ‘We are Well Run and in Control’.
- TMOs should stick to the principles of Good Governance throughout the development period so that it becomes part of the culture of the TMO.



Appointing professional advisors

- The TMO is almost certain to need professional advice during the development stage, particularly to help with negotiating the management agreement and developing the business plan.
- Some groups appoint one person as their 'lead advisor' to guide and support them through the process.
- Care must be taken to find advisors with relevant skills and who offer value for money. You can find lists of potential advisors and advice about selecting and managing them in the 'Getting Started' section of www.nftmo.com and at www.atlc.org.uk.
- A grant may be available to pay for advice but it will be limited. TMOs should therefore not pay external advisors to do things that volunteers could be doing for themselves.
- The relationship with advisors must be managed carefully. The TMO should be in control and always checking that the advisor is adding value to their work and helping them towards their objectives.
- Advisors should be in the background supporting the TMO and should NOT become an intermediary between the TMO and the council or a spokesperson for the TMO.
- It is good to agree some ground rules for the working relationships with your advisors and the Council. An example of a

communications agreement between a council, a lead advisor and a tenants group can be found in the Right to Manage Toolbox at www.nftmo.com/toolbox in the 'Right to Manage Process' section.



Keeping in touch with tenants

- One of the important characteristics of a competent TMO committee is that they are 'in touch' with tenants.
- The TMO can use the development stage as an opportunity to increase membership and encourage more active participation.
- The TMO will need to keep tenants informed of progress during the development stage but also listen carefully to tenants' views so that the TMO's proposals are shaped to reflect the priorities and aspirations of the community.
- TMOs should check whether any sections of the community are under-represented in the TMO membership or are simply 'switching off' from the whole process. Action plans will be needed to involve those sections.
- Don't forget the TMO will not go ahead unless tenants vote in favour at the end of the development stage.

4

The Assessment of Competence

Setting up a TMO is about developing an organisation that is competent and capable of doing the job. Before tenants vote on whether to accept the TMO's management offer an independent person from outside the organisation must be satisfied that the TMO is competent to deliver on the promises set out in that offer. The independent person is called the 'approved assessor'. He or she is appointed by the Approved Assessor Service, set up under the Right to Manage regulations.



Top Tip: Collecting evidence to demonstrate competence. See page 31.

The approved assessor will carry out the assessment at the end of the development stage, which should be within 15 months of the Right to Manage notice being accepted by the council. The TMO committee will meet the assessor much earlier than that. He/she will be appointed within 3 months of the notice and, at that early stage, will want to hear about the TMO's proposals and, in particular, to check that the training and development programme is sufficient to give the group a good chance of becoming competent within the timetable. The assessor is also likely to visit the group about half way through the programme, to check that the TMO is on course for success.

The assessment of competence will be made against standards that are set out in a document called the Common Assessment Model ('CAM' for short). The idea of the CAM is that everybody – the TMO, the council,

advisors, tenants and the assessors have a clear and commonly understood understanding of what is meant by a 'competent' TMO. At any point in the development stage the TMO can use the CAM to check for itself what progress is being made towards competence and how much work is still to be done.



Top Tip: Arrange a 'practise' assessment before the real thing. See page 32.

When the TMO and their advisors are satisfied that the TMO is ready, the local authority will ask the approved assessor to go ahead with the assessment. The approved assessor will expect to see key documents and evidence of the TMO's competence. He or she will want to meet with TMO members, the lead advisor(s), the council, and other people who have an interest in the TMO's work.

If the approved assessor decides that the TMO is not competent, they will provide a report setting out what action the TMO needs to take to correct this. The TMO and the council will be expected to agree and take action in response to the assessor's report. The approved assessor will then carry out a further assessment – if they still believe that the TMO is not competent then the ballot will not take place and the Right to Manage process will come to an end.

The Common Assessment Model (CAM)

The CAM is the document that sets out the standards that the TMO will need to meet in order to be assessed as competent. They are common sense expectations that most tenants would want to see in any organisation that was going to be running some part of their housing service. There are

16 standards grouped under 4 main headings:-

- **Our aims are realistic and viable**
Standards related to the overall vision and business plan.
- **We are in touch**
Standards related to communication and accountability
- **We are well run and in control**
Standards related to the proper functioning of the Board/Committee
- **We are able to provide an effective housing service**
Standards related to the proposed housing service

The assessor will need to see evidence that the TMO meets each of these standards. The evidence might include:-

- Important documents such as the draft business plan and key policies
- Minutes of TMO meetings
- The TMO Rules and Code of Governance
- Records of events and activities, including videos
- Testimony from people who the TMO has worked with, including the council
- Discussions with the TMO committee

In order to cut out unnecessary red tape from this process the assessor will not ask for extra detailed evidence unless he/she has concerns about the TMO in relation to a particular standard. Also the assessor will apply the standards having regard to the scale of the responsibilities the TMO will be taking on.

The Common Assessment Model and a Guide for using it can be found at www.nftmo.com/toolbox in the section 'Right to Manage Process'.



Collecting Evidence to demonstrate competence

Throughout the development stage TMO members should be collecting evidence that can be used to demonstrate that the TMO meets the CAM standards. This might include records of achievements, activities, correspondence, videos, notes from training courses, minutes of meetings, study visits etc.

For example, if the TMO runs a successful community event it is likely to provide some evidence of their skills relating to some of the CAM standards.

A simple note that somebody attended a training course is not of itself evidence of learning. The TMO person who attended the course should keep a note of what they learned from the course.

A good question for TMO members to ask themselves when attending training, study visits etc. during the development stage is "What am I learning here today and how is it helping the TMO to achieve the standards of competence set out in the CAM?"



Arrange a 'practice' assessment before the real thing

The assessment of competence at the end of the development stage does allow a 'second bite of the cherry' if the assessor says more work is needed. However, TMOs should NOT treat the initial assessment as a dry run to find out how much progress they have made. This is a very risky strategy because if the TMO does fail the reassessment then there are no more chances.

A much better idea is for TMOs to arrange their own 'practice' assessment using a facilitator who will take an honest and independent view of their progress using the CAM.

5 The Offer to Tenants and the Ballot

If the Approved Assessor concludes that the TMO is competent then it will be time to arrange a final ballot of all the affected tenants to find out if they agree that the council should delegate management to the TMO. This is done by first sending out details of the proposal and allowing some time for tenants to digest the information and ask questions before sending out ballot papers.



The Offer Document

So, as soon as the good news is received from the assessor, the TMO and the council need to finalise the proposal in the form of an offer document. It is the council's legal duty to send out the offer but it must be 'jointly prepared' with the TMO. This will be the document that will allow tenants to make an informed choice about whether or not they want to vote in favour of the TMO. So the document must be clear, accurate and easily understood. Some examples of TMO offer documents can be found at www.nftmo.com and at www.lacog.org.uk.

The regulations say that the offer must include:-

- A list of the housing management functions that are to be delegated to the TMO.
- The budget that will be available to the TMO to carry out those functions.
- Details of how the TMO will control the finances.
- Information about the TMO membership and committee, explaining how decisions will be taken.
- Confirmation that the Approved Assessor has said the TMO is competent.

In addition the offer can include information provided by the TMO about their proposals. This should include details that will be important to tenants, particularly telling them what changes will be made to the service they receive. This might include, for example, proposals for a local housing office, proposals for a different repairs reporting system, changes to the caretaking service etc.



Top Tip: Make the offer document attractive and clear. See Page 37.

Tenants are often concerned about how the TMO will deal with personal information such as might appear in tenancy files and rent records. It will be useful to explain in the offer document how information will be stored and who will have access to it. For example, if TMO committee members will not have access to personal information it is worth making that clear in the document.

To avoid confusion it may be helpful to be clear in the offer document that the council will remain the landlord and that tenants' rights will not be

affected by the proposal. The offer could also list those services that will continue to be provided by the Council.

Care must be taken to make sure that the offer document is truthful and does not promise things that the TMO may not be able to deliver.

After the offer document is delivered to tenants, but before the ballot opens, the TMO and the council may want to arrange meetings, drop-ins or Freephone lines so that tenants can ask questions and discuss the proposals.

The Ballot

No more than 3 months after the offer document is delivered, but ideally within a week or two, the ballot will take place. It is the council's duty to arrange the ballot but the TMO should expect to be consulted about the ballot arrangements and the council should take on board any reasonable requests.

Local authorities often arrange for the ballot to be conducted either by an independent body or by the council's own elections officer. It must be a secret ballot and a postal ballot is the most common approach but ballots can be collected door to-door, as long as the votes are kept confidential and secure. The ballot can be held over any reasonable period – two or three weeks should be suitable but a longer period can be considered if both the local authority and the TMO agree.



Top Tip: Decide in advance how misleading information will be dealt with. Page 37.

5> The Offer to Tenants and the Ballot

It is acceptable, perhaps advisable, for the TMO to campaign for a positive result. The TMO should reach agreement with the council in advance about any rules that will apply to their campaign and to any opposition campaigns who may be calling for a 'no' vote.

For the TMO to go ahead with the management agreement the ballot result must show that a majority of tenants (including leaseholders) who vote, including a majority of secure tenants who vote, have voted in favour. Ballot papers can be colour-coded to show whether the people voting are secure tenants or otherwise. Absent tenants (such as leaseholders who sublet their homes and live elsewhere) are entitled to vote, and the local authority should, at an early stage, consider any issues that this will create. If the majority who vote are against the proposal then the Right to Manage proposal notice is considered to be withdrawn, and a new proposal notice for those homes cannot be put forward for at least two years.

The regulations say that the local authority must tell the TMO about the result within 14 days of completing the ballot. In practice the TMO should normally be expected to be represented when the votes are counted.

The TMO and/or the council should notify all tenants of the result as soon as possible. If the vote was positive tenants should also be told about the next stage and the likely timetable before the TMO takes on its management functions.

The Offer to Tenants and the Ballot < 5



Make the Offer Document attractive and clear.

After all the work that has gone in up to this point it is important that the Offer is clearly communicated to tenants. Make the document an attractive and easy read. Some tenants will already be familiar with the TMO proposals but others will know much less. The Offer document should start from basics and explain the proposal as clearly and concisely as possible. Use plain English and avoid jargon.

Where necessary the Offer document should be available to tenants in other languages and formats so that tenants do not lose out because of their ethnicity or disability.



Decide in advance how misleading information will be dealt with

Tenants must have accurate and true information in order to make an informed choice. The TMO and council should agree in advance how this will be ensured. Will campaign literature be 'vetted' and if so by who? What would happen, for example, if a 'no' campaign leaflet was to tell tenants that they would lose their security of tenure if there is a 'Yes' vote. Would this untruth be corrected by the council, the TMO or an independent person?

6

Setting Up and Going Live

If the process has progressed within the timescales allowed in the regulations then it will now be nearly two years since the Right to Manage notice was served. The 'implementation stage' is the final and most exciting period before the TMO starts to manage for real. The regulations say that the management agreement must be signed within 9 months of the ballot result being announced.

In this busy period the TMO will need to

- Finalise any policies and procedures that were not agreed before the ballot.
- Agree with the Council any unresolved parts of the management agreement.
- Recruit staff, including any staff transferring from the Council.
- Let contracts where necessary and in accordance with agreed procedures.
- Obtain and make ready suitable office premises.
- Set up office systems, phones and IT equipment.
- Transfer from the council of relevant information and tenancy records.
- Keep tenants informed at all stages.

If it did not incorporate (see page 22) earlier in the development programme then the TMO must do it now, either as a company registered under the Companies Act 2006 (possibly a Community Interest Company) or an



Top Tip: Employ the TMO manager before the TMO goes live.
See page 40.

organisation registered under the Co-operative and Community Benefit Societies Act 1965. The TMO cannot sign the management agreement until it is incorporated and failure to incorporate within 9 months of the ballot result could result in the whole process being null and void.

The transfer of control from the council to the TMO should be as smooth as possible. Close co-operation between the TMO and council will be essential. This will be particularly true for the transfer of information and records, any necessary integration of IT systems, on-going links with services retained by the Council and personnel matters where staff are moving over to the TMO from the Council under TUPE rules.

The local authority and the TMO should take steps to make sure that all local authority departments (and their agents) that are dealing with the TMO are aware of this status and treat the TMO accordingly.

Now the real work begins!



Help with Start-Up Costs

The council is required to provide some funding for the TMO to help with Start-Up costs when preparing to go live. This will, for example, include the costs of premises, equipment and systems. More information is available in a government publication called "Guidance on Start-Up Costs for Tenant Management Organisation" which can be found at www.nftmo.com/toolbox in the section 'Right to Manage Process'.



Employ the TMO Manager before the TMO goes live.

The TMO should aim to recruit its chief officer (the TMO Manager) well in advance of the handover date when the TMO opens its doors for business. The chief officer will be needed to help recruit the rest of the staff (if there are others), finalise the management agreement and advise in setting up the office systems. The local authority should help with recruiting and funding this key post. Some government Tenant Empowerment Programme grant may also be available to help with the cost of the chief officer at this stage.

Once the management agreement is signed and the handover of duties to the TMO begins then all of the TMOs running costs, including staff salaries, must be paid out of the management and maintenance allowances.

Definitions and Jargon

Right to Manage - This is a legal right for Council tenants to manage the homes they live in.

TMO - A TMO is a means by which council or housing association tenants and leaseholders can collectively take on responsibility for managing their homes.

Modular management agreement (MMA) - A Government document used by tenant management organisations (TMOs) and local authorities to agree how to divide the responsibilities and management duties that the TMO will take on. The agreement provides a range of options in each section (for example, finance and repairs) for the TMO to choose from.

Governance - Governance is about how the tenants organise themselves and run things in accordance with their rules and with laws and good practice.

Voluntary Route - If the landlord agrees, TMOs can be set up without using the Right to Manage. The voluntary route is particularly important for housing association tenants who do not have a Right to Manage.

Common Assessment Model (CAM)

- The CAM is the document that sets out the standards that the TMO will need to meet in order to be assessed as competent.

Approved Assessor - Before tenants vote on whether to accept the TMO's management offer an independent person from outside the organisation must be satisfied that the TMO is competent to deliver on the promises set out in that offer. The independent person is called the 'Approved assessor'.

The Offer Document - When tenants vote on the proposed TMO they must be provided with an offer document setting out information they will need to make an informed choice.

Allowances - Management and maintenance allowances payable to the TMO for the work it does under the management agreement.

TUPE - Employment rules that protect the rights of staff when the business they work for is taken over by another organisation.

More Information

Much more Information about the Right to Manage and many useful documents can be found in the Right to Manage Toolbox at www.nftmo.com/toolbox.

Other useful organisations:-

- National Federation of Tenant Management Organisations (NFTMO)
www.nftmo.com
- ATIC (Agencies and Trainers for Involved Communities)
www.atic.org.uk
- LACOG (Local Authority Co-operative Officers Group)
www.lacog.org.uk
- CCH (Confederation of Co-operative Housing)
www.cch.coop
- Department of Communities and Local Government (DCLG)
www.gov.uk/government



**This publication was put together by the
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