

INVESTIGATION REPORT ON LONG-STANDING COMPLAINTS OF THE KENSINGTON AND CHELSEA TMO



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EXECUTIVE SUMMARY

There are a number of tenants, leaseholders and freeholders within the Borough of Kensington and Chelsea who feel aggrieved that their problems have not been resolved by the TMO despite several years of complaining.

In this report, the level of discontent appears higher amongst the leaseholders than the tenants and there are some concerns amongst a handful of freeholders. This report as currently prepared is a snapshot based on the residents who have contacted the Adjudication Service or who have been interviewed or spoken to the Adjudication team on the telephone, including staff of the TMO, Board Members, Council staff and Councillors. This report is prepared on the basis of the work carried out so far; there are a number of issues which are of a technical nature upon which specialist technical expertise is required. It is for this reason a separate independent chartered surveyor who is also a registered arbitrator has been appointed to assess specific technical complaints.

The residents' main concerns are around: Cyclical repairs, Major works, Management charges, Service charges, Customer care, Probity and ethics, Communications, Performance and Monitoring, Trust and confidence.

In turn these have been themed into issues of physical environment, finance, behaviour and governance, with the underlying cause of discontent being lack of customer care with several departments of the TMO seemingly more at fault than others.

With the changes made to the Constitution and the election of a new Board, the TMO now needs to tackle not only the governance, but the real operational issues around the services it provides to meet the demands of the residents within the Borough; to show true leadership; to lead by example, by being mature; dealing with strategic issues of the TMO guiding its direction of travel, with policy delegated to its committees; for operational and day to day management issues to be effectively delegated to officers of the organisation. The new Board needs to win the hearts and minds of those disgruntled residents who have had grievances going back several years. The Board must understand its constitutional and legal role and take collective responsibility to spearhead the TMO in its improvement plan.

In summary, some of the main recommendations are:

Customer Care/Relations

- For there to be a process of mediation/conciliation to build relationships with the aggrieved residents and the TMO
- A programme of training and development for the Board Members to ensure a level of competence

- A customer care training programme especially for all front-line staff (whether full time, part time or temporary staff)
- TMO Staff appraisals to reinforce customer care and respect for residents and to fully understand and accept their roles and responsibilities both within the organisation and towards the residents
- Conduct a skills and competency audit of staff to match posts, particularly the Technical Services department
- Ensure a full complement of permanent staff (full time and part time) rather than use consultants

Customer Services/Complaints

- All enquiries of a “technical nature”, e.g. repairs, to remain with the Hub at Kensal Road in Ladbrooke Grove. All other enquiries of a “non-technical nature” to come to Charles House under the remit of a corporate “customer services department” to deal with all enquiries and complaints of whatever nature
- A review of the Complaints procedure in the light of the findings of this report
- Review procedure for Tenant Repairs response times and follow up

Repairs, Major Works and Service Charges

- The Council should take a more robust role to ensure TMO technical services are capable of delivering an effective major works programme and Cyclical repairs
- TMO to be more robust in monitoring Major Works Contracts and Cyclical repairs
- Better communication between the Council and the TMO and protocols for joint working
- Full Service charges calculations to be provided to leaseholders and freeholders as a matter of course and in a timely manner
- Review the procedure for service of s. 20 Notices under the Landlord and Tenant Act 1985
- Re-visit IT systems in relation to Repairs and Leasehold management especially CRM (Customer Relations Management)
- To review the provision of caretaking a) around the Borough and b) on particular estates

Governance Issues

- The TMO to create a separate committee to oversee performance, standards, probity and ethics, made up of independent members and co-opted individuals to report directly to the TMO Board
- The Audit and Review Committee of the TMO to have people with core competences to sit on such committee or at the very least have available experts when needed to advise the Committee
- Board Members must not abuse their positions to obtain preferential treatment from the TMO staff

Corporate Policy

- Raise Data Protection, Freedom of Information and confidentiality awareness throughout the whole of the organisation and consider as part of the induction process
- To have a written procedure to deal specifically with dogs to support the Anti-social Behaviour Policy

Financial Issues

- Consider the possibility of writing off bad debts in relation to service charges recharges
- The Council to re-consider the level of investment in the fabric of their buildings; although it is appreciated at the time of writing this report the Council is considering its stock options

Follow-up and Review

- Follow-up review of the Adjudication Service

1. BACKGROUND

1.1 Overview of the Situation as it Stands

The Royal Borough of Kensington and Chelsea (“The Council”) is situated in West London. The borough is made up of Chelsea, Kensington, Notting Hill and Earls Court. The Council is one of the smallest London boroughs at just over 4.7 square miles.¹

The current population of the area is estimated at 178,600.

There is a wide variation in affluence and deprivation across the borough, ranging from wealthy Chelsea to the culturally diverse Notting Hill.

There are an estimated 29,000 dwellings in the private rented sector. The Kensington and Chelsea Tenant Managed Organisation (TMO) manage 9,347 homes. Some 2,525 homes have been purchased under the “right to buy” scheme, with some 6,822 for rented social housing. Of these, 98% are flats and 30% are listed buildings. There are some 50 registered social landlords operating in the Borough owning approximately 12,000 properties to let.²

Current position of the TMO

The TMO has managed all of the Council’s housing stock since it was set up in 1996.

The TMO amended its constitution and became an Arms Length Management Organisation (ALMO) in November 2002, when it also took over the management of the capital programme from the Council. The freehold of the housing stock is retained by the Council. The TMO obtain capital funding for the maintenance and repair of the fabric of the buildings from the Council through the HRA (Housing Revenue Account).

The TMO was inspected in 2003 by the Audit Commission and was assessed as providing a 'good' two-star service that had excellent prospects for improvement.

The TMO was re-inspected in 2006 by the Audit Commission and was assessed as providing an “excellent” three-star service (with excellent prospects for improvement).

¹ Audit commission, RBKC TMO (ALMO), October 2008

² RBKC Partnership, The Future of our Community – Community Strategy 2008-2018, 2008

The TMO exists within a highly regulated framework and relies heavily on its performance and outputs to achieve its improvement ambitions. The TMO has recently made changes to its Constitution and a new Board of Directors appointed. At the time of writing this report further governance reviews are in progress following the appointment of the New Board with a view to implementing new committee structures, resubmitting a new code of conduct and overhauling the TMO's standards, probity and ethics, which are positive signs for improvement.

It is important for the Board to understand its role and responsibility as a separate entity. There is also a need to examine the delegation of the TMO Board functions and consider the possibility of a separate committee, made up of independent members, and even co-opted individuals to oversee performance, standards, probity and ethics, which reports directly to the Board of Directors. It is recommended this should be reflected in the TMO's Improvement Plan.

The TMO are trying to effect improvements to their services but appear to be hampered by the deluge of complaints. There must be a measured approach to take complaints seriously on the one hand and resolving those complaints in a timely manner, and the complainants allowing the TMO the time to consider the complaints properly on the other. Relations between the TMO and some of its residents have broken down to such an extent that trust needs to be built from both perspectives and consideration should be given to the possibility of introducing a mediation process for this purpose.

There is some considerable concern regarding leasehold matters, particularly around leasehold income of the TMO. The budgeted income for 2008/09 is £2.09m for service charges with £1.4m for major works. Arrears of leasehold income as at the end of 2007/08 stand at £1.9m for service charges and £5.5m for major works, making a total of £7.4m arrears outstanding³.

The TMO Board Report 2008 stated that:

“Capital Programme Funding from HRA (Housing Revenue Account) was reduced last year which has an impact both short-term and long-term on the level of HRA Major Repairs Allowance (MRA) which necessitated a reduction in capital expenditure. As a result the TMO Board agreed to smooth capital expenditure over the next two years and to hold expenditure in 2008/09 to committed expenditure of approximately £12 million. The TMO has engaged with the Council to review expenditure options and revise a Capital Programme. The Capital bid for 2007/08 had assumed Supported Capital Expenditure (SCE) would be awarded to the Council until 2009/10. Unfortunately SCE had been withdrawn from all those Councils that had

³ RBKC, Audit Committee report, 5 January 2009

completed their Decent Homes Programmes – which included the Royal Borough of Kensington and Chelsea. The Council and the TMO now find themselves in an impossible situation in that funding falls far short of the level of investment needed to maintain the stock at the appropriate level”.⁴

The Council faces some tough decisions on establishing priorities for reduced capital expenditure and the TMO will have to balance the needs of the residents with the budget allocated to it by the Council.

⁴ TMO Board Report 10th April 2008

1.2 Context

Background to the management arrangements between the Council and the TMO

The relationship between the Council and the TMO was regulated by a Management Agreement created in 1996 (“The 1996 Management Agreement”)⁵ when the Council became the first and only (which it remains) borough-wide tenant managed organisation in the country. This Agreement appointed the TMO as the Council’s agent to carry out certain housing management functions, which were varied in November 2002 (“The 2002 Variation Agreement”)⁶ when the TMO became an ALMO (Arm’s Length Management Organisation) in order to obtain further borrowing under the Decent Homes programme. The 1996 Management Agreement and the 2002 Variation Agreement were subsequently revised by a composite Modular Management Agreement in 2006 (“The MMA 2006”)⁷. It is this latter Agreement that governs much of the management functions of both the Council and the TMO today.

Lancaster West Estate Management Board

The Lancaster West Estate Management Board (LWEMB) existed before the TMO and is quite separate from the TMO. A tripartite agreement between LWEMB, the Council and the TMO sets out the management arrangements. Negotiations are on-going as to the future management of LWEMB and as yet no decisions have been made.

⁵ Management Agreement between the RBKC (The Council) and RBKC TMO (TMO) dated 28th February 1996

⁶ Deed of Variation between the RBKC (The Council) and RBKC TMO (TMO) dated 7th November 2002

⁷ Modular Management Agreement between the RBKC (The Council) and RBKC TMO (TMO) dated 1st April 2006

1.3 Appointment – The Adjudication Service

Some complainants have long standing grievances against the TMO. Both the TMO and the Council were concerned at the level of complaints; as a result, following the Extraordinary General Meeting of the TMO in March 2008, the Council and the Board of Directors of the TMO decided to agree a temporary variation (for six months, renewable if required) to the MMA 2006. The Deed of Variation to the MMA 2006 was entered into in July 2008.⁸

The variation allows the Council to appoint a Partnership Director to oversee the development of the TMO's Improvement Plan.

As part of the interim arrangements, the Council appointed a temporary independent Adjudicator as part of an Adjudication Service. This service involved the independent Adjudicator discussing and documenting views of Council tenants, leaseholders and freeholders, or groups of residents who have long standing grievances, and give an independent view as well as attempt to resolve local issues where there are genuine causes for complaint.

The Adjudication Service is an impartial, independent temporary service, headed up by Maria Memoli (as Adjudication Manager), a Solicitor of the Supreme Court who holds an MBA in Change Management and is an accredited Mediator. She was previously employed as Solicitor to the Council, Legal and Democratic Services Manager and Monitoring Officer of a District Council for a period of 7 years, having some 17 years experience in Local Government. She is a Law Society Council Member representing Solicitors and trainees in Local Government in England and Wales and the Chairman of the Law Society's Members' Conduct Committee and is a member of the Law Society's Membership Board. She has set up her own Consultancy Company specialising in Local Government Law and practice, training and development in officer/member relations, roles and responsibilities on governance issues, mediation and conciliation; and conducts investigations in Councillor Code of Conduct complaints.

An Inspector was appointed to gather evidence of various allegations made against the TMO. He is a non solicitor associate with a firm of Solicitors from Lincolnshire, a firm specialising in local government governance and standards issues. He joined the firm following his retirement from the police service and now conducts investigations in Councillor Code of Conduct complaints, and other internal local authority issues. He is also an associate investigator for The Standards Board for England, and holds a BSc Honours Degree in Public Policymaking and Administration.

⁸ Deed of Variation between the RBKC and TMO dated 18th July 2008

An Assistant was appointed to collate data and co-ordinate appointments and information, previously an Inspection and Information officer with the Audit Commission and a Mentoring Project co-ordinator with a Housing Trust, a former Housing Officer and a Personal Assistant to the Director of Investment, Housing Corporation.

Scope of the Adjudication Service's Investigation

The intention of the Adjudication Service was to consider representations made by Council tenants, leaseholders and freeholders to try and establish an independent assessment of the exact level of discontent and to identify any themes which could inform the TMO's Improvement Plan. The themes surfaced early on and were shared with the Chief Housing Officer of the Council, The Chief Executives of the Council and the TMO, and the Partnership Director.

This approach was not intended to cut across the TMO's complaints policy and procedure; and any new complaints have been directed to the TMO complaints officer in the normal way. However, the Adjudication Service has intervened in a number of individual long-standing complaints, as well as estate complaints, with some positive results.

Due to the proposed changes to the TMO's constitution and recent EGMs, the Adjudication Manager was asked not to investigate the corporate governance arrangements of the TMO; albeit under the Deed of Variation she has authority to receive representations from residents regarding matters of concern relating to the governance. Although governance concerns were not investigated, they were nevertheless the subject of many grievances, particularly for Leaseholders. That said, it has to be noted the changes to the Constitution were duly approved and are now being introduced.

This report is a "snapshot" of the range of grievances across the Borough of Kensington and Chelsea as a whole. The Adjudication Service continues to receive complaints from individuals and, where appropriate, refer those complaints to the Complaints Officer at the TMO, but more often than not these tend to identify themselves as long-standing complaints. There is an acceptance by the Council, the TMO and the Adjudication Manager that a line must now be drawn to bring closure to the complaints, so that matters can be concluded.

Compensation claims

It has been difficult for the Adjudication Manager to come to specific conclusions regarding potential compensation claims where appropriate, for two reasons:

1. The TMO do not currently have an adopted Compensation Policy. Such a policy has been drafted and is currently being discussed with the Council. In the meantime, information has been gathered from other similar organisations to make comparisons.
2. The volume and technical nature of likely claims makes individual assessments within the timescales of the contract of the Adjudication Manager, difficult to achieve.

Nonetheless the Adjudication Manager has, as the next step in the process, appointed an independent chartered surveyor who is also a registered arbitrator, specialising in leasehold services, to assess specific claims directed by her, and to report to the Council on the outcome of his findings with appropriate recommendations as to compensation and remedies where appropriate.

More importantly, the TMO should firstly be addressing the residents' concerns as to the volume of complaints and the length of time in trying to resolve complaints, in the first instance - as no amount of compensation is a substitute for a good delivery of service.

Secondly, the Council should be more robust in monitoring the management functions of the TMO under the MMA 2006– specifically:

- complaints about the performance issues of both itself and the TMO as manager of the Council's properties,
- management of complaints policy and procedure
- monitoring and development of the management functions delegated to the TMO

1.4. Methodology

The exploratory desk top work carried out gave an overview of the working practices of the TMO and the Council in relation to the management functions of the Council's housing stock, while the Stock options are being considered by the Council, which is subject to much consultation.

The Adjudication Service was advertised on the Council's website, letters were sent to resident associations and a press release was sent to a local newspaper.

Individual complainants and groups of complainants were seen by the Adjudication Manager, to get a general feel for the types of complaints, all of which have been documented. In November 2008 an inspector was appointed to investigate in depth the specific issues identified by the residents and, directed by the Adjudication Manager, documentary evidence has been gathered where necessary.

As part of the investigation process, the work undertaken consisted of:

- Review of several key background documents of the TMO and the Council, and other independent reports (too numerous to document)
- Inspection of a number of emails and other documents
- A series of individual interviews with TMO and Council staff, some Board Members and Council Members sitting on the TMO Board and the Cabinet Member for Housing Services
- A series of individual interviews (Variously with Leaseholders, Tenants and Freeholders)
- Interviews with Interest Groups of residents within the Borough
- A series of focus group meetings with residents (Leaseholders and Tenants of both North and South of the Borough)
- Meetings with specific Resident Associations in relation to some Major works projects and repairs
- Documenting individual and group grievances
- Identifying common themes
- Spot checks on TMO files

- Site visits of properties within the North and South of the Borough
- Visits to the Customer Services Centre known as the “Hub” or the “Call Centre”

An exercise such as this had never been undertaken before in relation to Housing Services, either by the TMO or the Council. The feedback from residents who participated in the process has been good. They confirm the process as a “positive customer experience” insofar as their grievances were taken seriously; they felt they were being listened to.

Representations were received from both the north and south of the Borough; admittedly the majority of the representations were from leaseholders, but some were tenants.

LWEMB has yet to be investigated, although at the time of writing this report, a small number of freeholders have now come forward with their grievances which have been documented.

The scale of the grievances is much more widely spread than first envisaged by both the TMO and the Council. Several individual residents were seen who appeared to have their own files going back several years – cases full of papers and in some instances photographs and independent evidence were produced. Due to the sheer scale of the perceived grievances of the residents, it has simply not been possible to investigate all individual cases (although some very long standing complaints were taken on). Only the main recurring issues have been highlighted. Approximately 400 separate complaints have been identified and themed, from which empirical evidence has been drawn and is highlighted in this report.

Apologies to those residents who have contributed but not received individual feedback. It is hoped this report captures the main issues expressed.

Thanks are extended to all the residents of the Borough who have contacted the Adjudication service and assisted in compiling and documenting the main complaints, without whom this exercise would not have been possible.

Thanks are also extended to all those members of staff of the Council and TMO who were approached by the Adjudication service for giving their valuable time, and comments.

2. PRELIMINARY INVESTIGATION

Out of the approximately 400 separate complaints presented to the Adjudication Service, the main areas of complaints focus on:

- Cyclical repairs
- Major works
- Management charges
- Service charges
- Customer care/ethics/respect
- Communications
- Performance and Monitoring
- Trust and confidence
- Perception of dislike

These in turn have been themed into 4 main areas with an underlying cause being customer care in specific departments within the TMO (see fig 1 below)

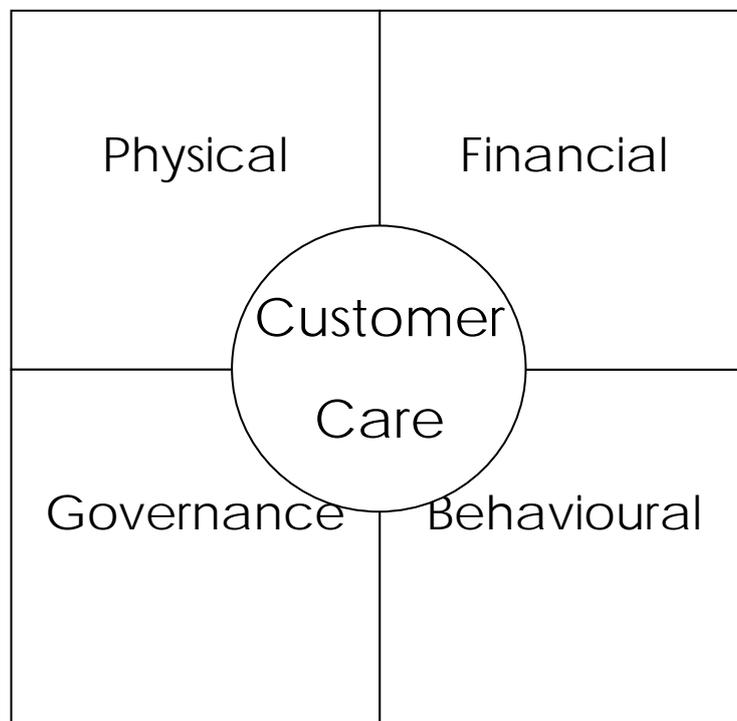


Figure 1

In summary, the residents' main complaints are elaborated within the themes identified below; some of these are addressed more fully later in this report and in the Analysis of Complaints section, as well as in case studies.

- **Physical**

- Bad workmanship by contractors

- Lack of Contractor supervision

- Inadequate equipment and tools of the contractors when carrying out their jobs

- Lack of caretaking generally

- Performance issues

- Monitoring of contracts and works

- **Financial**

- Service charges (Estimates and Final Accounts)

- Threat of forfeiture (arrears of service charges)

- Financial assistance to vulnerable, elderly and infirm residents

- Management fees

- Decent Homes work

- Monies allocated to Resident Associations and other organisations/clubs

- **Behavioural**

- Lack of customer care, etiquette and ethics generally

- Lack of respect by certain individuals at the TMO towards residents and vice-versa

- Lack of trust with certain individuals at the TMO, contractors of the TMO and the TMO as an organisation

- Perception of complacency of certain staff at the TMO

- Slow responses or no responses at all

- Bad communication between certain internal departments of the TMO

- Bad communication between certain departments within the TMO and residents

- **Governance**

Constitution (now changed)

Lack of training and development of Board Members on understanding their roles and responsibilities

Lack of chairing skills for those Members who are also chairmen of committees

Leaking of confidential papers by Board Members

Lack of transparency

Insufficient “scrutiny” of performance and standards, ethics and probity

3. REFERRALS TO THE ADJUDICATION SERVICE

3.1. Physical

Preamble

To put into context how capital works projects and cyclical repairs contracts are awarded by the Council/TMO (subject to the European Directives) it should be noted that the TMO is a member of a consortium of 10 London housing organisations which have together formed the London Area Procurement Network (otherwise known as LAPN).

The Consortium advertises and obtains tenders for capital works projects for its members across the London area. Tenders are received from a panel of contractors for specific works. Three contractors are used for cyclical repairs and eight for general contracting work. This is an effective exercise for the London Housing Organisations and is regarded as good value for money – but the question to be answered is whether the quality of work is good value for money. Some tenants and Leaseholders would argue it is not, as indicated below. Some shortcomings have also been mentioned in the Council's Audit reports.

There was a general feeling amongst residents (leaseholders and tenants alike) that:

- The quality of cyclical repairs and major works were sub-standard
- Requests for repairs were ignored
- They were unhappy that there were fewer caretakers on estates and that, despite this, some residents had noticed they were still paying for the same amount in their service charges even though the level of caretaking had diminished
- Some contractors who came to do a job were without the necessary equipment which often necessitated frequent unnecessary visits. On several occasions contractors would be wandering around the estate for long periods trying to establish the location of properties. This was particularly prevalent in Worlds End Estate
- Some work was unnecessary but carried out in any event
- There was insufficient monitoring of the contractors on site doing the work to prevent the sub-standard quality of the work
- Comments such as “being short-changed”, “bad workmanship”, “not fit for purpose”, and “lack of attention to detail” were made frequently.

Under the terms of the MMA 2006 the Council has a monitoring and development meeting with the TMO every 6 months. The Council monitors the performance of the TMO and the Council itself in relation to the management functions and as part of that process the Council must evaluate the performance and management functions and feed the results into the TMO's committee and into the Council's own internal monitoring arrangements. Clause 19 of the MMA 2006 deals with the failure to perform adequate management functions; for the Council to work with the TMO to develop, agree and implement an Improvement Plan to improve performance in order to reach the standards set by the MMA 2006

Further, the MMA 2006 provides for contractors to carry out repairs and maintenance work "to an acceptable standard of quality".

As to caretaking, the TMO confirmed arrangements were changed last year. Certain roles have been taken on by the Neighbourhood officers. The TMO say the level of caretaking (which in some areas, included caretaking accommodation) was not sustainable. However the reinstatement of some caretakers may be reconsidered provided the service is paid for by the residents. It is recommended the TMO revisit the caretaking on various estates and Borough-wide. The Adjudication service has identified the areas of concern, expressed by some residents, which have been passed on to the Council and the TMO for their consideration.

Case Study 1

There was an incident in one estate where contractors had been called in to repair a leak to a particular flat, which had been endured for several years, ruining furniture and wall decoration; upon inspection it became apparent the cause was from another flat. The leak was not regarded as an emergency by the TMO as several complaints had been made over a long period. Eventually the contractor came to the flat and concluded that he had to gain entry into the flat above. Rather than investigate the precise location of the flat in question, the contractor proceeded to break into a flat, damaging the door to gain forcible entry only to find it was the wrong flat. Thus the complainant had to endure years of complaints before the problem was fixed, and the resident above had to have her door replaced.

Case Study 2

A tenant had been complaining about a recurring leak in her flat for over 20 years. She had to be decanted as a result of the damage to her flat and was told she would be decanted for a period of 6 weeks. At the time of the Adjudicator's investigation, 8 months had already elapsed and there was no word from the TMO about her going back to her flat or any communication about the progress of the repair works. She stated that if the TMO had carried out the repairs in the first place then there would not be so much damage and she would not have had to endure the decanting and the waiting.

Case Study 3

A Leaseholder had to be decanted into temporary accommodation with 3 children whilst roof repairs were being carried out to her property. The family was told they would return to their home within a period of 6 weeks. After this time, the works were incomplete yet the TMO was insistent they should return to what effectively was a "building site". When the family refused, they were placed into temporary accommodation, but the family was then forced back into the family home with repairs still to be completed. The scaffolding had damaged a roof tile which was allowing water into a bedroom ceiling. Upon inspection, a hole in the ceiling was found; the fitted wardrobe contained damp clothes, and the timber was rotting. This complaint is over 10 years old. The mother is disabled herself and cares for her son who has an illness. The complainant suffers from asthma, as does her daughter, and the spores of the mould in the bedroom are affecting their health. She has suffered stress for over 10 years and comments "the TMO have ruined my life. The TMO don't care and they never will care".

Case Study 4

The Adjudication service took on board a complaint from a resident who had been complaining about a leak to the bathroom for over 10 years. No substantial repair had been carried out by the TMO – only continuous patching up. The extent of the damage now means the work involved has become a major repair and is possibly the subject of an insurance claim in relation to floor covering and wall decorations. The intervention of the Adjudication service means this resident's repair is now being taken seriously; although there was some problem initially with anyone at the TMO taking on the responsibility. Initially the TMO did not keep the resident informed of progress (or, indeed, lack of progress) which is a frequent complaint made by many residents.

Case Study 5

There were allegations that incompetent sub-contractors were being used who did not have the correct skills to carry out the works; an example is where exterior front doors had to be repainted. A young unskilled worker was used who clearly had not carried out painting before and was observed not sanding down the paint work beforehand or priming, but merely putting on a coat of paint with a roller by dipping into the tray of paint with some spirit. The residents were re-charged exorbitant amounts of service charge for what should have been full refurbishment of the front doors.

Case Study 6

As part of a major works project boilers and radiators had to be replaced; the central heating system on the estate has failed miserably for the past two consecutive years. Allegations have been made that the radiator valves were put in the wrong way round, and that some valves were so noisy that it was affecting the residents' health

(the Adjudication Manager witnessed the noise herself). An independent report was commissioned before Christmas which identified a number of failings, one of which was the TMO maintenance contractor not being proactive enough to avoid potential problems and being slow to respond to complaints.

Outcome of Case Studies 1- 6 - Recommended Actions:

Generic

1. *All complaints should go through the one complaints procedure, which should be logged, monitored and progressed or chased when necessary.*
2. *Regular progress reports should be made to the complainants to keep them informed*
3. *Responsibility for appropriate actions (remedial or otherwise) to be taken swiftly.*
4. *Response times to queries/complaints particularly to repairs needs to improve.*
5. *Complaints about leaks should be investigated immediately and corrective action taken as a matter of urgency.*
6. *Vulnerability of complainant should be established and priority given as appropriate. Priority should also be given to those decanted residents for early resolution of complaints.*
7. *On large estates, contractors to establish precise addresses where necessary, and come prepared with appropriate tools and equipment.*
8. *When contractors have to forcibly gain entry, they must ensure they have the correct premises beforehand.*
9. *TMO to consider compensation payments to those matters referred to by the Adjudication service, following the independent surveyor's recommendations.*
10. *The TMO and the Council to agree a Compensation Policy as a matter of urgency.*
11. *TMO to log all repairs complaints referred by the Adjudication Service. Letters to be sent to all complainants with a timescale of progress and anticipated date for resolution.*
12. *TMO to urgently survey "leak" problems referred by the Adjudication Service and carry out necessary repairs.*
13. *TMO or TMO's contractors to ensure only skilled labourers are used so as to comply with MMA 2006 in that contractors are of "an acceptable standard of quality". TMO to consider making specific reference to this in the contract documentation when work is to be tendered (case study 5).*

14. *A Clerk of Works to sign off only that work which has been carried out in accordance with specification documents (case study 5).*
15. *TMO to ensure all snagging items on major works is satisfactorily and efficiently dealt with.*
16. *With regard to communal heating systems, TMO to ensure all key personnel are available to carry out necessary firing up beforehand.*
17. *TMO to make adjustments to service-charge recharges where appropriate as referred by the Adjudication Service, and where necessary subject to the independent surveyor's recommendations.*
18. *The Council to robustly monitor and evaluate performance of the TMO, on a six monthly basis, in accordance with MMA 2006.*
19. *Following the independent assessment by the independent surveyor, on the matters directed by the Adjudication Service, the TMO to pay out necessary compensation and/or to make insurance claims as appropriate.*

Specific Estates

Worlds End Estate

20. *TMO to carry out a full survey of the leaking roofs in Worlds End Estate and a report made to the TMO Board and the Council for specific funding, subject to the independent surveyor's report, with implementation date as soon as practicably possible.*

Elm Park Gardens

21. *To deal with all outstanding snagging items at Elm Park Gardens as a matter of urgency (details of which have been passed to the TMO and the Council by the Adjudication Service). TMO to consider compensation where appropriate subject to the independent surveyor's recommendations.*
22. *Ensure key personnel are proactive in firing up the heating systems in advance of the due date to come on in communal systems and, more importantly, to ensure all key personnel are available during that period to deal with any problems that arise. In some cases the noise persists, and sometimes it is intermittent. This has been a long-standing problem and really needs to be addressed. Compensation for the lack of heating during the cold spell is not the answer. The problems need to be fixed and priority should be given to those residents still experiencing problems, or who are awaiting further work to be carried out before re-decoration is completed. A detailed list has been compiled by the Adjudication Service and passed onto the TMO to be actioned.*

3.2. Financial

Preamble

There are many disgruntled leaseholders, and some freeholders, who appear to be dissatisfied due to:

- The way in which service charges are calculated – insufficient detail/lack of clarity, particularly with final accounts
- Miscoded items relating either to different blocks and sometimes different estates
- With Major works projects the service charges recharges include management and supervision costs. There are questions as to what exactly is being charged and why there are additional fees on top. The HQN report⁹ is fairly comprehensive and gives some comparisons with other TMO/ALMOs.
- On one estate a management fee of 10% is charged instead of the usual 12.5%. It would appear this figure was arbitrarily reduced by a previous TMO member of staff. No-one has been able to establish the reason or the logic behind that decision
- There are many allegations on a variety of estates of bad workmanship/defective work which had to be put right, effectively meaning it had to be paid for twice over
- Allegations have been made about backhanders being paid to contractors but there was insufficient corroborative evidence to justify the allegations
- The service charges Final Accounts 2004/5 and Estimates for 2006/7 and the Leasehold major works Final Accounts and Estimates, and specifically the back-log of Final Accounts, were not finalised at the time of the Adjudicator seeing a variety of residents
- Allegations that s. 20 Notices under the Landlord and Tenant Act 1985 were not served on individual properties, or were incorrectly served

Many complaints have been received in relation to service and management recharges. The level of service charge is set by the Council and not the TMO. The HQN report is a comprehensive document on Service and Management Charges.

The report indicates that most ALMOs charge a fixed rate and estate management costs should be included in the relevant direct cost, with management repairs cost to

⁹ Housing Quality Network report, August 2008

be included with costs of actual repair. At the time of that report in the summer of 2008, the then administration and management charge was based on an analysis of costs undertaken in 2002/03; HQN concluded it was difficult to see the basis of the charges and how the percentages were applied to the leaseholders. Additionally, the headings did not sufficiently identify what services were charged for and those that were not. It was clear that no charge was made for managing repairs (in technical services) or for human resources.

In calculating the service charges the TMO as directed by the Council use the bedroom weighted fixed charge for recharging purposes. Having made enquiries of the Royal Institute of Chartered Surveyors it appears the bedroom weighted method is the usual practice, but there is no hard and fast rule provided "it works". The HQN report confirms that fixed charges are more widely recognised by the LVTs since the method is not subject to wide variations throughout the year

In terms of major works management charge, a common methodology is a percentage fee which varies from 8% to 20%. The Council are currently in the mid range which is 12.5% excluding professional fees.

Capital programmes include payment of external professional fees such as legal advice, building control costs, architects etc., which the TMO does not have of itself and which is allowed under the MMA 2006. Costs are charged to individual projects.

Case study 7

Allegations of lack of proper s. 20 Notices and proper consultation periods have been made. Spot checks have been carried out and reported back. Complaints were made about the timings of the s. 20 Notices, particularly over festive periods which meant leaseholders were given little effective time for proper consultation. Alleged defective Notices were subsequently corrected. On one particular estate, the Adjudicator found there is some doubt as to whether the s. 20 Notices (stages I and II) were adequately served. There were no certificates as to delivery on each property file, although there is one estate file. An email confirmation exists on the TMO file that notices were delivered on the estate and copies of the sample notices were produced. However evidence by the Resident Association Chairman and Secretary that has been corroborated by documentation casts some doubt as to whether each individual property was served. In that case it is concluded that on the balance of probability, the service of the Notices was found to be deficient. This has financial consequences for the TMO as to whether it can legally charge for the service charges. The TMO would be recommended to have a more robust system of delivery of Stage I and II s. 20 Notices to eliminate any doubt and to afford the organisation protection against any false allegation of non-delivery.

Case Study 8

Several disgruntled leaseholders from a variety of estates are withholding some element of their service charges, and hence are in arrears, because they feel certain works are still outstanding. These leaseholders have been threatened by the TMO leasehold services that they intend to inform the Mortgagee. Whilst this may be correct procedure, consideration of the current policy of the TMO ought to be more aligned with the economic climate which currently exists and suitable arrangements should be agreed between the parties; while balancing this with the need to collect "old" arrears. The TMO must collect arrears of service charges, and the TMO does have a policy for collection of arrears within a period of 3 years. The difficulty is that in the past the TMO came to separate arrangements with some of the leaseholders, and this is causing friction. In one case an incorrect letter was sent to a leaseholder wrongly stating he was in arrears. The TMO apologised.

The actual recharge costs to leaseholders can cause hardship, especially to the elderly and vulnerable. Potential liabilities for huge service charges were dealt with and are still being dealt with in a non-uniform fashion. There appears to be little sympathy as to how leaseholders were/are to repay the huge service charges. Furthermore, where arrangements were made between the leaseholders and the TMO to repay arrears of service charges, the TMO has regaled on their agreement. In some instances residents have received letters threatening court proceedings, or have received letters from their mortgagees, without any warning whatsoever – sometimes despite arrangements already in place. This is contrary to the MMA 2006.

Case Study 9

Leaseholders on the Lancaster West Estate are paying service charges for a private road which belongs to the Council when the right of way is exercised by members of the public. Furthermore, inaccurate service charge accounts have been raised.

Outcome of Case Studies 7-9 - Recommended Actions:

- 1. As there is some doubt as to whether the s. 20 Notices were served on individual properties, at the relevant time, or at all (case study 7), it is uncertain whether TMO would be able to recover the re-charge of service charges. The independent Surveyor will give an independent assessment as to whether or not the service charges should be recharged.*
- 2. The TMO to re-visit their method of delivery of notices to avoid a legal challenge and consider further their proof of service.*
- 3. Following the independent Surveyor's assessment, provision may have to be made in the budget for the potential shortfall in the re-charge for service charges on a particular estate (details have been given to both the TMO and the Council).*

4. *Council to monitor TMO's obligations under MMA 2006 particularly relating to service charges – chapter 4.*
5. *It would be wise to have a uniform system of collection of arrears of service charges and to investigate whether pre-existing arrangements exist prior to issuing arrears letter.*
6. *To ensure that the arrears actually do exist prior to issuing the letter.*
7. *Computerised leasehold services customer relationship management module and database should be upgraded to reflect accurate records.*
8. *Arrears should be collected in accordance with the MMA 2006.*
9. *TMO/Council to investigate the possibility of the road being adopted as a public highway, on the Lancaster West Estate (details given to the Council and the TMO).*
10. *TMO to ensure correct codes are used for re-charge purposes.*

3.3. Behavioural

Preamble

Several residents (leaseholders and tenants), individually and in focus group meetings, made several comments to the Adjudication Services about the lack of customer care and etiquette on the part of the TMO staff – particularly, rudeness by some TMO staff which was also commented upon by Board Members and other TMO staff members. Equally, some TMO staff have stated that some residents are just plain rude. One resident commented that they felt they were treated as the “scum of the earth” while, on the other hand, TMO staff commented that they were shouted at by some residents. Residents also complained at the complacency of the TMO when dealing with enquiries; words such as “malevolent” “mistrust” “malaise” and “treated with contempt” were often used when describing the TMO generally. The Adjudication Service did encounter some unhelpful staff at the TMO, and staff that did not return calls, or did not like to take on responsibility. The Adjudicator found that the newer members of staff at the TMO were trying extremely hard to dispel certain “ingrained” behaviours by longer serving members of staff, and those staff that have subsequently left the employ of the TMO. This is an unhappy culture and needs to change for the better.

Case Study 10

Many residents expressed their discontent at the lack of progress or communication about their enquiries, which invariably ended up as complaints because of lack of response. There was evidence of some residents having to wait years for a simple response. One chairman of a resident association had requested two parking spaces for sheltered accommodation tenants, despite several letters and telephone conversations with the TMO over the period of one year there was no response. The adjudication service intervened, and as a result the TMO have now responded to the tenant and are making arrangements for the parking spaces to be provided. This is indicative of the lack of response by the TMO to queries raised by residents who subsequently become distressed at not receiving answers to their legitimate questions.

Case Study 11

Several residents complained about slow responses to legitimate complaints, these having escalated from enquiries. Upon investigation, it was found that the complaints officer was often waiting for information from other departments before being in a position to compile a composite response, notably from technical services. Other internal departments of the TMO also expressed their frustration with lack of responses from technical services. The Adjudicator looked into the question of how

enquiries were raised from the beginning to the end of the process. There was evidence that residents preferred to raise queries with “named individuals” within the TMO rather than go through the complaints procedure – indeed, some residents were not aware of the complaints officer or customer services at the TMO (although the complaints procedure is on the TMO’s website). Some residents were “used” to complaining to named individuals, which indicates an historic unsatisfactory method of complaint. There are inherent problems with this method of complaint: with the refusal by residents to deal with those members of staff other than those to whom the complaints are addressed; that some of the named members of staff did not take on responsibility for answering the enquiry or deal with the complaint; and that the complaints officer not even having knowledge of the complaint. Some residents direct their queries and complaints to the Chief Executive of the TMO with copies to the Chief Executive of the Council and to the Leader of the Council, and expect a response direct from the Chief Executive of the TMO (this was the normal procedure used by her predecessor). According to the complainants, the reason for this copying of complaints to others is the hope that someone will at least take notice. In addition, the Adjudication Service found instances of “defensiveness” and some “qualified/reserved” apologies by the TMO.

Case Study 12

One resident corresponded with the Adjudication Service regarding breach of confidentiality, another resident telephoned about a breach of data protection. One resident wrote to the Adjudication Service about a breach of data protection and was considering taking action against the TMO by reporting it to the Office of Information. Evidence was received regarding lack of confidentiality – e.g. an open letter with confidential information was faxed to a third party to be delivered to the resident by hand. This was meant to be a quick method of providing information/answering a query, but the action amounted to a breach of the data protection legislation. The TMO gave an unreserved written apology to the resident, who was happy with the response, upon the assurance that it would not happen again. Conversely, on another occasion the data protection principle was taken to another extreme by the TMO staff: the daughter of a Tenant couple provided information to the TMO as requested on behalf of her parents as her parents were on holiday. The TMO staff refused to deal with the daughter directly and insisted on seeing only the parents, despite the fact that on other occasions the TMO had dealt with the daughter in the absence of the parents. The situation ended up being very confrontational. The TMO staff could have handled the situation in a very different way merely by responding in a more accommodating manner.

Outcome of Case Studies 10-12 - Recommended Actions:

- 1. The TMO has been proactive in addressing the problem of response handling and propose introducing a communications policy. The TMO is currently monitoring the response times to correspondence. However the TMO should be*

ensuring substantive responses are given in a timely manner, e.g. 10-14 days if possible, with initial response/acknowledgements within 3-5 days and, where substantive responses are expected to take longer, to inform the residents at the outset. It is recommended "response time" is included in the Improvement Plan.

- 2. Additionally, the TMO could consider utilising its website much more, so residents can access self-help information.*
- 3. TMO to ensure all enquiries and complaints to be directed to the Customer Services (mentioned already).*
- 4. There should be consideration of splitting up the technical repairs complaints (mainly dealt with at the Hub) from the non-technical complaints – to be handled by the customer services team at the TMO.*
- 5. Where simple grievances can be resolved, or mistakes are made by the TMO, staff should be quick to respond and to give unreserved apologies where warranted.*
- 6. Qualified apologies should be avoided where possible.*
- 7. A review of the complaints procedure should be undertaken.*
- 8. Customer care training programme for all front line staff (whether temporary, full-time or part-time)*
- 9. As a number of residents raised the issue of confidentiality, all TMO staff to receive training on confidentiality, Data Protection principles and Freedom of Information.*
- 10. If not already on the website, the TMO to place the Data Protection and Freedom of Information Policy on the website for the benefit of the residents.*
- 11. A procedure for dealing with complaints on the subjects mentioned in 10. above, should also be on the website.*
- 12. Both the Council and the TMO to revisit the MMA 2006 – particularly the provision on confidentiality which is to be re-enforced.*

3.4. Governance

The issues that came before the Adjudication Service were:

- Constitution (now changed)
- Training and development of Board Members
- Leaking of confidential papers by Board Members
- Transparency

The Constitution changes have been adopted and are now being implemented. There were several residents who were unhappy with the proposed changes, but nevertheless the changes were approved by the majority of the residents and have been introduced. The composition of the Board is made up mainly of Residents as it is a Member Organisation. There was a recent election. Some prospective candidates who were hoping to stand for election were unfamiliar with their prospective roles and responsibilities as Board Members and the collective responsibility they would have as Directors. The actions of some of the Board members in the past indicate there are real concerns about their understanding of their roles and responsibilities. Good decision-making equals good governance which, in turn, equals good performance. The fact that some confidential papers have been leaked in the past by Board Members is an indication that the Board was not functioning as well as it could be. The leaking of confidential papers also amounts to a breach of the Code of Conduct.

Observations of the Adjudication Service

There were some complaints that some Board Members abuse their position so as to be given priority treatment. Evidence found this to be true in some instances.

Some residents complained about the Board's lack of skills and understanding of the residents they serve, and referred to the leaking of confidential papers and the subsequent EGMs so that residents could have a "voice". Several residents questioned why there were so many meetings in "private" and lack of transparency.

Outcome of Observations - Recommended Actions:

1. *The training and development of all Board Members on their roles and responsibilities, how to conduct meetings; understanding the principles of confidentiality, to undergo a customer care training programme and have training on the code of conduct.*

2. *In order for the residents to be able to have the faith and confidence in the TMO Board it is recommended to have appropriate expertise (whether professional: financial, legal or technical) on the TMO's Audit Review Committee.*
3. *To create a separate committee to oversee performance standards, and probity and ethics, made up of independent co-opted people – very much like a scrutiny committee to hold the TMO Board to account. This overseeing role is crucial to ensure good governance and a good ethical framework.*
4. *Board Members to have an external facilitator on relationship building with residents*

4. ANALYSIS OF COMPLAINTS

4.1 Physical

Several Residents, leaseholders and tenants of various estates and some individual street properties, approached the Adjudication Service regarding a number of complaints, particularly around repairs generally. These tended to be in relation to bad workmanship, slow responses to repair complaints, contractors promising to come back and finish their jobs but never returning, and TMO technical staff surveying the nature of repair or maintenance required but nothing seeming to progress beyond that. The Adjudication Service has intervened in a number of cases and found that in the majority of cases the technical staff found difficulty in taking ownership of a resident's problem. A complaint would be made about a long-standing problem, it would not be clear when the job was completed and there was no feed back either to the call centre or to the complaints officer at the TMO. This is not sustainable and needs to be reviewed as a matter of urgency.

There are mixed messages sent to residents as to what is expected of them or the process that needs to be followed, even though a Tenant's Handbook exists which gives explanations as to the processes. The Handbook is also on the TMO website. It appears residents are not aware of the reference. Different complaints are being referred by the residents in different directions and repositories. It seems sensible to split the complaints a) for the repair service at the Hub for technical type complaints (the actual repair itself), and b) for the complaints officer at the TMO to deal with the non-technical complaints. Further, it is recommended that there be a central customer services department at the TMO to deal with all non-technical complaints. All staff, Board Members and Council Members should be made aware that all complaints must go through the one complaints system and all residents should be encouraged to go through this route.

It was noted by the Adjudication Manager that several residents were not aware of the Hub's existence. Upon making enquiries of the Customers Services at the Council, it was evident residents still came to the Customers Services desk at the Council with their TMO queries. It is also for this reason that all complaints should go through one route and all routine complaints should be treated uniformly.

At the moment, Leasehold services deal with their own complaints, as do technical services. To an extent finance does too – but leasehold services come under the Finance Umbrella and the value of this arrangement must be questioned.

The Chart below (fig. 2) gives an indication of the types of complaints received by the Adjudication Service. It should be noted that by far the largest number relates to

major works, with the next largest portion being unsatisfactory repairs. It has to be said that the major works relate in the main to one particular estate and are in the snagging period. It is hoped that many problems will be resolved in the very near future.

The level of complaints regarding repairs and maintenance is of no surprise considering that 98% of the properties managed by the TMO are flats. The Adjudication Service has set up a matrix of complaints received from a variety of residents with a progress outcome. This has been made available to the Council and the TMO to progress these issues beyond the life of this report and the life of the Adjudication Service.

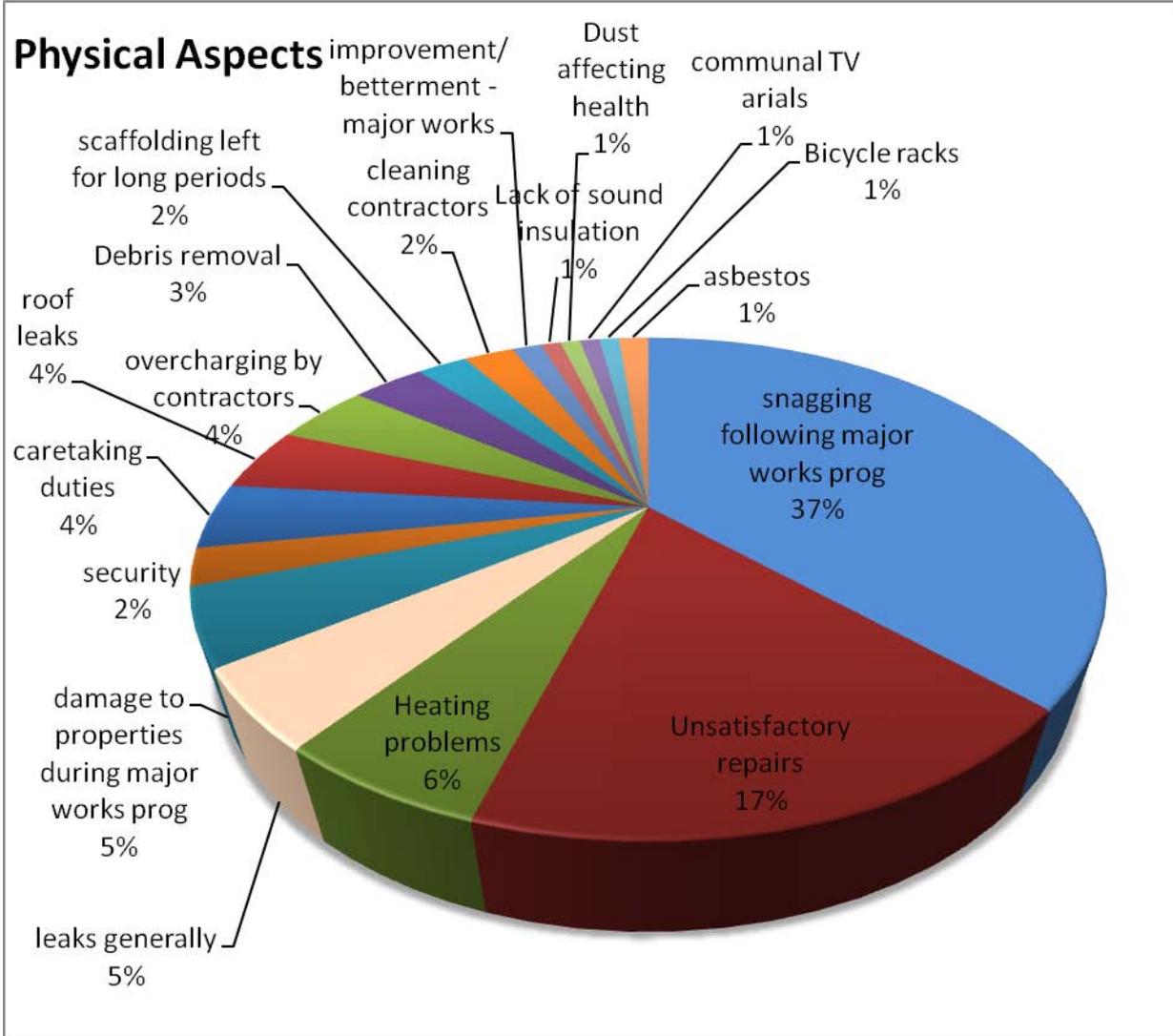


Figure 2

The snagging following major works (shown in blue) in fig. 2 above, and the heating problems (shown in green) relate to Elm Park Gardens, whereas the unsatisfactory repairs (shown in maroon) and damage to properties during major works programme (shown in beige) are generic to the Borough as a whole.

One of the key findings in the RBKC Audit report in December 2006¹⁰ was that post-inspections in relation to tenanted properties (housing repairs and maintenance) identified an overall 70% failure rate, particularly charging for work not done, overstating volumes of work involved (and hence the cost), additional charges for items already included in composite cost of repair and poor workmanship. In addition, four surveyors did not achieve the required 10% post-inspection target. Evidence showed only 4% was achieved.

Much of the information contained in the December Audit report has been corroborated by tenants and leaseholders referring their grievances to the Adjudication Service. This is further corroborated by the Complaints Officer at the TMO, who confirmed that from June 2008 to December 2008 there were 130 registered complaints in relation to repairs, 29 in relation to engineering services, 16 in relation to property services and 7 in relation to landscape and environment – making a total of 182 complaints in respect of Technical services, which accounts for 52% of the complaints received by the TMO during that period.

It is recommended that both the Council and TMO address the above problems, including the monitoring of the contractors' work. It is unclear to the Adjudication Manager who is actually checking the scheme rates for the TMO's contractors in relation to bad workmanship and the breaking down of individual costs as opposed to a composite unit. In their meetings of Monitoring and Development, the Council and the TMO should ensure the provisions of the MMA 2006 are adhered to rigidly. Secondly, the recommendations in the December Audit Report should be the subject of the TMO's Improvement Plan.

¹⁰ RBKC Audit Committee Report December 2006

4.2 Financial

By far the largest volume of complaints regarding finances were in relation to the service charges. Several residents complained about over charging or miscoding, with residents requiring fuller details, being the common themes.

There were complaints about damage to properties by the contractors during the major works programmes and at the time of writing this report it is unclear whether the damage was caused by wear and tear, as a result of the major works or if it arose within the snagging period. The independent Surveyor should be able to report on these specific issues. The other major concern was in relation to the heating. On one particular estate the central heating system failed following some replacement pipe and boiler work by the Council, which has been mentioned elsewhere and is the subject of a separate technical report. Compensation has been offered to the residents. Another estate has a central heating communal system which is costing the residents enormous amounts in service charges. It is understood the TMO bulk buy utility supplies to cut costs, but the residents are still complaining of high re-charge bills. This is something upon which the independent Surveyor should be able to give a view.

With the major works programmes, residents are seeking clarification on management fees on top of service charges and they are unclear as to why there should be separate fees. It would appear inadequate information is being given to residents at the outset of any major repairs programme to identify the precise nature of fees to be paid. The TMO should look at being more transparent in their estimates and provide fuller information. Both the Council and the TMO should ensure that the provision in the MMA 2006 is being adhered to, in relation to service charges and the information given.

Several residents check and re-check their service charge re-charges on a frequent basis. Leaseholder services have made changes to their procedures to give more information to leaseholders in their estimates. There is a genuine attempt by the TMO to be more transparent in their costings but they may need to examine what further information would be helpful to the residents.

On one particular estate, estimates of service charges were built into the bills. Some leaseholders have paid their bills and others have not. Some have been chased as a debt and remain outstanding, others have not. There appears to be no uniform treatment.

The Audit report of December 2006 highlighted a number of issues in relation to the TMO's IT system for collating data, particularly the high incidents of manual entries, which need to be reduced; the figures for outstanding major works debts were misstated in the TMO's accounts and Performance Indicators. Estimates raised were not reconciled to major works schemes carried out. Estimates should be raised

in all cases. All these matters were the subject of individual and estate complaints referred to the Adjudication Service, as will be evidenced below in fig. 3. By far the main complaints across the Borough, in relation to financial aspects, relate to three main areas:

- Overcharging on service charges
- Miscoding for re-charge of service charges
- Lack of full details for services charges particularly final accounts – but also at the estimate stage

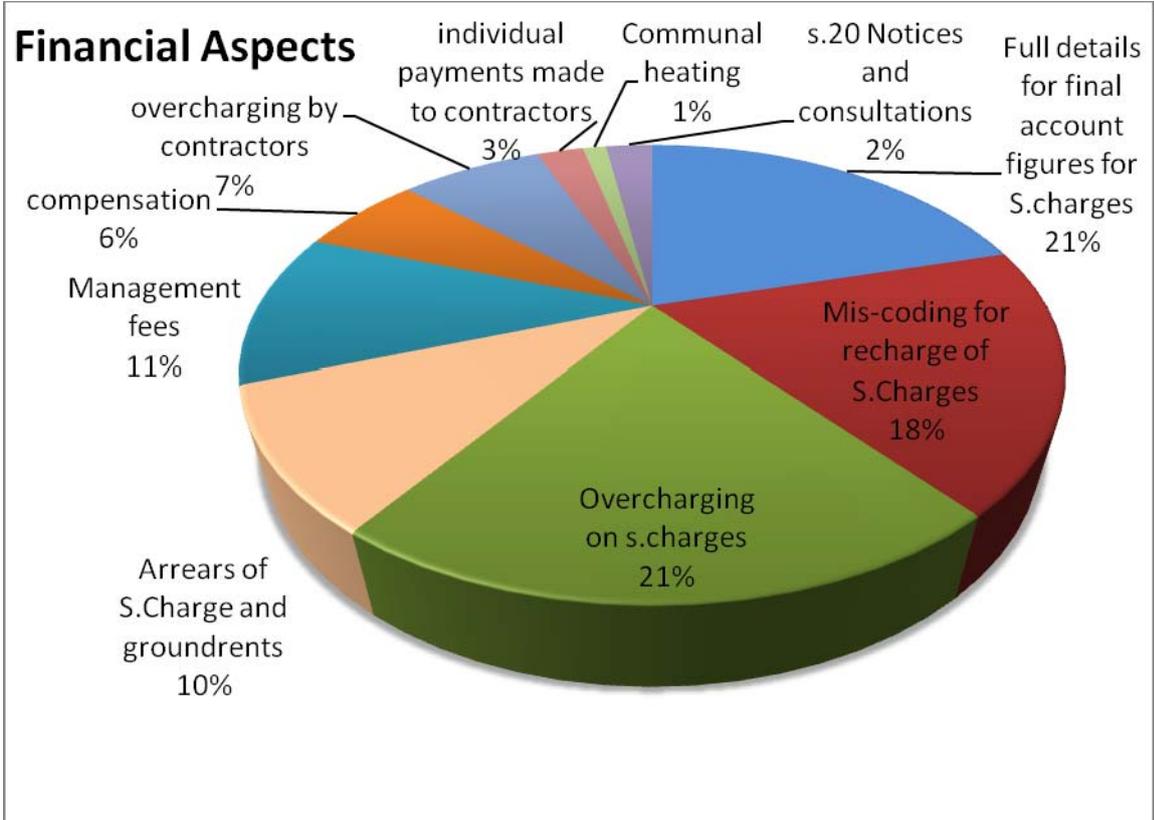


Figure 3

The Adjudication service actively raised a number of issues with the TMO in relation to service charges, generally and specifically, which are currently being addressed. A list was produced both for the Council and the TMO for action.

Of some concern to the Adjudication Service were the missing manual files of the Technical Services Department for some schemes. This was also mentioned in the Audit Committee Report in December 2006. The Council should ensure the TMO account for all manual files relating to the major works schemes and should be

addressed in the monitoring and performance meeting of the Council with the TMO under the MMA 2006.

The Audit Committee report of December 2006 highlighted two main high risk areas: The service charges final accounts 2004/5 and Estimates for 2006/7 and the Leasehold major works Final Accounts and Estimates – specifically the back-log final accounts. The historic debt levels stand at major works (£5.5m) and service charges (£1.9m) at the end of 2007/08.

Final accounts are likely to include long-outstanding credit balances (refunds). It may be difficult to track down the predecessors. Although the debit amounts are probably not transferable to the successors in title, nevertheless amounts should be calculated and then written-off wherever possible; although it is accepted aged debt analysis may be a problem since the current TMO IT system does not allow the identity of individual debts.

A further RBKC Audit Committee report was presented to the Council in January 2009¹¹ specifically on the TMO leasehold and Income Debt recovery, particularly the monitoring of the payment plans. More importantly there was a recommendation that “the TMO should clarify and document a policy in respect of leasehold bad debts, and that leasehold debts should be reviewed and written-off as appropriate. Write-offs should be approved in accordance with TMO financial Regulations. All recommendations to be implemented by the end of March 2009”.

Rather than having a provision for bad debts year on year in the TMO accounts, the Adjudication Manager recommends a full review of leasehold debts; the TMO to have a policy in respect of leasehold bad debts and then to write-off the bad debts once and for all, to enable the TMO to start afresh with the correct accounts, so that leasehold accounts can accurately reflect the proper estimates and final accounts.

The Adjudication Manager has raised a number of issues following sight of the above Audit reports and speaking to the Audit team, much of which has been corroborated by the residents themselves and highlighted in this report.

More importantly, there is some concern that there is no audit assurance for the major voids and capital programme for major works – which appeared unclear and underdeveloped. This should be referred to in the Improvement Plan.

It is also advisable to have professional/technical expert advice available to the TMO’s Audit and Review Committee, so the Board is fully apprised of their financial commitments.

¹¹ RBKC Audit committee report 5th January 2009

4.3 Behavioural Aspects

By far the largest volume of complaints by residents was in relation to disruption to resident's lives during major works programmes. Several complained about the scaffolding being erected for very long periods – on more than one estate. The TMO are saying the works were completed on time on one particular estate and the scaffolding was always expected to be in place for a very long time. Having made enquiries independently it is quite feasible for the scaffolding to be in place for long periods following the works – either for inspections and minor jobs. The independent surveyor will be looking at this aspect and making a judgment in his report.

The next highest volume was in relation to contractor attitudes and their lack of respect for the residents. The TMO are currently going through a procurement exercise for a new contract for repairs and maintenance and this aspect will be addressed in the proposed contract.

In relation to the size of the Borough there appears to be little in the way of anti-social behaviour (noise, graffiti, dogs, motorcycles etc.) Having said that, some residents on a particular estate did experience particular problems with dogs – specifically the keeping and breeding of dangerous dogs in the flats. The TMO do have an anti-social behaviour policy and do have a paragraph on dogs, but there is no specific procedure for dealing with dogs. The Neighbourhood Officer has now taken control of the situation and has produced a Register – the intention is for the dog owners to register their dogs. The TMO have produced a warning mechanism with eventual withdrawal of permission to keep dogs using the tenancy enforcement procedure, police enforcement or Local Authority powers (as the Landlord is still the Council). It would therefore appear the TMO are actively looking at the anti-social behavioural aspect of dogs on one particular estate. The TMO would do well in having trialled the procedure, to have a written policy which can be incorporated into a Borough-wide policy, and thereby amend the Residents' Handbook accordingly.

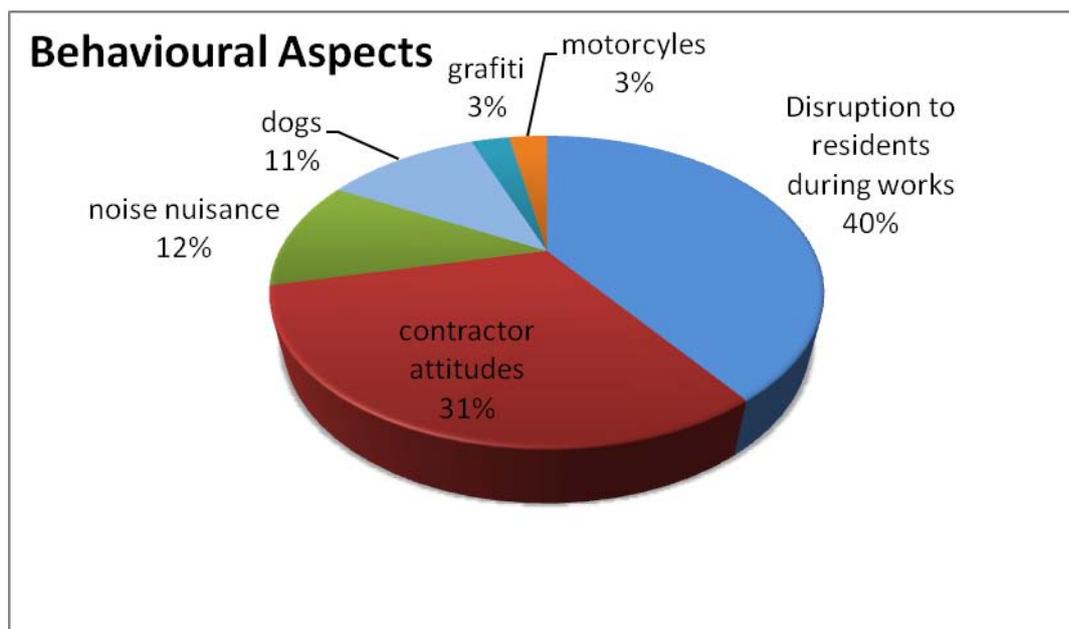


Figure 4

The other problems encountered on several occasions were the contractor attitudes which have been described as “bad”, “rude”. Residents saying they are treated with “contempt”. This appeared to be quite a widespread problem – not only in relation to estates, but to individuals who had cause to encounter contractors for a variety of reasons. This appeared to be a favourite topic among the focus group meetings. Common concerns also reflected the little regard to residents by Contractors when carrying out their work.

With regard to noise nuisance, several residents complained of lack of sound insulation between flats, and some street properties also suffered from traffic noise. It would be very costly to install sound insulation, bearing in mind that the majority of the Council’s housing stock is flats. More importantly, there is no guarantee that insulation would effectively stop household noise.

Following a vicious attack on a young child a couple of years ago, it is understandable why dogs were also of some concern to the residents in Worlds End Estate – which, as stated elsewhere in this report, is being tackled pro-actively. This should give the residents some level of comfort.

4.4 Customer Care

Customer Care aspect has been touched upon elsewhere in the report. As can be seen in the chart below (fig. 5) there are four main areas of concern: Response times to complaints(30%) was the main concern, closely followed by general negative attitude of TMO staff (26%) with lack of communicating progress or lack of progress (15%), and insensitivity towards the needs of the resident (12%). This is manifested in the several complaints by tenants and leaseholders not only in relation to estates, but also street property owners who came to the focus group meetings. Some of the issues have been addressed in the various case studies within this report.



Figure 5

It appears the Engineering side of the TMO is more task-oriented rather than resident focused; although committed to their profession, staff morale is low at the moment. The culture needs to change to focus more on the residents, improving the services it delivers. The cultural shift will not be an easy task, but improvement is necessary to provide the sort of service expected of residents today. The TMO is looking at developing skills, procedures and processes in planning, prioritising, organising and monitoring works. This should be reflected in the Improvement Plan.

The Resident Involvement Team shifted its focus following the restructure of the TMO's Executive Team last year, moving into Housing Support Services. Following

a review in December 2008 the Resident Involvement Team now focus specifically on developing community and local area involvement in conjunction with other departments within the TMO to have a more joined up approach especially with Neighbourhood Management, and Repairs and Customer Services. This has to be commended and is certainly a step in the right direction. Many residents praised the work of the Resident Involvement Team and commented they had a good rapport with the officers.

4.5 Conclusions of analysis

Residents expect to receive a good, reliable and sustainable service from the TMO in return for payment. Instead, from the evidence gathered by the Adjudication Service, some residents are receiving sub-standard services (as can be shown in some of the case studies referred to in this report).

Furthermore, the residents expect an early response to the queries they raise without the need to keep chasing. TMO staff should take on responsibility to take action on queries, particularly on the technical side. There appeared to be little or no follow up procedure to ensure the queries were concluded, even at the time of writing this report and the Adjudication service having closed down. It is noticeable how some TMO staff has reverted back to the original culture of ignoring complaints. This “interim” period between the Adjudication Service closing down and final resolution of complaints requires constant monitoring of the TMO, to ensure resolution of complaints in a timely manner. It is worrying as to what is to happen to some of the complainants’ queries which have yet to be resolved, and who will take on the responsibility until resolution. These are genuine concerns of the residents and the Adjudication Manager; the residents have engaged in the process which the Adjudication Service has documented and passed onto the Council and the TMO. The residents need to be assured their outstanding grievances will be dealt with, efficiently and swiftly.

Recommended action(s):

It is recommended the Complaints Officer at the TMO write to those aggrieved (details of which have been passed on by the Adjudication Service) with timescales as to when full answers will be given to the queries, and chase those in the Technical Services Department for action with a bring forward system. Senior management in Technical Services should oversee the progress of complaints as one of their main priorities and give a full written report to the TMO Executive and to the Council with regular updates. The Complaints procedure at the TMO requires an urgent review with particular emphasis on resources being available. It is recommended this is reflected in the Improvement Plan.

As to the standard of service, both the TMO and the Council should be enforcing the provisions in the MMA 2006 that is demonstrable and communicated to all concerned. Only then will the Council and the TMO gain the confidence and trust of the residents. Communication is key and respect is important.

5. RECOMMENDATIONS

In the light of this investigation by the Adjudication Service, there are several recommendations being made in this report, which have been themed for ease of reference. It is recommended the majority, if not all, should be reflected in the TMO's Improvement Plan.

Customer care, PR, communication, training and development

1. For there to be a process of mediation/conciliation to build relationships with the aggrieved residents and the TMO. Relationships between certain fractions of residents and the TMO have broken down irretrievably – only an independent process can intervene to try and improve relations.
2. A Customer care training programme especially for front-line staff (whether full time, part time or temporary staff). All staff at the TMO should greet and meet residents with the utmost respect and courtesy and always show willing to assist residents in their enquiries, and be prepared to take on responsibility for acting on those enquiries.
3. TMO Staff appraisals to reinforce customer care and respect for residents and their roles and responsibility both within the organisation and towards the residents.
4. A re-examination of the core principles of the TMO and conduct a skills audit of staff to ensure they have core competency skills to carry out the functions of the posts (and not people) and that there is a full complement of permanent full time or part time skilled staff for continuity, and to make less use of long-term consultants. In short – an investment in people.
5. A more pro-active approach to be taken by TMO staff and their contractors to share information with the residents on prospective work schedules and planned maintenance and where possible on emergency works on estates.
6. TMO to be alive to the varying lifestyles and diversity of their residents and must have respect for their privacy. Where ever possible visits to properties should be kept to a minimum and always arranged at a mutually convenient time.
7. A programme of training and development for the Board Members, particularly on the governance issues, their roles and responsibilities as individual board members and collectively as a Board, and training on customer care.

8. Raise Data Protection and Freedom of Information awareness throughout the whole organisation (staff and Board members). Also consider as part of the induction process for new staff.
9. The Council and the TMO to re-examine their relationship with each other to ensure openness, transparency and trust mutually exist between the two organisations. The Adjudication Manager experienced a “them and us” culture which may have existed historically, but needs to be addressed for the benefit of both organisations.

Complaints procedures

10. A review of the Complaints procedure to ensure all enquiries/complaints go through the one system with targets for response times, and to discourage residents to contact individual officers at the TMO to make their complaints. The complaints procedure should be robust enough to give residents the confidence to see their complaints dealt with satisfactorily.
11. Ensure all front line staff recognise and act upon a complaint and log with the customer complaints officer and, where appropriate, take responsibility for following through the complaint to a successful conclusion.
12. All technical complaints to be diverted to the Hub and all non-technical complaints to be diverted to the Customer Complaints Manager at the TMO. Eventually to have a corporate Customer Services Department at the TMO to deal with “all” non-technical complaints including those in Leasehold services. The Technical complaints tend to be around repairs and maintenance – the physical aspects – whereas there are many “softer” issues such as customer care, personal relations etc. that do not sit well within a “Technical” environment.

Governance

13. To have professional and technical expertise available to advise the Audit and Review Committee of the TMO to give full explanations before decisions are made or recommendations made to the TMO Board.
14. TMO Board would benefit from having an external facilitator to assist Board Members in understanding their roles and responsibilities and to assist with their training and development needs, concentrating on skills and relationship management, to enforce good behaviour which leads to good decision making and ultimately to good performance.
15. The creation of a separate committee to oversee performance, standards, probity and ethics, made up of independent members and co-opted individuals to report directly to the Board of Directors. This overseeing role is

crucial to the good governance of the Board, and gives credence to its functions and responsibilities.

16. Board Members should not abuse their positions in order to gain advantage in terms of priority responses, merely because they are Board members. Several comments were made by a variety of people, some were perceptions by others and in some instances in relation to some of the Board Members; the allegations were corroborated. This practice must stop and Board Members should be fully compliant with their own Code of Conduct.

Information Technology – particularly Customer Relation Management (CRM)

17. The repairs IT management system to have a fully functioning integrated CRM (Customer Relationship Management) package or bolted on to track residents' repairs and allocate responsibility. At the moment the system currently used is flawed and unsustainable in the long-term, since separate spreadsheets tend to be used which, by their very nature, are not all linked up and subject to manual data input, where there is room for error (such as the miscoding, and miscalculations of service charges).
18. Leasehold IT management system to have a fully functioning integrated CRM package, or bolted on to correctly code service charges re-charges per estate, block and individual properties and specifically to raise estimated charges and final accounts in a timely fashion thereby relying less on standalone spreadsheets. At the moment separate programmes are used with data entered manually with the risk of wrong data being inputted. This is not sustainable in the long run and has been mentioned in the Audit Committee Report of the Council.

Financial and Service Charges

19. The Council should seriously consider the level of funding to the TMO, beyond statutory duties in relation to health and safety, Disability discrimination works and emergency repairs.
20. To have regard to HQN's suggestions for payment options and offer early discount for prompt/early payments discount as incentives and to send out options with major works invoices with full information for residents.
21. In the current economic climate the TMO to be proactive in giving advice or explore ways in which large service charge costs can be mitigated, but also consider re-examining the TMO policy on service charge arrears particularly in the light of the credit crunch, balancing this with the need to collect arrears. Consideration should be given to changing the policy to better reflect the current market and seeking ways in which the residents can retain their homes, particularly those most vulnerable.

22. Review procedure for service of s. 20 Notices under the Landlord and Tenant Act 1985 to ensure robustness to avert potential legal challenges.
23. Full Service charges calculations to be provided to leaseholders and freeholders as a matter of course and in a timely manner and to ensure compliance with the MMA 2006.
24. To give serious consideration to write off the bad debts amounting to £7.4m arrears outstanding to enable the TMO to start proper accounting procedures with a “clean slate” – provided allowed under the Financial Regulations.

Major works and repairs

25. The Council, as Freeholder, to take more of a proactive role in the monitoring of Major Works Contracts and Cyclical repairs and be robust in checking the TMO's performance under the MMA 2006.
26. TMO to take a more robust monitoring role of Major works contracts and cyclical repairs and to take immediate action against the contractor for non compliance.
27. To have a clear protocol on joint working with partners in relation to all contract work. The Council to liaise with the TMO in respect of its freehold land or properties and new build or re-development affecting TMO managed properties as more information flow is required.
28. Tighten up procedure for Tenant Repairs response times and follow up and where necessary to organise a bring forward system to ensure someone takes on full responsibility.
29. To plan regular structural surveys of the Council's housing stock to ensure the integrity of the fabric of the buildings is intact and report the condition to the Council.

Miscellaneous

30. Review the provision of caretaking around the Borough and on particular estates to ensure an adequate service is provided at value for money.
31. Consider a written procedure for dealing with Dogs under the Anti-Social Behaviour (ASB) regime, for the whole of the Borough. Much work has already commenced on Worlds End Estate which could be rolled out for the whole Borough and included in the Tenants' Handbook. Currently there is a small paragraph in the Tenants' Handbook under ASB policy but there is no written procedure.

32. TMO and the Council both consider how to advertise the existence of the Hub to the residents as it is felt this is not well publicised and many residents were not aware of its existence.
33. Although the future management of the Lancaster West Estate Management Board is the subject of negotiation, from initial enquires made, it would appear the LWEMB is expensive to run as it has its own staff, budgets etc. The logical answer is for the TMO to take over the management but there are many hurdles to overcome.

Review

34. The Council to programme a review of the progress of certain case studies and the outcome of the lists of complaints produced both to the TMO and the Council by the Adjudication Manager, to externally validate the progress made as a result of this report and to report on the implementation of the recommendations. It is recommended a review is conducted by the Adjudication Manager within six months thereafter with an “interim report” on the findings, followed by a final inspection after another six month period with a “final report” on the findings.

Maria Memoli, MBA 10th April 2009