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Guidance on SHiP Housing Management Contracts

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1. Introduction

This Guidance provides advice to those using the SHiP model housing management contracts. It does not form any part of those contracts.

These contracts aim to ensure that a high quality housing service is provided to those who occupy the properties owned by the Registered Provider (RP) and managed by the Managing Agent (the Agent). Setting out clearly defined areas of responsibility for both parties to the contract should help with the delivery of such a service. However the most significant influence on the quality of the service will be the spirit in which both parties approach use of this contract. It should be seen as a tool in a joint endeavour to provide the best possible outcomes for the RP's tenants and licensees. If the contract is seen as stick with which to beat the other party, resources will be wasted on disputes which have no benefit for the service's users.

2. Agreeing contract terms

The models are a starting point for the RP and Agent to agree the terms on which the service is to be delivered. As a minimum, the two parties must ensure that all the either/or options, optional clauses or spaces for agreed dates, figures, etc. which are highlighted in yellow or have square brackets, such as “notice of [six/twelve] months”, have been agreed and completed or deleted as required. While SHiP recommends the use of the models to its members, it also acknowledges that some organisations will wish to make other changes or substitute their preferred wording for some clauses.

The schedules to which the contracts refer are not provided as part of the set of model documents but are an important source of operational detail. Any example schedules provided must be tailored to the particular organisations and services involved. The same care should be taken to agree, date and update the schedules as with the main contract.

The contracts also refer to property inspections being made at commencement and then at agreed intervals. It is essential that when the contract for the service is being set up, these joint inspections identify all responsibilities for any defects, records of condition, inventories of equipment and furniture, etc. as relevant to that service.

3. Contract management

When contract terms have been agreed, the contract management arrangements must be set up. A joint meeting of RP and Agent staff with both strategic and operational responsibilities may help to initiate mutual understanding and good working relationships. At this point the RP and Agent will want to agree the specific arrangements for the contract including:

- Contact or communication responsibilities and protocols
- A schedule of review meetings
- Performance reporting
- Payments and any fee reviews as provided for in the contract or schedules
- Procedure for agreeing variations
- Disputes and complaints responsibilities.

On-going contract management activities can be grouped into the three areas described here:

Service delivery management – ensures that the service is being delivered as agreed, to the required level of performance and quality. Both parties must ensure that all their staff who are involved in service delivery and management understand the requirements of the new contract and schedules. This can be problematic where there is significant staff turnover and those who were involved in setting up the service move on without an understanding of the contract requirements having been sufficiently embedded or documented for their successors. There can also be difficulties where staff are working with several contracting partners and assume all terms will be the same without checking the specific contract or schedule.

Relationship management – keeps the relationship between the two parties open and constructive, aiming to resolve or ease tensions and identify problems early. Regular face to face meetings will help build good working relationships. Openness and understanding of each other’s priorities and constraints is important. Getting the frequency, method and tone of communications right is vital. Many organisations have learned of the perils of “email-rage”! It is advisable that those involved communicate horizontally with the other organisation, that is, with those at their equivalent level of management. Both parties

should be aware that they should not try to direct the work of the staff of the other organisation. Regularly acknowledging that both parties are working for the benefit of the RP's tenants or licencees may help deflect focus from clashes of personality or culture.

Contract administration – handles the formal governance of the contract and changes to the contract documentation. Clear procedures set up at the start and signed up to by all involved are essential. A common tendency is to slip into informality because recording all decisions seems burdensome and unnecessary when things are going well. Then when things go wrong or there is a dispute, one party will reach for their formally documented agreements and find that they don't reflect current practice, that there is no audit trail for an allegedly agreed variation or that they can't identify which is the latest version of an agreement. Even if operating with one relatively straightforward contract, an organisation should have a simple document control system with a summary sheet logging all changes and all emails, letters or variation notices filed in the same place with a copy of the original contract and schedules. Who in the organisation is authorised to agree changes must also be clearly understood and recorded.

4. Notes on contract clauses

This section of the guidance uses the clause numbering in the model contracts. Where a clause appears in the Housing with Support, Registered Care or Housing Management only models, this is noted. It should be read alongside the model contract.

Schedules	This listing and references to schedule numbers within the contract must be amended when this is tailored for an organisation's use.
1.1	Both parties must identify their organisation's constitutional status, deleting the not applicable options. It is a legal requirement for those who are exempt charities, as defined by the Charities Act 2006, to state this.
2.1	This list aims to define all the terms used in the contract but in some cases refers to additional detail in the schedules.
2.2.4	The schedules form part of the contract and are there to provide supplementary or operational detail. When they are revised and updated it is essential to check that any change made does not conflict with the terms of the contract.
3.1.1	Housing with Support and Housing with Registered Care optional clause. The RP and Agent will need to consider the practical implications of the principle of increasing choice for occupants on who provides them with support or care. Previous contracts usually stated that the Agent was sole provider of a support or care service to occupants of the property. As commissioners and providers of support and care develop proposals to increase choice for service users on who will work with them, it becomes more likely that providers will not have an exclusive block contract. This optional clause refers to the Agent being primary provider rather than sole provider. The instance of support or care to some individual occupants from specialist providers in addition to the generic support or care delivered by the Agent could be covered by this wording. Deletion of the clause would leave the question open.
5.1	The models can be used for either fixed term or rolling contracts.
6.2	The RP and Agent must agree who is authorised to request and approve variations to contracts and schedules, as referred to in the guidance on contract management above. It will also help operation of the contract if the parties have a shared understanding of what are reasonable timescales for

	decision making in each organisation.
6.3	This is a standard legal requirement and refers to the formation of a legal partnership as defined in the original Partnership Act of 1890 and as subsequently amended. It should not be read as warning against joint working.
6.5	The provision for assignment with consent of the other party applies to both RP and Agent. It is most often used in connection with organisational changes such as mergers.
7.1.2	It is not possible to describe in the contract all the possible changes that might trigger this requirement so the parties must be expected to use their judgement and experience of what will impact on the housing service provision.
7.1.4	Designation of rooms and spaces for individual occupant, shared and staff use should be clearly set out at the start of the contract in the schedule describing the property but this clause allows for subsequent changes in needs.
7.1.5	This optional clause and the optional additional term within it aim to take account of the possibility of multiple support or care providers, as referred to in the notes on 3.1.1. above. This clause says that the Agent <i>may</i> allow as, even if included, practical considerations may prevent it being a viable option.
7.2.2	Charging for office and staff facilities has become a very contentious issue, particularly where it has affected pricing in competitive tendering. This contract and guidance cannot determine a RP's policy on charging or predict all the circumstances where it would be considered (in)appropriate, (un)fair by either party or where it would be contrary to the terms of the original development to do so. However this wording is intended to promote proper justification, in relation to the interests of all parties, of any charging proposals. If there is to be a charge, the parties should agree an appropriate form of licence agreement setting out the terms of occupation/use.
7.2.3	This optional clause should be used only where a part of the property does not need to be used by the housing management agent and can actually be separately let.
8.3.3	While the Agent will use the RP's occupancy agreement, and may issue any other relevant RP documents such as customer service standards, it is free to, and often will, produce its own information packs or handbooks in formats tailored to the specific needs of occupants.
9.2	Agents should note the presumption that they will be responsible for taking and paying for legal action. This reference to the option of the RP contributing to or taking and paying for the action in exceptional cases is expected to be used rarely, perhaps where the Agent is a very small charity or the case has significant implications for both parties.
9.3.2	This listing of stages for RP notification or approval is intended to be a comprehensive one so that it can apply to either tenancies or licences. Legislation, the occupancy agreement and eviction policies and procedures will determine what action is actually required in each case. If for example the occupancy agreement is an excluded licence it may be that the RP and Agent have agreed a different procedure for violent or disruptive behaviour.
10.1	This listing is illustrative and not prescriptive (i.e. <i>may</i> include) but should be a useful guide to what is likely to be required. If a user of the model prefers not to have a list, the first sentence of the clause should be retained but the second sentence and bullet points can be deleted.

10.2	The two parties to this contract cannot compel the third party (the support or care service commissioner) to sign up to a Joint Working Protocol or similar agreement but it is strongly recommended that they try to persuade them to do so.
11.2	It is vital to the delivery of a good service to occupants that who does what and to what standard is entirely clear to both RP and Agent staff. These clauses, the schedules to the contract and the organisations' policies and customer service standards or charters will all contribute to achievement of that clarity but it is the schedules which will generally provide the operational detail to which service delivery staff will refer. As noted above, when changes to schedules are agreed contract managers must check for any amendment needed to reflect these changes in the contract clauses.
12.1	Short term services are expected to use assured shorthold tenancies or licences and to be services where a key focus of the support provider's work with occupants is developing their ability to move on to more independent living. Agents should be working with occupants on a wide range of move on options, including where appropriate the private rented sector as well as social housing.
12.2	Assured tenancies would be expected to be used in long term services. Both parties should be aware that if an assured tenant who no longer needs the support or care provided at the property does not agree to be moved on, but is not otherwise in breach of tenancy conditions, the Agent will only be granted possession if the court rules the tenant has been offered suitable alternative accommodation. There is a significant <i>Either/Or</i> option in this clause as current practice varies considerably. Those using the first option, which gives no obligation on the RP to assist, should be aware that it may be very difficult for the Agent to satisfy this requirement without their assistance. Those treating them as any other tenant transfer applicant are likely to not want the following optional clause on quotas.
13.4	These options enable the parties to agree that the Agent will take on day to day in addition to minor repairs. It was not envisaged that any further variation to the division of responsibilities would be required and anyone wishing to explore other options should seek further advice.
13.5	The terms used are defined briefly in 2.1 but, as for 11.2 above, it is essential that RP and Agent operational staff understand who is responsible for what and are familiar with the detailed descriptions of what repairs come under which categorisation set out in the schedules. Lack of clarity or agreement on this causes many disputes.
13.14.1	The Regulatory Reform (Fire Safety) Order 2005 requires there to be one Responsible Person so while a commitment to joint working on fire safety is very important, the contract must identify one of the parties as the Responsible Person. It should be the party which, as the Order describes, has control over the property. Further information is provided in the schedule on Fire Safety but RP and Agent should also refer to the legislation and specialist advice on this matter.
13.14.2	This clause places responsibility for provision of all fire safety equipment on the RP. Should the parties wish to amend this, e.g. to make the RP responsible for fixed and Agent responsible for portable equipment, they will need to ensure that all items are correctly identified and listed in a relevant schedule.
13.15.4	The requirement to review the implications of carrying out an adaptation is not

	intended to deter either party from enabling an occupant to benefit from such work but to prevent disputes about subsequent maintenance responsibilities.
14.4.1	The Housing with Support and Housing Management only contracts continue to offer the three variants on fee calculation originally drawn up by the Financial & Legal Advisory Panel 2002-3 (FLAP2). Actual amounts or formulas are not included in the contract but will be set out in the relevant schedule.
15.1	The statement that all sums payable under this contract are deemed to be exclusive of VAT reflects both usual business practice and the fact that if a change in status or regulations created a liability for VAT, an unexpected 20% increase in either expenditure or loss of income would create major problems for most organisations.
16.	This section contains the clauses generally relating to insurance but there are other references to specific liabilities in other sections and in schedules.
16.2.3 & 16.3.2	These clauses are intended to ensure an even-handed responsibility for the excess payments incurred in relation to insurance claims.
16.3.1	The Agent is here given responsibility for the insurance of contents owned both by itself and any owned by the RP.
17.1	The Social Housing Regulator no longer issues good practice guidance but SHiP and the individual RP may still choose to make use of previously issued guidance and guidance issued by other sector bodies.
17.2	The sub-clauses b) and c) facilitate an even-handed approach to accountability for performance by both parties.
17.3	Where the RP does not use the SHiP quarterly returns, this clause will need to be redrafted to identify what performance information is required.
18.2 & 18.3	While this says the parties <i>may</i> refer to a mediator or arbitrator, rather than <i>will</i> refer, it should be noted that should one of them bypass this and take a dispute to court or a complaint to the regulator, the court or regulator may take account of a failure by that party to use a dispute procedure where it was available to them.
19.2	The Either and Ors in the four sub-clauses 19.2.1 to 19.2.4 are not necessarily optional deletions (as are elsewhere in the model) as the parties to the contract may not know at its commencement what action the commissioner of the support contract may take in future. If there is certainty, any inapplicable sub-clauses may be deleted.
19.4 – 19.5.4	Similarly, if it is clear that there are clauses here inapplicable to the service provided under this contract, they may be deleted.
19.6, 19.8 & 19.11	In agreeing timescales, the RP and Agent need to consider the time it will take their staff to draw up accounts, carry out inspections, etc., and the point at which they will have final or accurate figures and reports.
19.7	In the circumstances where occupants remain in the property which is to be handed over to a new managing agent, the RP may wish to involve the new managing agent in the communications with occupants and outgoing agent about the new arrangements. However the RP as landlord should ensure that occupants have the correct notification of change of managing agent. This contract between the RP and current agent cannot make any directions in relation to a third party (i.e. a new agent) so clause 19.7.2 requires the RP to advise the new agent of debt and repayment arrangements relating to the outgoing agent.

19.9	These practical aspects of handing a property back will be much easier to handle if a shared understanding of responsibilities and standards is established at the beginning of the contract and adequate communication and record keeping maintained through its duration.
19.12	Requirements for occupants' consent on which aspects of their records can be passed to an incoming agent should be addressed by compliance with the Data Protection Act but should also be set out in service policies or specific agreements with occupants.
21 TUPE	This section applies to a termination of the service(s) provided under this contract, i.e. it does not make reference to or take account of any preceding transfers that may relate to previous contracts or service provision agreements.
21.1	Reference is made here to termination of "this Contract or any of the Services ...". Generally there would be no termination of separate services within the contract except that it is possible that the termination of Repair Option 2 could be seen as termination of a service while the rest of the contracted services continued. Subject to the general requirement that the parties must obtain their own legal advice on whether or not TUPE applies in any particular case, it is theoretically possible that the termination of Repair Option 2 might be regarded as having potential TUPE implications.