



Glasgow and West of Scotland
Forum of Housing Associations

Processes leading up to potential Transfers of Engagements: GWSF guidance for member associations

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1 Introduction

From time to time, community based housing associations may be in the position of considering major structural change. The circumstances around such moves can vary greatly, from an entirely voluntary merger between two neighbouring associations, to the more difficult cases involving associations which face significant problems and are under close engagement with SHR.

The most common type of structural change in recent years has been a Transfer of Engagements, where an association is effectively absorbed into a (usually) larger association and no longer exists as an independent body. In the past, it was more common than it is now for associations to join another association's group structure, retaining its name but with systems and operations obviously heavily shaped by the parent association. The focus on ToEs in this guidance is simply a reflection that they are the more common form of major structural change now.

There has been a perception among some in the sector that major structural change is driven by SHR. This is not GWSF's general view, but in preparing this guidance we have discussed with SHR the importance of community interests being protected wherever possible, and the importance of full transparency where community interests may be under threat because of a potential/actual ToE.

The focus of this guidance is on what member associations *themselves* can do to ensure that community interests are (a) fully considered and (b) protected as far as possible in the decision making process around possible transfers, and that community interests are sacrificed, or seriously compromised on, only in circumstances where it can be fully justified, for example because critical stock investment cannot be made under existing arrangements.

There is no established definition of 'community interests'. But in the context of Transfers of Engagement involving community based housing associations as the disposing body, we are primarily referring to the following factors:

- **The local nature of housing management, maintenance and environmental services**, which, as Charter data invariably demonstrates, makes for the most responsive services compared to national associations and local authorities
- **The local nature of decision-making processes**, as compared to the inevitably lesser ability for one community within a national association's many areas to meaningfully influence decision making
- **The ownership of assets being maintained in the community**, meaning, for example, that the use of assets to facilitate borrowing results in investment exclusively in that community
- **The carrying out of community development or 'wider role' work**: whilst it should never be suggested that a national association could not continue or even expand on the community activities and services which the community based association has been providing, there are obvious question marks over (a) how intimately a national association will understand the wider needs of the community and (b) what level of resources it might put into the area when it has stock in many others

GWSF takes it as read that housing associations aim at all times to act in the best interests of their tenants. In many aspects of an association's functions and services, tenant and community interests may well coincide. But we believe it is helpful to specifically identify the above areas of *community* interests, because it may sometimes be the case that the parties in a transfer process are assessing the respective merits of these community factors alongside more general tenant interests such as investment in the stock.

The nature of this balancing act will vary from one transfer case to another: all we can urge in this guidance is that the assessment is made on the basis of robust, factual information, enabling tenants to feel there is full transparency over why particular courses of action are being pursued and promoted.

We believe that this guidance reflects what is largely existing practice: community based housing associations, even where facing serious challenges, are not in the habit of giving up their independence unless it is perceived to be absolutely necessary to safeguard tenants' interests.

But associations in trouble often face governance and leadership issues which can bring consultants and others to the table – usually in the most helpful of ways – but which can sometimes increase the scope for 'external' influence over the association's future, which we believe can in turn lead to the association being nudged in the direction of transfer. A CBHA with good senior staff and a strong

committee is unlikely to be unduly led by external parties, but we know this has sometimes happened in the past and could happen again in the future.

So whilst it may sometimes feel like we are stating the obvious, we believe it is helpful to set down this blueprint for handling how structural change is considered by associations facing serious difficulties.

Note - SHR guidance: It is worth noting that with the restrictions made some years ago to SHR's consent powers, there is now relatively little SHR guidance on transfers, with the only relevant documents being statutory guidance on SHR's legal duties relating to (a) [SHR directing a transfer](#) and (b) [tenant consultation and approval](#) in a transfer of assets.

2 Key stages of the process of considering major structural change

Experience from the past suggests there are some particular stages, or triggers, where care is needed to ensure that the option of transfer is not disproportionately favoured by choices and decisions made by the association. Below we focus on these triggers individually:

- Identification of co-optees
- Recruitment of interim chief officers
- Options appraisal processes
- Appointing a preferred bidder

We then go on to look at specific categories of community interests and at how we believe these should be considered before and during a transfer process.

(a) Identification of co-optees for the governing body

Whilst recruiting additional governing body members does not always happen, it is more common than not in the case of associations facing serious difficulties.

Wherever possible, associations should seek co-optees who are generally supportive of the ethos of community based housing associations. Independence of mind and an ability to bring a fresh perspective are important, but people who have never worked in the CBHA field may be less likely to understand what is at stake as the association considers its future options.

We have said to SHR that where it is directly recommending potential co-optees to an association, it should not suggest people known from their track record to be

unsympathetic – and in some cases actively hostile – to the ethos of community based housing associations.

GWSF has a Support Panel of senior staff and committee/board members potentially willing to offer assistance to troubled associations, including as time-limited co-optees, and member associations are urged to contact GWSF to discuss the help that can be provided. The Forum may also be able to advise on any co-optees identified by the association or recommended to it by SHR.

We have welcomed SHR's undertaking that in its engagement with GWSF member associations in difficulty, it will normally refer the association to membership bodies, including GWSF's Support Panel, and we look forward to this practice continuing.

(b) Recruitment of interim chief officers

The same principles apply to situations where an association facing difficulties needs to appoint an interim chief officer.

The attributes required of an interim chief officer will vary, depending on the association's particular needs and circumstances, but associations should be mindful of the values that an interim will bring, and should consider whether they wish to avoid selecting someone with a track record of involvement in associations being taken over by larger regional or national associations. This particularly applies where the association is at the beginning of a process of considering its options: different considerations may apply where an interim is being appointed after a decision to pursue a ToE has already been made.

Again we have said to SHR that it should not recommend interim chief officers known from their previous track record to be unsympathetic to the ethos of community based housing associations.

(c) Strategic Options Appraisal process

This is usually the critical stage in the process by which an association considers the need for major constitutional change. Experience suggests that it may sometimes be a process which can easily be manipulated to make a particular outcome more likely, especially where co-optees, interim senior staff or consultants may be seeking to influence the process to achieve that outcome.

Quality of information used to inform the SOA

The quality of an association's business plan is critical to any SOA exercise, as the SOA is highly likely to be closely related to the aims, objectives and priorities etc. outlined in the plan. So if, for example, the importance the association attaches to its

wider work within the community is not adequately reflected in the business plan, it may result in this being weighted lower than other factors in the SOA process when that is not the association's intention.

Whether or not an association is going into the SOA process wanting or expecting a particular outcome, in all cases the financial, stock and other information fed into the process should be objective, factual and proportionate. It is important that the SOA reflects on the known and potential future costs for the adequate maintenance and improvement of the association's homes, while also recognising that there will be uncertainty around future funding for such works.

The process should not introduce deliberate bias by suggesting the association has less capacity to address major issues if its position is little different from the norm in the sector (an example might be suggesting that ESSH2/SHNZS cannot be afforded when no social landlord in Scotland can fully afford it). And if it quotes the overall known costs of, say, improving all tenement roofs and stonework, it should acknowledge that no other association with similar stock is likely to have the long term funds to guarantee being able to carry out such work.

As part of any options appraisal process, governing body members should be asking challenging questions about the appropriateness of business planning assumptions – a process which can be supported by the provision of comparative data from similar associations. A challenge may question whether, for example, the assumptions on stock investment are too optimistic or, conversely, whether they are being unduly understated to help justify the disposing association's pursuance of transfer.

How the SOA is weighted and scored

In terms of how the SOA process is 'scored', the weighting of different factors (e.g. services to tenants, investment in stock, local control over decision making, importance of wider community role) should reflect the association's published aims and objectives, as set out in the business plan – i.e. what the association and its committee/board believe is most important going forward. This is for the association to decide, not for its consultants to recommend, as this can bring the possibility of consultants 'cutting and pasting' from previous processes with other associations.

The governing body should expect to explore a range of options and see these assessed against the business plan aims and objectives, with clear account being taken of tenants' feedback/views, in order to be assured that all relevant factors have been considered.

Tenant consultation within the SOA process

Unless there are exceptional financial or other circumstances which are severely limiting the association's future options (such as impending insolvency), once it has been decided that ToE is one of the options being seriously considered, the association should involve and consult tenants as part of the SOA process: SHR says this is not a regulatory requirement but is 'good practice'.

Tenant consultation in the context of consideration of structural options is not of course a vote, nor binding in any way, and this should be made clear from the outset. Consultation should be clear and factual about current challenges, about how different options will lead to those challenges being addressed (or not, as the case may be), and about the perceived benefits and drawbacks of any decision to remain independent or transfer.

(d) The process of appointing a preferred bidder

The reasons and circumstances behind decisions to seek a Transfer of Engagements or other major structural change will be different in each case. But as a general principle, GWSF believes that the options should not be unduly limited at an early stage, and so should include – and, in as many cases as possible proactively encourage – expressions of interest, and then bids, from neighbouring community based associations. It would rarely, if ever, be appropriate to exclude neighbouring community based associations from bidding on the basis of their size and constitutional form.

In the process of then selecting a preferred bidder, disposing associations should seek assurances from bidding associations that key issues relating to community interests, and the extent to which they can or can't be protected, are clear to the disposing association and its governing body.

Associations in this position will have their own specific asks when they issue the 'prospectus' to those organisations who have submitted an expression of interest, but Section 3 below sets out what GWSF would urge members to include as a minimum in terms of community-related factors. Prospective bidders will be on the front foot in what is promised will be gained from selecting them but may be less forward about what is likely to be lost, and in the case of bids from larger regional and national associations, local/community interests are, realistically, likely to figure prominently in what will be lost.

The same principle of transparency on community interests, and what may be lost, applies to the association selected as the preferred bidder, and in particular to the information it provides directly to tenants and members, or provides via the disposing association (and/or via the Independent Tenant Adviser body), ahead of the ballots.

In each case it is entirely a matter for each association what and how much information is included in what is provided to associations which have expressed an interest in receiving detailed information. We do not think it is necessary for this guidance to try to outline everything that should normally be provided, as this is for each association to decide. Specifically on stock condition information, which will obviously include the detail of any identified issues with particular properties, on occasion this may helpfully include any relevant information from the local authority and/or Scottish Government about any funding which may potentially be available to address particular stock issues.

Finally, through very thorough due diligence processes, associations should ensure they avoid selecting associations which appear to have governance, financial or service delivery issues of their own.

3 Maximising transparency over the loss of community interests

Where an association has made the decision to seek a transfer, both it and the appointed preferred bidder will, understandably, want to promote the benefits of transfer. This increases the scope for some information to be put to the fore and some to be excluded altogether or played down. There is no justification for not being transparent about what will be lost as well as what will be gained, and tenants (and subsequently shareholding members) need to be able to make an informed choice based on full information.

The following issues are the minimum that should be explained to tenants, both before any decision to seek transfer is made, and during the subsequent processes when information will be coming from both the disposing association and the preferred bidder.

The potential loss of local assets (stock) currently regarded as community owned

- Where a national/regional association has been appointed as the preferred bidder, tenants should receive clear information on the implications of the loss of community assets, including the scope for stock to be used as security for investment elsewhere in the country/UK, potentially resulting in levels of investment that prove to be little different from, or actually lower than, what may have been the case without transfer
- Where a preferred bidder is pledging that a specific level of investment in the stock will be made over a set period, this is likely to mean little to tenants without appropriate context/comparison. It should be clear to tenants how the promised investment levels compare with both previous investment levels

made by the disposing association and with the likely levels in the event of no transfer happening.

The impact of transfer on performance on repairs, other estate services and housing management

- Clear information should be provided to tenants, at all stages of the transfer process, on how transfer will affect the provision of services, including whether a locally accessible office will be retained, the quality and speed of repairs services, work to maintain the local environment, how the process of appointing contractors may change, and how the process by which tenants contact the association (for example to report repairs) may change
- This information should include transparent use of recent Charter data comparing respective performance (of the disposing and prospective landlords) on tenant satisfaction, repairs response times, arrears, relet times and other factors important to tenants and to the effective management of the association

The potential loss of local control and decision making

- The impact of transfer on the ability of local people to control the association should be a highly significant issue in any potential transfer or group structure situation, but often seems to be underplayed (e.g. through reference to local 'advisory groups') and drowned out by promises on investment and rent levels etc.
- Both the disposing and receiving landlords should ensure that tenants have clear information on what will change, in terms of membership (e.g. there will no longer be an AGM held locally), board/committee arrangements, including the likelihood that no tenants or other local people will be part of the receiving association's board, and the role and likely lesser influence of other groups such as tenant/scrutiny panels, if indeed such groups continue after transfer

The extent to which wider community work done by the existing association may or may not be replicated after any transfer

- The disposing association should set out clearly to tenants information on what it currently does, and has achieved in the past, in terms of its wider community work. The prospective receiving association should set out – in explicit rather than vague terms – what it will do, making specific reference to the information from the disposing association on what it currently does. The receiving association should also set out what it does in its existing community (or in its various communities if it is a regional or national association)

- It should be transparent during a transfer process what relationships the disposing landlord has with other local organisations, and what the likelihood is of such relationships being maintained if a non-local organisation takes over
- Likewise reference should be made to what the likelihood is of funding applications (for 'wider role' activities) continuing to be made specifically for the local area/community if a regional/national association takes over

4 The decision to appoint a preferred bidder

When this decision is announced, full transparency – for example on which associations made a bid but were not successful – is rarely possible as such information is generally felt to be confidential unless the bidding association itself has said it will or did make a bid.

But without breaching confidentiality, disposing associations are encouraged to be as open and transparent as possible about whether bids from other community based associations were received and, in general terms, why they were not successful, where this is the case.

5 Role of the preferred bidder association before the tenant and membership ballots

GWSF has previously suggested that sector guidance is needed on the role of the preferred bidder organisation from the point at which it is selected to the conclusion of the second (membership) ballot.

Realistically such guidance may be difficult to agree across the sector: in many previous cases of transfer or proposed transfer, the bidding association has not been a Forum member, and so we cannot expect to necessarily reach out to such bodies.

It may therefore be preferable for any guidance on the role of the preferred bidder to be aimed mainly at GWSF members who may become involved in future transfers as a potential or eventual preferred bidder – most likely in cases where one community based association has an interest in taking over a neighbouring one (a scenario which GWSF is likely to welcome where transfer is inevitable).

It would be challenging for GWSF or any other body to try to set down a prescriptive position on what the role of a preferred bidder should entail and – perhaps more pertinently – what it should not, as each scenario will have unique circumstances, so we would want to tread carefully here.

A particularly challenging set of issues arises where the disposing association is looking for urgent assistance (for example with day to day repairs and/or housing management services) and feels it cannot wait for the transfer to be completed to receive that assistance.

There is a legitimate question mark over whether it is appropriate at all for the preferred bidder to have any role in assisting with day to day service provision during this period: any proactive role in assisting with service provision ahead of the ballots could be perceived as a conflict of interest and an effort to make the ballot process more of a 'fait accompli'. But GWSF recognises that a range of scenarios need to be allowed for, and a disposing association will only ask for such support if this is needed to ensure that tenants' interests in the immediate future are satisfactorily met.

What is not in question is the need for transparency in such situations, especially for the tenants. We believe that, normally, any supply of services ahead of the actual transfer should be through a service level agreement with the disposing association, which is then clearly communicated to tenants (and owners as appropriate).

There may also be a serious conflict of interest where the preferred bidder, in supplying housing management or maintenance services ahead of the ballots, uses that contact with tenants to promote the transfer. Disposing associations should ensure that any contact information or other information on tenants which is shared with the preferred bidder is done so in accordance with data protection laws.

There is also a question mark over whether it is appropriate for the preferred bidder to be entering into any other financial arrangements with the disposing association or with, for example, other local organisations ahead of the ballots. This happened in a recent case, when the preferred bidder appointed a local voluntary body to provide a specific community service. The financial commitment was not fulfilled after the transfer did not progress, but the 'deal' with the local organisation could not be undone and subsequently has been the subject of huge challenges for the incumbent housing association.

6 Reporting on progress post-transfer

Until more recently, there appeared to be no specific regulatory requirements around periodic reporting of progress against pre-ballot commitments in the years after a ToE. We understand this is now expected by SHR, albeit not as an explicit requirement within the regulatory framework. This is a welcome step.

Reporting on this to SHR is in addition to what we believe should be reporting to the association's governing body at least on an annual basis for several years after the

transfer, with the report, or at least a summary of it, being made publicly available on the association's website.

7 Role of the Independent Tenant Adviser

As far as we are aware, there is no guidance on how national tenant organisations (and any other bodies appointed to the role) should carry out their role as Independent Tenant Advisers in transfer processes.

This is a sensitive area: the ITA is appointed by the disposing association, and is heavily dependent on information given to it by the association. The extent to which an ITA can provide fully independent analysis of the potential benefits and drawbacks of transfer for tenants is very much in question, in GWSF's view.

As a minimum, though, we would suggest that it can rarely if ever be appropriate for the ITA to publicly declare a view on whether the transfer should be approved by tenants.

GWSF intends to engage with Scotland's national tenant organisations to discuss the role of ITAs.