

KIRKLEES COUNCIL

RISK SERVICES

FUTURE OPTIONS FOR HOUSING MANAGEMENT AND BUILDING MAINTENANCE SERVICES CURRENTLY PROVIDED BY KIRKLEES NEIGHBOURHOOD HOUSING LTD

1. Introduction

The fire at Grenfell Tower, and the responsibility ascribed to the owning local authority, Kensington & Chelsea LBC, rather than the intermediate management organisation, affirmed the importance of understanding risk and liability.

This report therefore considers the current position in relation to the governance, management and control of housing management and property maintenance services provided to the council by its wholly owned subsidiary Kirklees Neighbourhood Housing Ltd (KNH). It considers the risks associated with the current position and presents options for future management which may amend the risk profile.

This is against a backdrop of continuing uncertainty around some key national policy and funding issues for housing and local authorities more generally but a heightened appreciation by councils of the need to have full line of sight and assurance on how risk is being managed on its behalf.

2. Background

KNH was formed in 2002 as an arms-length housing management organisation (ALMO), to enable it to receive decent homes funding to improve the councils housing revenue account properties. The decent homes improvements were completed circa 5 years later, and the formal need to maintain the ALMO lapsed. As others did at the time, the council chose to keep KNH as a separate business with the ALMO governance structure. Although the business was fully owned by the council, it did not control the board; 15 directors represented the council (5), tenants (5), and independents(5).

In 2016 the council transferred its direct labour building maintenance function- Building Services- to KNH. Whilst this made sense in that three quarters of the activities of Building Services related to HRA properties, this significantly changed the size and business risks of the operation.

In 2017 a consultancy study by Altair identified that aspects of governance and control did not meet best practice (in that the board was perceived as too large, lacking in key skills) and concerns about the strategic direction and the risk relationship with KC led to a decision to reduce the size of the board and increase the council's control and influence over the company. This amended

the board to 9 directors, 6 council nominees; (5 councillors, 1 officer), and 3 tenants representatives).

In the last 10 years many local authorities, including Leeds, Sheffield and Wigan have chosen for varying reasons to close their ALMOs and return all management in house, although some ALMOs e.g. Barnsley remain. Many authorities have transferred their housing to registered providers -3 of 5 in West Yorkshire, in the 1990s and early 2000s; a small number have transferred their housing functions to register providers post an ALMO based home improvements.

3. Considering Risk.

The council remains the landlord of 20,000+ tenants. As such it holds all of the statutory risks that any property landlord holds, many of which are onerous and have increased in the years since the ALMO was established.

Events such as the Grenfell Tower fire have highlighted that ultimate responsibility lies with the landlord, even where management is delegated to another party.

Cabinet makes executive decisions on behalf of the council as landlord. Operational decisions are made on behalf of the council by its own officers and to a large extent by KNH officers who execute the decisions of council, Cabinet and some decisions delegated to the KNH Board.

There can be occasions where responsibility for decision-making is unclear, which can cause conflict or delays or where the council's and the KNH board's priorities may differ.

Despite these delegations, though, the full responsibility ultimately remains with the council.

The council therefore needs to be clear about the level of risk that it is willing to tolerate as a result of having to work through an intermediary organisation to discharge its responsibilities and liabilities.

Grenfell has prompted most councils with responsibility as a landlord to consider their position. A number of ALMOs have been closed in the period since 2017 as councils revisit their risk appetite, the need to have absolute line of sight on compliance issues direct to cabinet and the ability to ensure that appropriate action is being taken. For example, as the landlord, a council is ultimately responsible for every appropriate property having an annual gas safety check. For a council to have proper line of sight, it needs to be confident that the ALMO board is focused on compliance with gas safety

checks, is receiving regular compliance performance information and is acting on this. As landlord, it should be receiving regular, formal, reporting of performance on compliance, immediate escalation of non-compliance and an annual statement of compliance from the ALMO board. It should be clear how it will deal with instances where the ALMO board's priorities or focus differs from its own requirements as a landlord.

KNH is a wholly owned subsidiary, whose contract has been awarded without any competition (legitimately under various legislation and current EU Teckal provisions for fully controlled operation). Almost all of its funding has been derived from activities carried out on behalf of the council, and it has no resources of its own. Any liability of the company is inherited by the council as the ultimate owner.

As a limited company, KNH has an obligation to comply with companies legislation and its directors have to act in their perceived best interests of the company, although the shareholder has ultimate control. This has at least the potential to lead to conflict. The recently restructured company seems to have faced some degree of challenge in establishing its new role. A number of wider management issues have arisen, that have included concerns about fraud and strategic alignment though these are not a direct consequence of the separate management structure.

If the council had appointed a third party to manage its housing management and maintenance activities, it may have been able to mitigate against the financial (if not statutory) consequences of these activities. In practice, this would have been likely to have been controlled by the provider by way of contractual caveats and a fee commensurate with the absorption of that risk. There remains however no circumstances in which the reputational risk would not impact on the council.

If the council were to manage its own housing management and maintenance arrangements the risk profile would be unchanged, as under TUPE the same employees would be discharging the duties within the council, initially at least following the same business practices. Ultimately, realisation of any risk would result in identical consequences.

Although the council has only recently carried out a control and governance realignment, the recent LGA Corporate Peer Challenge has recommended further consideration of the purpose of KNH having a separate status. Cabinet had already agreed in 2018 that it needed to keep this issue under review.

The existence of a separate organisation creates a risk to securing best value for money for the council as there are a set of additional costs, associated with management and governance of the entity, and managing the relationship between the council and the company. Although the company has

used the corporate accounting and payroll system, it has otherwise operated with dedicated supports services (rather than these being provided by the council under a services agreement) which suggest that there is scope for efficiency and saving if these were integrated into the larger council functions. There are additional costs for example for auditing and other administrative tasks. The continuing financial challenges and the need to achieve best value for money for tenants and, more widely, citizens may therefore lead to consideration about the financial case for continuing to have separate entities.

As the council increasingly focuses on outcomes for local citizens and the need to align the work of multiple organisations to maximise these, fragmentation of capacity across multiple organisations, (each of whom may ultimately have differing organisational priorities), risks hindering achievements of these outcomes.

Closer integration may mitigate this risk and potential scope may exist to recast parts of the operations in line with the council's objectives and the people, places and partnerships agenda, which might achieve better outcomes, although there are some risks in this approach. The council does have to balance this against the need to demonstrate how the tenant voice is heard and influences decision making in social housing, although that would not be insurmountable, or indeed necessarily difficult under a directly managed option.

From the opposite perspective, a single purpose organisation can be more clearly devoted to specific customer service, and gain better client relationships, potentially achieving higher levels and quality of outputs, and thus overall bring better value for money, albeit at higher cost. This does however need to be balanced against the risks mentioned earlier in this report

The ultimate control of risk to the Council would be to transfer to a registered provider or providers which would remove all risk from housing management operations, but it would also reduce very substantially the influence the council could have in neighbourhoods, and the ability to integrate social housing activity with or within other council priorities. It is not clear how practical this option would be in the current financial market. It would involve a very considerable consideration of the impact on the rest of the council (e.g. shared support services) and on the potential negative impacts in respect of a future integration of activity. In the short term after a transfer the council would find it difficult to divorce itself from many reputational risks.

In any scenario where the Council is not also the managing organisation, there is the risk that what the managing organisation defines as good and what the Council defines as good will differ and drive cost and risk towards the Council. For example, a managing organisation might seek to maximise rent collection rates and so be reluctant to house or continue to house

vulnerable individuals who may be more at risk of defaulting on their rent. As a consequence, the Council may need to become involved in finding alternative arrangements (for instance in the private sector) for those individuals that transfers resource demands and risk to the Council. It should be noted that areas such as compliance are defined by regulation and should therefore in theory be the same across any model. The impact on what a managing organisations considers to be a decent property beyond the statutory minimum could be based on financial and not outcome drivers.

There is a culture, leadership and relationships factor. A strong relationship will almost always ensure that decision making recognises mutual beneficial outcomes. But relationships depend on individuals, which can disappear as individuals move on, or corporate priorities change. This is not an issue for direct management, but can occur within a ALMO operation, and would be more likely in a contractual relationship with a services provider, or partnership arrangement with a registered provider.

Reputationally, the public generally, and tenants will still see the property as “council houses” with a reputational risk almost irrespective of the management model. (This would diminish over time if there was a full stock transfer, although even this may take many years).

4. Options Comparisons

The table below analyses four options- the status quo current position, a fully in house solution, a fully outsourced management solution, and a transfer of all properties to registered provider(s).

Although the analysis considers the combined housing management and property maintenance operations as is currently provided, the lead determinant is the housing management function. As a consequence, the balance of construction and maintenance being provided in-house (or by a HM contractor) and other building contractors is largely immaterial for the purpose of this assessment.

5. Conclusions

The current arrangements for delivery of housing management creates an opaque management solution, where ultimate responsibility and liability remains with the council, but an intermediate body (KNH) has some rights and exercises day to day operational control (without commensurate responsibilities).

There are pro’s and con’s to alternative approaches.

A fully in house (direct council provision) solution would provide a greater degree of clarity of accountability, responsibility and more flexibility.

An outsourced housing management solution would force a greater degree of clarity about roles and responsibilities and could be backed by a genuine penalty regime. In practice, the contract is likely to be priced to reflect this and any outsourced provider could be expected to look to maximise profit/surpluses by minimising output.

A transfer of the housing activity to a registered provider or providers would eliminate housing operations risk, at the expense of opportunities for better integration of service delivery, a loss of influence, and impacts on the council otherwise. This would involve very substantial effort, and may not be achievable in the current financial market.

M E Dearnley
Head of Risk
December 2019

The table below summarises issues and consequences

- Legislative and Compliance covers the risks associated with complying with core statutory responsibilities
- Governance covers the risk that there will be a misalignment between strategic intent of the council and delivery organisation
- Integration covers the risk that tenants have a more fragmented experience as a result of different organisations working with them
- Operational Practice covers the risk that the council cannot adequately influence activities that impact on current and future tenants experience and so there is a mismatch between what the council wants tenants to experience and what they actually experience
- Commercial and VFM covers the risk that opportunities to secure vfm are not maximise

In the table

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|--------|----------------------------------|
| Green | Likely best outcomes |
| Orange | Some issues |
| Blue | More complex concerns and issues |

| OPERATING MODEL>>>>>>> | FULLY IN HOUSE SOLUTION | AS CURRENT KNH IS A SEPARATE WHOLLY OWNED SUBSIDIARY | OUTSOURCED HOUSING MANAGEMENT FUNCTION | TRANSFER HOUSING TO REGISTERED PROVIDERS |
|--|--|---|--|--|
| ISSUE OR TOPIC ~~~~~ | | | | |
| Legislative+ Compliance | | | | |
| Landlord Statutory Compliance (Visibility of compliance) | Very clear lines of accountability are achievable, within the officer and political hierarchies of the council | Although ultimate responsibilities lie with the council, the company has some rights and responsibilities which could impact on lines of accountability | Although ultimate responsibilities lie with the council, the contract would clearly set out roles and responsibilities, | Responsibility passes to the operator |
| Compliance & variations to level of service... | Fully flexible | Flexible , subject to company separation | Requires variation at quoted cost. | Responsibility passes to the operator |
| Governance | | | | |
| Governance & business control | As standard council decision making | Directors must act in interest of company, Potential for conflict or disagreement although shareholder has ultimate control. | Contractual; Potential for conflict or disagreement; resolution would be mediation, adjudication or litigation | No direct influence (other than as condition of sale) Depends on partnership |
| Relationship with Council | As standard council decision making | Can be strong , but depend on individuals | Contractual- can be variable – dependant on individual relationships and corporate objectives | Strategic relationship potentially strong- but not much detailed involvement |
| Ability of local councillors to be involved. | Fully involved through democratic processes | Opportunity to be directly involved in governance | Limited involvement as set out in contracts. | None |
| Tenant involvement | Still fully achievable but requires new structures. Has potential to be as strong as providing participation in governance | Current involvement in board, | As potentially covered by contractual relationships. Likely to be subservient to formal client and contractor relationship | Depends on the provider |
| Integration | | | | |
| Clarity of Purpose | Part of Council – potential to stifle independence and initiative | A single purpose organisation can have clarity of purpose | If part of a larger group may mean that some local initiative is limited- or is multifunction outsourcer. | A single purpose organisation can have clarity of purpose but may be negated by wider corporate policy or issues |
| Contribution to outcomes, people place & partners | Greater flexibility to match these needs is achieved by this solution | The need for separation is likely to limit many opportunities | Limited opportunities, beyond those formally specified as requires hard structure | Limited |

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| Ability to integrate activity to meet wider objectives | Unlimited | Separate structures are likely to substantially frustrate this. Limited scope to integrate by negotiation. | Separate structures are likely to substantially frustrate this. Limited scope to integrate by contract variation | Limited |
| Clarity of understanding or roles by service users | A very clear model of responsibility and accountability | A somewhat unclear demarcation | Clarity of responsibilities clearer than current arrangements | Clarity of responsibilities, but not linked to wider council |
| Operational Practice | | | | |
| Penalties for Non-Compliance | Not applicable | Theoretically possible but all funds of company already belong to council | A penalty regime for non-compliance is possible (although the contractor will charge a risk premium commensurate with expected losses) | Not applicable |
| Client & Contractor split | Fully integrated- no requirement | Yes, but with some "soft" areas. | Yes- "hard" | Not applicable |
| Housing management operations | Effectiveness depends on control of inputs and outputs | As in house solution, but with potential of conflict between client and operational functions | Well defined for work specified at time contract is let. Potential problems if need to change activity (e.g. to align with a policy or legislative change) | Not applicable |
| Property maintenance operations | Effectiveness depends on control of inputs and outputs | As in house solution, but with potential of conflict between client and construction contractor functions | Well defined for work specified at time contract is let. Risk of poor vfm for work not specified – as contractor has limited value incentives | Would require council restructure as almost all routine and a large proportion of planned repairs and improvements currently carried out by KNH BS |
| Flexibility | Fully in control of council to reshape and realign for achievement of direct and indirect policy objectives | Company hierarchy and governance , and "contract" is block to any reshaping, though ultimately achievable on instruction of council as shareholder | Contract with formal variations only will substantially limit restructuring without compensation to contractor.(until retendering) | Not flexible within council needs |
| Potential for changes in organisational and operational structures | | | | No opportunities for integration |
| Commercial & VFM | | | | |
| Trading & commercialisation | LAs have a general power to trade, but may require creation of new vehicles to trade in commercial sector | As company already exists has more freedom (already) than the local authority | Not applicable | Not applicable |

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|------------------------------|--|--|--|--|
| Operating Costs | Opportunity to integrate support services and unify management structures should produce costs savings | Current largely self-sufficient management and governance structure of company, and costs of client activity | Competition may drive down operating costs of function, but costs of client activity | Not applicable |
| Value for money | Potential for very good. (although risks of other outcomes, depending on management- as with KNH) ,and restructuring and change always presents risk | Unlikely to achieve beyond good | Unlikely to achieve beyond good | Not applicable (probable impact on client rents) |
| Practicality & Achievability | Fully achievable, but requires effort to obtain outcomes | Current position | Not a clear, active market for all activity | Serious doubts about achievability without impacts |
| SUMMARY | | | | |