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# CCH

The Confederation of  
Co-operative  
Housing

## Housing co-ops – working with managing agents and contractors

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## Housing co-ops working with managing agents and contractors

This guidance is about how housing co-ops work with various organisations:

- Nearly half of the CCH’s member housing co-ops buy management services from managing agents. The nature of this managing agent relationship is vital for the success of those housing co-ops.
- All housing co-ops work with contractors who deliver repairs and other services. Housing co-ops also employ the services of other consultants. How well these relationships work determine the quality of many of the services that co-ops provide to their members.

The first part of the guidance is about managing services provided by a managing agent. There are various organisations and people providing services to housing co-ops – from dedicated agencies set up to support co-ops, to housing associations or similar to small enterprises run by one or more members of staff. The guidance discusses how the contractual managing agent relationship works; and how to get the best out of the relationship.

The second part of the guidance is about working with contractors and consultants. Getting this right is a critical part of ensuring that co-ops deliver the services their members want.

The third part of the guidance is about the procurement process which applies to managing agents, contractors and consultants.





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## Part 1 – working with a managing agent

### 1 Delivering a housing service – what are the options?

Housing co-operatives can manage their homes in different ways:

- a) In some co-ops, volunteers play a hands-on role getting involved in day-to-day management of services.
- b) Some co-ops employ staff directly.
- c) Some co-ops use the services of a managing agent with whom they have a contract to provide some or all their day-to-day management services.
- d) Many co-ops operate using hybrid options involving one or more of the options listed above.

Theoretically housing co-ops can change how they manage their homes, and there could be options within options. But making management changes can be difficult and time consuming for volunteers. Other untested options can appear daunting, meaning that most long-established co-ops tend to stick with the management arrangements they had when the co-op was set up.

Nonetheless, the CCH suggests it is best practice that co-ops should periodically consider whether the management arrangements they have in place are still the right ones for them – if only to re-affirm that this is the case. Issues that the CCH would suggest co-ops should consider include:

- What are the different types of options available?
- If a particular option is not available, could there be alternative ways to make the option available, by, for example, setting up a new service?
- What are the comparative costs of the options available?
- What is the value for money of the options available?
- What quality criteria does the co-op have and how well could the available options meet the quality criteria required?

This guidance starts with a discussion of the potential options that may be available.





**A Volunteer management**

Many co-ops include some element of volunteer co-op member involvement in management of the homes. The extent to which volunteers may participate in management vary considerably, and may include functions such as financial management, to arranging allocations and lettings, to arranging repairs and various other services.

Advantages and disadvantages of volunteer involvement in management may be as follows:

Volunteer management	
Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• Volunteers can deliver a localised hands-on personal high-quality service that meets resident needs.</li> <li>• Personal day to day involvement may mean that volunteers have a clearer idea of what is happening in the co-op</li> <li>• Volunteers may be able to respond quicker to local issues</li> <li>• Fewer management costs</li> <li>• Building the skills of volunteers</li> <li>• Potential for a strong community</li> </ul>	<ul style="list-style-type: none"> <li>• Availability of volunteers with the time/skills to carry out functions</li> <li>• Personnel change challenges</li> <li>• Challenges relating to cover when volunteers are absent</li> <li>• Volunteers being aware of legal and regulatory responsibilities</li> <li>• Potential that some necessary functions and/or bureaucracy would not get done</li> <li>• Potential for conflict or conflicts of interest within the co-op</li> <li>• Potential lack of clarity regarding who does what and about what powers have been delegated</li> <li>• Possible confidentiality issues</li> </ul>

Most co-ops include some element of volunteers participating in the day to day running of their co-op and co-ops are usually run better because of it. But there is a need for co-ops to adopt policies and strategies to mitigate the risks associated with this approach.





## B Staff employment

Some co-ops directly employ staff. The advantages and disadvantages of this approach may be as follows:

Staff employment	
Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• Staff employment may be less onerous for volunteers than voluntary management.</li> <li>• It may be particularly appropriate in a larger co-op.</li> <li>• Potentially there could be more control over directly employed staff than in a managing agent.</li> <li>• Directly employed staff would be dedicated solely to providing services to the co-op.</li> <li>• There would be no VAT costs for staffing costs.</li> </ul>	<ul style="list-style-type: none"> <li>• Few smaller co-ops can afford direct employment.</li> <li>• Voluntary co-op members are responsible for recruitment and staff management. This is an onerous responsibility - often delivered poorly in co-ops by volunteers who are not trained to manage staff. This can lead to sometimes difficult to manage and sometimes costly staff disputes.</li> <li>• The size of co-ops usually means that only one or two staff are employed – meaning they have limited opportunities for career progression or interaction with other staff.</li> <li>• The co-op needs to cover pension liabilities for directly employed staff</li> </ul>

Direct staff employment can work for some co-ops, but the disadvantages need to be addressed if this approach is to work well. The CCH generally would suggest consideration of employing an HR company and a payroll company to provide support to the co-op in relation to directly employed staff.





**C Managing agents**

Advantages and disadvantages of using the services of a managing agent as a management option may include the following:

Service provision	
Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• The co-op can receive staffing support from managing agents with broad housing skills.</li> <li>• The co-op is not responsible for staff management.</li> <li>• The managing agent has a responsibility to provide its own staff cover and have the skills it needs to do the job.</li> <li>• Larger managing agents and those linked to housing associations have access to specialist skills.</li> <li>• The co-op may develop links with the other co-ops the managing agent provides services to.</li> <li>• In some cases, it is possible for the co-op to participate in shaping or influencing the managing agent.</li> </ul>	<ul style="list-style-type: none"> <li>• The co-op’s governing body still remains responsible for the co-op. Employing a managing agent may make the voluntary governing body members complacent about their responsibilities.</li> <li>• The co-op does not have direct control over staff working for the managing agent.</li> <li>• Compromises may have to be made to gain economies of scale.</li> <li>• The co-op will usually have to pay VAT for the services they buy from a managing agent (see below).</li> <li>• There is a need for the co-op to get the right legal agreement with the managing agent.</li> <li>• Some managing agents may not have the right ethos for the co-op.</li> </ul>

It may be difficult to find the right managing agent for the co-op. It can be a challenge to identify organisations willing to provide services to housing co-ops.





**D Hybrid options**

Some co-ops combine some aspects of voluntary involvement with either staff employment or using a managing agent – having some tasks performed by volunteers with people employed either directly or through a managing agent to manage the rest of the service.

Further hybrid options exist:

- Co-ops working with managing agents could also directly employ some staff or could use other managing agents for some services.
- Co-ops directly employing staff could also use a managing agent to provide some services.
- Co-ops could work with self-employed individuals using “associate” contracts to provide some or all services.

Advantages and disadvantages of associate contracts may include the following:

Associate contracts	
Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• The commitment to an associate is solely set out in a contract. The approach does not carry employment liabilities.</li> <li>• This can result in greater flexibility for both the co-op and for the person concerned.</li> <li>• Because the person is working directly for the co-op, the co-op may have greater control over how they perform their functions than with a managing agent.</li> </ul>	<ul style="list-style-type: none"> <li>• It may not be possible for the co-op to find someone who wishes to work with the co-op in this flexible manner.</li> <li>• The co-op needs to satisfy itself and HMRC that using an associate is not just a legal loophole to get around tax and employment liabilities (see below).</li> <li>• The co-op may need to take appropriate legal advice regarding using associate contracts.</li> </ul>

Two tests may determine whether a co-op’s arrangement with an associate is bona fide for HMRC’s purposes – whether the associate has other work than just the work for the co-op and whether the work the associate does with the co-op is ongoing and regular.







## 2 What housing co-op managing agents exist?

There are a variety of managing agents providing services to housing co-ops:

- There are a few long-established housing co-op managing agents that were once “secondary housing co-operatives” set up specifically to provide services to housing co-operatives. One still operates in that way, but that is not the case for others, many of which have now merged into housing associations.
- Various other housing associations or large organisations provide services to some housing co-ops.
- Some housing co-ops buy services from businesses set up by former employees of the long-established managing agents
- Some housing co-ops buy services from one or two individuals who provide such services – some of whom may be existing or former members of housing co-ops themselves.

There is also the potential that some recently formed community led housing hubs, set up to provide development support to new community led housing organisations, may choose, particularly if they are asked to do so, to also provide services to housing co-ops.

It is also possible that, if not satisfied with available service provision options, groups of housing co-ops could request support and advice from interested parties to set up a managing agent to provide services to them.

This is what happened when Merseyside housing co-ops whose services were being provided by a housing association, worked with staff there to establish a new secondary co-op (North West Housing Services) and transferred their business to it in 2006. The primary co-ops are members of NWHS and exercise control over it through a Board elected from the membership.

One potential benefit of this approach is that, subject to certain conditions, an organisation like this can be regarded as a cost-sharing group which does not have to charge VAT on management fees to its members resulting in significant savings. However, it should be noted that setting up such an organisation is a major task and professional advice on VAT would be required.





### 3 The relationship with a co-op managing agent

Housing co-ops that work with managing agents may wish to agree a specific Managing Agent Policy covering many of the issues discussed in this guidance. Guidance on producing such a policy is set out in Appendix One.

A legal contract should exist between a housing co-op and a managing agent, usually known as a “management agreement”. The management agreement is discussed below.

However, problems can arise if the relationship is seen by either party as a simple contractual relationship.

Co-ops are governed by volunteer members who change over time and managing agents to co-ops usually have a role to sometimes provide proactive facilitatory support if the relationship is to work effectively.

On the one hand, proactive facilitatory support means that the managing agent usually needs to ensure that co-ops they are providing services to are made aware of legal and regulatory issues and changes they need to be aware of. Managing agents are rarely in a position to provide formal legal advice, but they can advise co-ops when they need to take legal advice.

On the other hand, proactive facilitatory support may mean that a managing agent has a duty to keep a watchful eye on whether the co-op is doing what it needs to do giving advice and/or taking other appropriate action if a client co-op:

- does not follow proper procedures; or
- is about to make an ill-considered decision; or
- is about to do something that would be against the law; or
- is about to do something that would mean they would breach regulatory requirements or associated codes of practice; or
- is struggling to maintain its governing body.

However, the role of the managing agent is made more complicated in that ultimately decisions, the responsibility for them and consequences of them, always rest with the co-op and its governing body.





## 4 Expectations

Co-op members can have expectations of managing agents that it may be difficult for them to fulfil.

Many housing co-op managing agents operate in the “Registered Provider” sector – ie. they either are housing associations, or they provide services to housing associations. Housing co-op members often want, and in many cases can afford to have, enhanced service standards that may go over and above what would normally be provided in a standard social housing setting. The hands-on service that exists in most housing co-ops due to co-op members knowing each other is a unique feature of housing co-ops that encourages and enables them to provide an enhanced service offer.

This may mean that managing agents who operate in the housing association sector may think that they are providing a satisfactory service, but it may not achieve the enhanced service offer expected by co-op members.

Disputes between co-ops and their managing agents may stem from these differing perceptions. The challenge to making the relationship work is for the co-op and the managing agent to work in partnership where, on the one hand, co-op members have reasonable expectations of the managing agent, whilst on the other hand, the managing agent understands and seeks to accommodate that co-op members often want an enhanced service offer (and are prepared to pay for it).

## 5 Management agreements

A management agreement between a co-op and a managing agent would be expected to cover:

- a definition of the parties to the agreement
- the period of appointment of the managing agent
- how the agreement can be terminated
- how the agreement can be varied
- a statement of formal delegation to the managing agent in respect of the services it provides for the co-op
- information about how the managing agent will keep records on behalf of the co-op
- a statement regarding both party’s compliance with General Data Protection Regulations





- how the managing agent will be paid for providing services
- how the managing agent will be accountable to the co-op’s governing body – how liaison will take place between the co-op and the managing agent; and how the agreement and performance will be reviewed
- how any complaints about the services provided by the managing agent will be managed and approaches to dispute resolution, including through arbitration or mediation
- a statement regarding both party’s commitment to equality and diversity
- a listing of the co-op’s properties covered by the agreement.

## 6 Operational services

The agreement also needs to clearly specify the services that the managing agent will provide. Services could include:

Operational services	Potential charging arrangements
Management of rent/service charge setting, notifications & accounting	Annual fee
Management of rent payment systems and inputting payments	Annual fee
Management of arrears handling & advice and support for co-op members in relation to benefit entitlement	Annual fee
Preparing legal action and attending court where necessary	Annual fee or charge per case
Management of waiting lists, allocations, lettings	Annual fee
Management of transfers and mutual exchanges	Annual fee
Management of voids	Annual fee
Management of day-to-day repairs	Annual fee
Management of contractor list	Annual fee
Management of gas servicing	Annual fee
Ensuring health and safety compliance, particularly including fire safety assessments, asbestos registers etc.	Annual fee
Estate management (eg. communal electricity, grounds maintenance, communal cleaning, window cleaning)	Annual fee
Preparation of asset management strategy	Annual fee
Implementing asset management strategy, planned maintenance and major works	Percentage of works





Operational services	Potential charging arrangements
Management of anti-social behaviour and harassment	Annual fee and/or charge per case
Management of domestic violence cases	Annual fee
Management of tenant damage and other tenancy issues	Annual fee
Management of complaints	Annual fee and/or charge per case
Management of insurance claims	Charge per case
Leasehold management	Annual fee
Provision of financial services	Annual fee
Preparation of accounts	Annual fee
Audit arrangements	Annual fee

This is not necessarily an exhaustive list. Some managing agents enable the co-op to choose which services are provided, although some services may need to be linked. Others only provide a full-service suite.

## 7 Governance services

Co-ops may also wish to receive support in relation to their governance that might include:

Operational services	Potential charging arrangements
Assistance in relation to ensuring compliance with the co-op's chosen Code of Governance	Annual fee with additional charges for particular items
Arranging and/or provision of training and development for governing body members	Annual fee with additional charges relating to particular training
Carrying out governing body member appraisals	Annual fee
Arranging and carrying out member surveys – likely to become a requirement for Registered Providers	Fee per survey
Advice and support regarding developing an Active Membership Strategy	Fee dependent on the work required





Operational services	Potential charging arrangements
Facilitating internal audit reviews	Fees relating to each internal audit
Facilitating policy review processes	Fees relating to each policy review
Producing and updating business plans	Fees relating to each area of work
Producing and updating active membership strategies	Annual fee with additional fees for particular items
Administrative support	Fees relating to the support provided

It may be the case that some or all these services could be provided by a managing agent already providing services to the co-op or by a different organisation. Some of the above services would particularly benefit from being provided independently of the managing agent already providing services. Facilitation of internal audit reviews would benefit from the internal auditor being able to independently scrutinise the review area. Other services listed above may benefit from the input of new and fresh ideas.

## 8 Remuneration

The tables above set out potential charging arrangements for each service, but different managing agents charge in different ways. Some managing agents may charge a lump sum for all services provided. Others may break the services down into each service provided and itemise charges for them, and with many of the above services being of an ongoing nature, would charge a specified annual fee for them.

In relation to delivery of the asset management/planned maintenance programme, it may be appropriate that the managing agent charges a percentage cost of the works delivered.

Some services would be one off services or services provided infrequently. In which case, charges may be made that are specific to when those services are provided. This may be to the advantage of a co-op that may make little use of the service identified. The potential for this is shown in the tables above.





Legal work, management of anti-social behaviour issues and management of complaints, for example, are all items that may only be required infrequently and so might be charged as they arise. Various items of governance support are likely to be items that are only charged as needed. Co-ops and the managing agent will need to work together to determine the best way to charge for such services.

As organisations that are independent of the co-op, VAT registered managing agents need to charge VAT to the co-op. Any organisation that has a turnover greater than £87,000 is required to be VAT registered (this figure is correct in 2021 but it may change).

## 9 Performance reporting framework

A clear performance reporting framework will assist in developing the right relationship between the co-op and the managing agent. The reporting framework needs to identify performance issues in relation to the service functions the managing agent is managing, and these issues need to be reported in such a way that the co-op's governing body members will be able to easily understand them and performance implications from them.

It is anticipated that the following items would be regularly reported on (either directly to the co-op governing body or to a sub-committee to which relevant issues have been delegated):

- a) **Performance statistics** reporting in relation to services the managing agent manages. The following may be statistics it would be expected would be reported on:

### Rent collection and arrears

- The percentage of rent arrears against total rent roll
- Percentage of rent collected
- Trends of rent collection
- Analysis of action taken to tackle rent arrears
- Percentage rent arrears written off
- Percentage rent lost through voids

### Allocations

- Number of homes vacant and available for let
- Number of homes vacant but not available for let
- Total number of lettings
- Average relet time per letting





### Repairs

- Emergency repairs completed within target time
- Urgent repairs completed within target time
- Standard repairs completed within target time
- Total number of repairs and average number of repairs per property
- Average costs of repairs
- Average costs of void repairs
- Numbers of repairs satisfaction returns and satisfaction percentage

### Complaints

- Numbers of management, anti-social behaviour and other complaints received, timeframe for handling complaints and their outcomes
- Any complaints referred to the Housing Ombudsman Service

### Tenancy breaches

- Any notices served
- Any possession proceedings initiated and their progress
- Any evictions arranged

It would also be expected that the managing agent would report on any significant or abnormal issues arising in relation to any of the statistics or on any significant out of policy management issues.

#### b) Budgeting and finance reporting

Subject to whether the managing agent is responsible for financial services, it is anticipated that they would periodically report on:

- **Finance plan review** – the managing agent should update the finance plan in the co-op's business plan on an annual basis and provide the governing body with a summary of the reviewed plan
- **The co-op's annual budget** – the managing agent should draft a budget annually based on the co-op's business plan for approval by the co-op's governing body
- **Reviews of the annual budget** – the managing agent should provide a review against the budget on at least a quarterly basis







- **Income and expenditure statement** – the managing agent should provide a statement of income and expenditure periodically as agreed with the co-op’s governing body
- **Cashflow** – it may be appropriate that a cashflow statement is provided to the governing body periodically
- **Abnormalities** – the managing agent should report to the governing body on any abnormalities in the co-op’s finances, including any activity that contravenes the co-op’s Financial Standing Orders or any other policy, and any unreconciled funds

c) **Compliance reporting**

The managing agent should report regularly to the co-op’s governing body on any matters it is delegated to manage in respect of health and safety matters or other areas where the co-op’s governing body must comply with legal or regulatory requirements including:

- percentage of current gas safety certificates
- information regarding any properties for which a current gas safety certificate is not held
- confirmation that fire safety inspections have been carried out and any issues highlighted in fire safety inspections
- asbestos checks and their outcomes
- other health and safety matters
- any personal data breaches
- any other matters where the co-op may be in breach of a legal or regulatory requirement

d) **Lists of repairs, voids or other matters**

Most co-ops are comparatively small organisations and performance statistics may or may not be statistically relevant. Co-op governing bodies may draw more from lists of repairs carried out or information on each void property or other primary data relating to performance issues.

Provision of such information may be dependent on the IT capabilities of producing such information and some personal data considerations (see below).





e) **Issues log**

A multiplicity of issues may arise in a housing management and maintenance service that relate to the relationship the co-op has with its managing agent. Issues may be raised in governing body meetings or elsewhere, dependent on where authority is delegated to. Many of such issues may be action points for managing agent members of staff.

It is important that such issues are captured and regularly reported back on to the co-op's governing body or to where authority has been delegated. This could be through matters arising in minutes or through a formal "issues log" that shows when the issue arose; who is responsible for managing it; and actions taken.

## 10 Liaison and review

Formal and informal liaison and review structures need to be established and the principles behind the formal liaison and review structures should be built into the management agreement.

**Formal liaison and review structures** should include:

- a) a specified person identified in the managing agent (their role rather than the name of the individual) with whom the co-op should formally liaise if there are issues of concern regarding management agreement matters;
- b) the co-op's primary liaison person (again their role rather than the name of an individual) who acts as a formal point of contact for liaison with the managing agent (normally the Chair but possibly the Secretary or another role on the co-op governing body);
- c) a formal liaison and review meeting structure – where the co-op and the managing agent formally meet on perhaps a quarterly basis to review performance in relation to the management agreement;
- d) a formal annual meeting to review performance in relation to the management agreement; and
- e) a formal complaints procedure should the co-op or the managing agent consider that there is a need to formally complain about the performance of either party.





The following checklist of questions may be helpful to shape formal liaison and review meetings:

- Is the co-op generally happy with the quality of service provision? Are there issues of concern?
- Does the managing agent have areas of concern regarding the co-op's activities or how members of the governing body are behaving?
- What do the performance statistics and other information provided to the co-op say about services provided by the managing agent? Is the right information being provided and do co-op governing body members understand it?
- How well are the items raised on the issues log being handled?
- Are there any issues specific to compliance with the management agreement (on either side)?
- What areas of change or improvement should the managing agent and/or the co-op focus on for the next review meeting?

Informal liaison and review can and should happen in various ways. In a well governed housing co-op with a good relationship with its managing agent, there is likely to be ongoing dialogue between co-op governing body members and managing agent staff.

The managing agent should ensure that the co-op's governing body members are aware of staff that it is appropriate to contact in relation to each function. The co-op's governing body needs to agree a scheme of delegation that details who is responsible for decision making in relation to particular functions.

## 11 Delegated authority

The co-op's policies and scheme of delegation should set out to whom authority is delegated to make decisions about certain functions. Levels of authority are likely to be delegated to:





- The co-op's chair – particularly in relation to urgent matters
- The co-op's treasurer – in relation to financial matters
- Other co-op officers – dependent on how the co-op's governing body has chosen to manage its operations
- The managing agent – as the entity implementing the co-op's policies in respect of operational services, the managing agent needs to have authority delegated to it in respect of those operational services. Delegated authority needs to be referred to in the management agreement to enable the managing agent to carry out its roles, and the managing agent needs to be clear about the limits of its delegated authority and at what point it needs to seek authority from co-op officers and/or the co-op's governing body.

All of those to whom authority is delegated need to also be clear regarding how they are accountable to the co-op's governing body in respect of any delegated authority they have exercised.

## 12 Confidentiality and data protection

The CCH is sometimes contacted by members of a co-op's governing body complaining that their managing agent is not prepared to give them personal data in relation to their members/tenants.

How data protection works is the subject of other CCH guidance, but the co-op's data belongs to the co-op. It is the co-op governing body's responsibility to develop a framework that will enable it to be compliant with data protection legislation and regulations.

The basic principle behind data protection is that only those who have a legitimate need to see personal data to carry out a function within the organisation should have access to personal data. The purpose for which anyone has access to personal data should be clearly known and once that purpose no longer exists, the person in question should no longer have access to that data.

This means that those governing body members who have a specific defined function in relation to a particular service should be able to have access to relevant personal data. It is for the co-op's governing body to decide who has a specific defined function in relation to a particular service.





For example, the following may be appropriate uses of personal data:

- If a co-op considers that its entire governing body has a legitimate function to oversee rent arrears cases, then it would be appropriate to provide access to all governing body members (all of whom would then be required to understand and comply with data protection legislation).
- If a co-op defines a governing body Rents Officer role to oversee how the managing agent manages rent collection and arrears, it may be appropriate/necessary for that role to have access to personal data in respect of rent accounts and management.
- If a co-op defines a governing body Repairs Officer role to oversee how the managing agent manages repairs, it may be appropriate/necessary for that role to have access to personal data in respect of repairs.
- If a co-op has a treasurer who does the co-op's financial management, it may be appropriate/necessary for the treasurer to have access to personal data that will enable them to keep the financial books of account.
- If a co-op appoints governing body members to carry out a door knocking survey of members, it may be appropriate/necessary for those members to have access to personal data needed to enable them to carry out the survey (eg. names and addresses of members/tenants), but those governing body members should ensure that they no longer have access to that data once the door knocking has been completed.

Governing body members who have access to such data may only use the data for the purposes that they have access. They need to understand and comply with data protection regulations in respect of any personal data they have access to.

## 13 Whistleblowing

Transparency requires that housing associations and other large organisations have whistleblowing policies that enable their staff (and possibly others) to raise issues appropriately where they have evidence that the organisation (possibly through its governing body members or senior staff) is committing fraud or carrying out other illegal or non-regulatory compliant activities. Where a staff member has legitimate reasons to whistleblow, it is intended that the staff member is protected from potential employment action because of them whistleblowing.





Co-ops working with managing agents should similarly establish whistleblowing policies that protect their managing agent if they consider that co-op governing body members or others are committing fraud or carrying out other illegal or non-regulatory compliant activities. In extreme cases, managing agents have a duty to raise such issues potentially with the police, the Regulator of Social Housing or elsewhere.

## 14 Addressing issues of underperformance

The CCH is contacted frequently by co-ops saying that they are not happy with the performance of their managing agent.

Below are a set of ideas for co-ops to address issues of underperformance in their managing agent. The first four are about the co-op ensuring it is communicating properly with the managing agent and has appropriate expectations of them.

- 1 **Being clear about what the problem or problems are** – the first step is to be clear about what problems exist. The co-op needs to know what it considers to be the outcome it wants. What does it want to change in the way that the managing agent is providing services? Having evidence relating to the problems the co-op is seeking to tackle and providing clarity to the managing agent about what the co-op wants done differently will be useful.
- 2 **Being clear about who is responsible for the problems** – is the co-op clear about where the problems lie? Is the problem with the managing agent and/or with the co-op's contractors, or with someone else?
- 3 **What do the co-op's policies say?** It may be that problems are being caused because there is not clarity in the co-op's policies regarding how the co-op expects services to be provided. If this is the case, the co-op needs to review policies in areas where problems are being experienced, potentially working with the managing agent to review the policy or policies so that they understand the co-op's expectations.
- 4 **Being clear that the co-op's expectations are reasonable** – it has been suggested above that sometimes, co-ops have expectations for enhanced service quality. It is good that many co-ops set enhanced standards, and hopefully those enhanced standards can be achieved. But the managing agent may not be geared to achieving





enhanced standards. There may be a need for diplomatic work to set out how the co-op wants enhanced standards and is potentially prepared to pay for them.

It is also the case that in any housing service, problems will arise. It is a multi-faceted business, and many complex decisions are needed. Sometimes tenants do not behave as they should do and this can make service delivery harder, although some housing professionals tend to automatically assume that tenants are in the wrong, which is probably not the culture that most co-ops would want to operate.

It is recognised that sometimes managing agents do not meet basic service standards and that co-ops can reasonably expect them to. The following points relate to what co-ops can do if they consider that their managing agent is not providing services to the standards set by the co-op.

- 5 **Informal dialogue** – the first contact with the managing agent about the problem should be through informal dialogue with the relevant person in the managing agent who is best placed to effect the change the co-op wants. Seek to agree a remedy to the problem or problems within a given timeframe. If there are multiple problem issues arising, potentially using an “issues log” as suggested above may help keep track of how well the managing agent is addressing the problem issues that may arise.

Feelings may run high when a problem or problems have been identified, but it is more likely that problems will be resolved if the co-op remains calm and seeks a diplomatic solution with the managing agent.

Sometimes managing agents react defensively to issues raised by co-ops about their performance when they should accept responsibility for mistakes that may have been made and seek ways to rectify problems. Defensive reactions are often unhelpful and can exacerbate disagreements between co-ops and managing agents.

- 6 **Formal dialogue** – the management agreement with the managing agent should set out a formal process for the co-op to escalate concerns. This should include the person (or role) who the co-op should formally contact if the co-op is not happy with the managing agent’s performance. If the co-op wishes to have formal dialogue with the managing agent about performance, it should ensure that the governing body has agreed what issues it wishes to raise formally. Formal dialogue should be in writing (either a letter or an email) so that there is a formal record of it. The co-op should





expect a formal response from the managing agent – possibly initially verbally, but subsequently also in writing so that there is a formal record.

- 7 **Formal complaint** – the management agreement should also set out how the co-op may make a formal complaint to the managing agent. It is important in making a formal complaint that the co-op clearly specifies any evidence relating to the formal complaint and how it would like to see the issue complained about resolved – what outcome the co-op is expecting from the complaint.
- 8 **Dialogue with other co-ops** – if the managing agent provides services to more than one co-op, it may be appropriate for a co-op that is experiencing difficulties to seek dialogue with other co-ops who buy services from the same managing agent to see if they are experiencing the same or similar problems. It may be that approaches to the managing agent jointly will better enable change.
- 9 **Internal audit** – some co-ops use internal audit companies to review aspects of their services. It may assist in resolving problems with a managing agent to get an internal auditor to carry out a review into either the entire relationship with the managing agent or into the specific service where it is considered that the managing agent is failing.

If an internal auditor has a track record of carrying out internal audits in the social housing sector, their recommendations from an internal audit may help to resolve problems. If this approach is appropriate, it is important the co-op properly brief the internal auditor about the scope of the audit. The co-op will also need to discuss the internal audit with the managing agent to ensure that they give the internal auditor access to records as necessary and has appropriate dialogue with them.

- 10 **Contract clauses** – it may be helpful for the co-op to include a sequential escalation process in the contract with the managing agent which allows for the following with the intention that each step will be taken sequentially, and subsequent steps will only be taken if the problems are not resolved:
  - **Service of a warning notice** – where the co-op serves a formal “warning notice” to the managing agent detailing the area of service failure, the ways that the co-op expects the failure to be remedied, and a clear timeframe for resolution
  - **Service of a breach notice** – where the co-op serves a formal “breach notice” to the managing agent detailing the failure to comply with a prior warning notice, the







ways that the co-op expects the breach to be remedied, and a clear timeframe for resolution

- **Service of a notice of termination** – where the co-op can serve a formal notice of termination of a specific service or the entire management contract (within the terms of the management contract). Where a breach is severe, a temporary suspension or immediate termination may be considered appropriate.
- 11 **Other dispute resolution** – it may be the case that the management agreement provides other dispute resolution approaches, such as arbitration, mediation, support from organisations such as the Confederation of Co-operative Housing. Even if the management agreement does not include dispute resolution clauses, taking such an approach may be agreed as beneficial by both the co-op and the managing agent.

It may also potentially be possible to resolve some disputes in the courts, but if action is taken that ends up in the courts, it is probably the case that the relationship between the co-op and the managing agent has irrevocably broken down.

- 12 **If all else fails** – if none of the above remedies result in resolution of the problems a co-op is experiencing with a managing agent, it may be appropriate for a co-op to terminate their contract.

Changing managing agents is not a step to be taken lightly. To change managing agent should be supported by the co-op's general membership and it is a regulatory requirement that Registered Provider co-ops consult with their members if they are to change their housing management arrangements.

The process to change managing agent would also have to be done in accordance with the co-op's procurement policy and could take time and resources. As well as this, there are limited numbers of organisations that can or are willing to provide services to housing co-ops.

However, setting up a new managing agent relationship can be done and may be desirable in some circumstances.





15 Tendering for and assessing managing agents

Perhaps in an ideal world, co-ops would be able to periodically re-tender their management agreements to a range of potential managing agents in the same way that they re-tender for other services. However, this rarely happens because on the one hand, the nature of the relationship is often such that bonds of trust are formed between the co-op and managing agent staff, so much so that neither party wishes to terminate the contract. On the other hand, the competition is often limited – there are few alternative organisations available in most parts of the UK who could provide services to co-ops.

Nonetheless, co-ops need to be confident that those providing services to them have the skills, experience, the staff and other qualities needed to provide the agreed services. The list below might be questions which co-ops might ask potential managing agents, (and it may be appropriate that client co-ops ask the questions to existing managing agents).

Questions	What are the questions exploring?
What staff roles exist in the organisation that would be relevant to providing services to the co-op?	Are there sufficient staff at the desired level to provide services to the desired standard? How do the numbers of staff providing services compare to numbers of staff providing housing services in other organisations?
What skills and experience are expected in the staff roles that enable them to carry out the roles?	Do the staff have the skills and experience that the co-op needs?
How does the managing agent ensure that it has a comprehensive and up to date knowledge of legislative and regulatory requirements that potentially apply to housing co-ops?	New legislative and regulatory requirements come into force regularly. Is the managing agent tuned into knowing these requirements as they emerge and if so, how?
Is the managing agent a CCH member organisation?	CCH member organisations receive regular briefings on issues of importance to housing co-ops and if the managing agent is a CCH member organisation, it would suggest that they have an interest in matters pertaining to housing co-ops.





Questions	What are the questions exploring?
<p>How does the managing agent ensure that it has access to specialist skills that it may not have within its staff team?</p>	<p>Some areas that require specialist skills include surveying, fire safety, dealing with mental health issues, dealing with domestic violence or abuse cases and dealing with extreme anti-social behaviour and harassment issues (and racial harassment). Does the managing agent have the means of providing advice and support in these areas and/or do they have links with organisations that can provide these specialist skills?</p>
<p>Does the managing agent have appropriate indemnity insurance to cover the services it provides? How would the managing agent respond if the co-op asked for advice regarding legal, financial investment and insurance advice?</p>	<p>The managing agent should have general indemnity cover, but it is important that it is understood that managing agents are unlikely to be indemnified to provide legal, financial investment and insurance advice.</p>
<p>What is the managing agent's commitment to providing services to housing co-ops? Does the managing agent have a track record of providing services to housing co-ops? If not, how do they demonstrate their understanding of the co-op model and their commitment to community led housing services?</p>	<p>Cultural fit between a housing co-op and its managing agent is important. A managing agent does not necessarily have to have a track record of working with co-ops, but it does need to demonstrate that it is fully committed to community control of housing.</p>
<p>For fully mutual housing co-ops, does the managing agent understand the uniqueness of the fully mutual model and the tenancies that fully mutual housing co-ops can issue?</p>	<p>There are legal and other technicalities relating to the fully mutual housing co-op model that managing agents providing services to them need to be aware of.</p>
<p>Is the managing agent financially viable?</p>	<p>It is suggested that co-ops particularly examine the previous two years' audited accounts of the managing agent.</p>
<p>What is the managing agent's approach to equality and diversity?</p>	<p>The managing agent should have an equality and diversity policy that fits in with the co-op's policy.</p>





Questions	What are the questions exploring?
What is the managing agent's approach to health and safety?	The managing agent should have a health and safety policy that demonstrates they will be able to comply with the co-op's health and safety requirements.
What is the managing agent's approach to data protection?	The managing agent should have a data protection policy that demonstrates that they will be able to comply with the co-op's data protection liabilities.
What is the managing agent's approach to receiving complaints?	The managing agent should have an appropriate policy that enables its client co-ops to formally complain about service provision and for complaints to be handled in an appropriate fashion.

## 16 A managing agent checklist

The following checklist is provided as a means of evaluating the effectiveness of managing agents to housing co-ops. It is suggested that representatives from the managing agent and representatives from its client co-ops consider these questions and score them between 0-4 as follows:

- 0 – not at all well
  - 1 – broadly not well, but maybe a little
  - 2 – a bit well, a bit poorly
  - 3 – broadly well, but some room for improvement
  - 4 – definitely well and possibly better
- 1 How much does the managing agent have a clear understanding about why it is providing services to housing co-ops? How much is the managing agent committed to providing services to housing co-ops? How much does the managing agent understand the unique nature of housing co-ops?
  - 2 How much does the managing agent provide services in accordance with policies that its client co-ops have agreed? How much does the managing agent enable its client co-ops to individually adjust their service policies where they consider it necessary or desirable to? How well does the managing agent enable its client co-ops to shape the way that the managing agent provides services to them?





- 3 How well does the managing agent regularly report to the co-op in ways that its governing body understands on the services that it provides, both using a statistical performance reporting framework and providing appropriate analysis of key issues and trends?
- 4 How well does the managing agent regularly report to the co-op about health and safety (and other) compliance issues it has responsibility for (again in ways that the co-op's governing body understands)?
- 5 How well does the managing agent regularly report to the co-op on the co-op's finances where the managing agent is responsible for managing them (again in ways that the co-op's governing body understands)?
- 6 How much is the managing agent's performance in respect of its client co-ops leading to positive outcomes for the co-op's members (ie. high levels of service; well-maintained homes etc)?
- 7 How well does the managing agent track and respond to issues of concern that are raised by its client co-ops?
- 8 How good is the managing agent's approach to liaison with the co-op? Does the managing agent send a liaison officer (or similar) to each co-op governing body meeting? Is a managing agent liaison officer regularly available to co-op officers?
- 9 How well does the managing agent discuss forthcoming or potential legal and regulatory changes and/or new best practice with its client co-ops? For example, would the managing agent discuss with its client co-ops emerging Government policy and changes to regulatory framework; the Housing Ombudsman's Complaints Code; emerging fire safety issues; and the CCH's guidance on governance and management and the updated model rules for housing co-ops?
- 10 How well does the managing agent provide advice and support to its client co-ops in relation to governance matters? Does the managing agent bring to the attention of its client co-ops to the CCH's Code of Governance for housing co-ops? Does the managing agent ensure that its client co-ops have access to appropriate training and development opportunities? Does the managing agent ensure that co-op members





are aware of the CCH as the national representative body for housing co-ops and its annual conference?

- 11 How well does the managing agent manage issues of conflict between itself and its client co-ops?
- 12 How effective is the managing agent's procedure for managing issues where it perceives one of its client co-ops to be potentially in breach of its legal, regulatory or other requirements?

Assessments may be scored as follows:

- |       |  |
|-------|--|
| 0-18  | Is this managing agent really in the right line of business?   |
| 19-25 | Not particularly good – the managing agent's client co-ops should perhaps seek an alternative method of receiving services   |
| 26-32 | Average – the relationship between the managing agent and its client co-ops is not excellent, but it could improve   |
| 33-39 | Good – the relationship is working well and it is delivering results, but there are still areas for improvement  |
| 40-45 | Excellent – if the managing agent and its client co-ops consider the managing agent has earned this score, then it is an excellent example of how the relationship should be working |
| 46-48 | We don't believe you – start again   |





## Part 2 – Working with contractors and consultants

### 17 Contractors

A housing co-op will need to use the services of a variety of contractors in relation to their day-to-day repairs service, their emergency out of hours repairs service and their voids/planned maintenance/major works programmes.

Subject to the nature of the co-op's properties, the co-op may need access to the following contractors – some because of the nature of the work on an infrequent basis:

- general contractors for a wide range of general repairs
- gas contractor
- electrical contractor
- a contractor or contractors who can provide an out of hours service
- plumbing contractors and roofers (although these could be part of a general contractor's remit)
- a damp prevention specialist
- a drainage specialist
- a tree surgeon
- an energy performance specialist
- an intercom and door entry systems specialist
- a pest control expert
- a lift maintenance and/or other electrical systems specialist
- an environmental safety specialist (for items such as asbestos checks)
- a fire safety officer
- water tank and plumbing inspection services
- cleaning and gardening services
- other specialists dependent on the nature of the co-op's homes

The co-op may also need or wish to employ technical advisors in relation to its repairs and maintenance programmes, such as:

- clerk of works surveyors
- stock condition survey specialists
- asset management advisors
- retrofit advisors





- quantity surveyors, architects and project managers (generally in relation to new build, but possibly also in relation to major works and possibly other programmes)

The co-op may also need or wish to employ other contractors/consultants for other services (some on an ongoing basis and some for one off pieces of work), such as:

- general book-keeping services
- an external auditor to carry out the annual audit
- a solicitor for legal advice
- an internal auditor to carry out reviews of services
- a governance advisor to advise on governance
- a membership involvement specialist to assist in encouraging active membership
- independent advisors to the co-op in respect of matters where the co-op would benefit from having access to independent advice (such as in complaints, anti-social behaviour or harassment issues where co-op governing body members might be perceived to have conflicts of interest)
- independent advisors to the co-op where there is a need for specialist advice (such as providing advice and support on business planning, procurement, policy development and in a range of other potential areas)

## 18 Identifying potential contractors and consultants

Identifying good and value for money potential contractors to carry out repairs and planned maintenance works is always challenging and is made more so in uncertain economic times.

A broad generalisation (possibly an over-simplification) is that housing co-op contractors fall into three types:

- a) **Smaller localised contractors** – with whom the co-op develops a long-term almost personal relationship. Often the staff of such small contractors form relationships with the co-op's members and people know their operatives. Such small contractors may not charge VAT (potentially lessening costs for the co-op).

Finding good quality small contractors may be difficult especially those who can comply with the co-op's legal, regulatory and best practice requirements for contractors (see below).







The challenge for smaller contractors is that the co-op is unlikely to provide them with enough work to support their livelihoods, meaning that they need to take on other work. This in turn means that they may not always be available to carry out works for the co-op – especially larger pieces of work, such as major works.

Where co-ops use smaller contractors, they tend to carry out general works for them. It may be possible to identify smaller gas and electric contractors, but this can be rare. Cleaning and gardening contracts can often be fulfilled by small local contractors.

- b) **Specialised contractors** – contractors who specialise in a particular service or services (that require particular skills and equipment) such as door entry/intercom maintenance, pest control, lift maintenance and other specialisms. Such companies are likely to operate across a wider region or in some cases nationally.
- c) **Larger regional or national contractors** – larger contractors that operate over a much wider area, sometimes having sub-contractor relationships with smaller contractors. Larger contractors are perhaps less likely to form personal relationships with the co-op or with their members, but their scale will mean that they may be able to also provide specialist skills and they will be more likely to be able to meet a co-op’s fluctuating demand for repairs and major works.

Some organisations exist to enable social housing organisations identify potential contractors. Such organisations may be able to identify the second two of the categories listed above, but small localised contractors are possibly best identified by housing co-op governing body members.

It is difficult to give clear advice regarding identification of specialist and other consultants that the co-op may need to use. The table below gives some suggestions:

Consultancies	Notes
Clerk of Works surveyors, stock condition survey and asset management specialists	It can be difficult to identify good quality surveyors, but there are companies that do this work. These skills are not necessarily co-op specific and so it may be appropriate to have dialogue with other Registered Providers operating in the region to seek suggestions.
Retrofit advisors	This is a specialist but growing area. Co-ops owning converted elderly buildings may have need of good advice in this area. The CCH can provide retrofit advice services.





Consultancies	Notes
Quantity surveyors, architects, project managers	With the growth of the community led housing sector, there are firms that provide these services to community led housing services. The CCH accredits advisors to developing community led housing schemes who may be able to provide advice on consultants who can provide these services.
General book-keeping and external audit services	It is not possible to advise on who can provide these services. Co-ops need to explore the market of available advisors in these areas but should ensure that external auditors are suitably qualified and indemnified. Experience is perhaps a more important attribute for a book keeper, but co-ops should ensure that a book keeper is also properly indemnified.
Legal services	Co-ops also need to ensure that their solicitors are appropriately qualified and indemnified (and legal advice can only be provided by a solicitor appropriately qualified and indemnified) but providing legal advice to a Registered Provider requires specialist legal knowledge and providing advice to fully mutual housing co-operatives is an even more specialist area. Co-ops should check the skills of their solicitors.
Governance advice, internal audit, business planning, policy development, procurement and independent advice	There are various organisations that can provide such services in the Registered Provider sector, but most do not have specific knowledge of housing co-ops. The CCH and some managing agents can provide such services.
Membership involvement	There are organisations and individuals who can provide advice on tenant participation in Registered Provider landlords, but advice and support on membership involvement in housing co-ops is an area in which few organisations and individuals have skills and experience. The CCH and some managing agents can provide such services.





## 19 Contractor/consultancy requirements

There are various legal, regulatory and best practice requirements that need to be assessed in relation to contractors and consultants, including:

- Tax and legal status of the organisation
- Relevant insurances
- Contractor/consultant structure and employees and consideration of any parent/subsidiary relationships
- Trade related certification for contractors (most notably in relation to Gas Safe Standards and NICEIC certification)
- Service-related certification for consultants (most notably in relation to qualifications and indemnities for legal and financial advisors)
- COSHH certification where contractors handle dangerous substances (such as cleaners or gardeners)
- For maintenance contractors, their approach to safe waste management
- Financial status and credibility (ie. considering the previous 2 or more years accounts)
- Costs and how costs are charged
- Equality and Diversity Policies
- Data Protection Policies
- Health and Safety Policies
- Safeguarding Policies

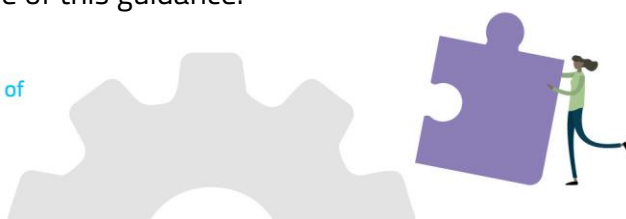
## 20 A contractor code of conduct

Because contractors engage directly with co-op members, co-ops may also wish to have a Contractor Code of Conduct which they ask contractors to sign up to. If so, clauses from the code of conduct that relate to customer care could be publicised to members so that they know what should be expected of contractors.

Potential headings in a possible Contractor Code of Conduct are set out in Appendix Two.

## 21 Managing contractors

Many issues can come up in relation to managing contractors. The table below suggests some issues that may come up with pointers of how to address them, but a comprehensive guide is beyond the scope of this guidance.





Issues	Pointers of how to address them
Poor workmanship	Carry out spot checks of works; have access to a properly trained surveyor to check on works
Jobs not carried out right first time	Ensure the contractor is aware of the co-op's expectations and establish systems to specify works are accurate and efficient so that the contractor is properly prepared for the job
Contractors not meeting target times	Understand if there are legitimate reasons for delays; but if not, have discussions with the contractor about your target times
Unforeseen costs	Agree a charging structure with the contractor and expect dialogue between the contractor and the co-op's repairs manager when costs may overrun
Not making appointments with members or poor timekeeping	Agree a Code of Contract with the contractor that sets out the co-op's expectations regarding appointments and whether contractors should keep members informed prior to their arrival
Attending a job without prior warning	Sometimes contractors call round to carry out works if they are in the area. This can be annoying to some tenants. Again, agree what is appropriate in a Code of Conduct.
Disagreements between a member and a contractor about whether the member was in at a pre-arranged time	Ask contractors to keep evidence of attendance (ie. timed photographs at the front door) and to card the member
Tenants refusing access to contractors or not being in at the time specified	If the work required is health and safety related, the co-op needs to escalate action to require access as appropriate. The co-op should have, and if necessary implement, a policy regarding members not enabling access (ie. potentially recharging the member)
Not treating members in ways they should be treated	Set out expectations in a Code of Conduct. Have dialogue with the contractor if expectations are not met.





Issues	Pointers of how to address them
Contractors not complying with the co-op's or their own health and safety policies	Set out expectations in a Code of Conduct. Have dialogue with the contractor if expectations are not met. Issue warning notices if the problem is particularly severe.
Members seeking to get contractors to carry out extra works when they call out	Ensure that how the repairs service works is explained to members. Ensure that contractors understand the issue and what to do if a member asks for additional repairs.
Members arranging private works with the co-op's approved contractors	This can cause problems and the co-op should set out its approach to private works in the contractor code of conduct
Abusive activity from members or contractors	The co-op needs to act in accordance with its anti-social behaviour policy and/or complaints policy should either a contractor or a member report abusive activity to the co-op
Dealing with allegations	The Contractor Code of Conduct should advise contractors how they should safeguard themselves with regards potential allegations. Action should be taken where allegations are made.
Identifying safeguarding, subletting or other potentially illegal activity	The co-op should explain in its Contractor Code of Conduct that contractors should report back to the co-op any concerns they may that there could be safeguarding issues relating to members or their families (ie. including hoarding, abusive behaviour etc); subletting (in that the person at the property is not the person identified as the tenant); or any other potentially illegal activity (including the use of illegal drugs).

Key issues that co-ops need to ensure in relation to management of contractors include:

- The co-op needs to have access to a properly trained Clerk of Works surveyor who can assess, specify, inspect and consider works from a professional perspective
- The co-op needs effective management systems for receiving, specifying and managing its repairs and other works



## Housing co-ops – working with managing agents and contractors



- The co-op needs to clearly explain to contractors their expectations regarding works and ideally these should be set out clearly in a Code of Conduct for Contractors
- The co-op should periodically assess the performance of each of its contractors. If a particular contractor is not performing as expected, they should be removed from the contractor list.





## Part 3 – Procurement

### 22 Procurement

Co-ops should agree a Procurement Policy and guidance on producing such a policy is set out in Appendix Three.

Some key points regarding procurement of managing agents, contractors and consultants include the following:

- A co-op's financial standing orders should set out a financial limit beyond which it is necessary to go out to tender for managing agents, contractors and consultants (as well as lower financial levels where numbers of quotations are required and/or numbers of governing body members who can approve quotations)
- Most housing co-op governing body members are not procurement specialists and so co-ops should seek competent procurement advice when tendering. Such advice could come from managing agents (if the procurement is not for the managing agent) or from the co-op's directly employed staff.
- The co-op should agree basic procurement principles – that are about having fair and objective processes for advertising and awarding the co-op's contracts.
- Going out to tender relies on the production of an appropriately detailed tender specification for the services required, that includes information about pricing schedules, the qualities expected in the tender and how the tender will be scored.
- Co-ops should use an objective process to determine what managing agents and contractors they work with and should keep appropriate records relating to their tendering processes.
- Where a tender will exceed limits set in the Public Contracts Regulations 2015 ("PCR 2015" or formerly the "OJEU Regulations"), tenders must confirm to PCR 2015 regulations. Co-ops should seek advice regarding what these regulations require.





## Appendix One

### GUIDE MANAGING AGENT POLICY

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*This guide is intended to enable co-ops to consider issues relating to their relationship with their managing agent. It is intended that co-ops will be able to adapt the guidance, potentially working with their managing agent, to develop an appropriate policy that meets their needs.*

#### ***Aims of the managing agent policy***

*Suggested definitions of the aims of a managing agent policy:*

- To ensure that services provided by managing agents are delivered to agreed standards
- To enable monitoring of service delivery and to address issues of underperformance and failure to perform
- To ensure an appropriate management contract is in place with the managing agent and that there is an appropriate method to vary the contract and uplift fees

#### Delegated Authority

*It is suggested that delegated authority is identified at the start of the policy:*

- 1 The governing body always has overall responsibility for management of contracts with managing agents. Managing agents are formally accountable to the governing body for delivery of contracts.
- 2 The co-op's policies and scheme of delegation sets out delegated authority, including to the managing agent, enabling them to have delegated authority in respect of the services the co-op has asked them to manage.
- 3 The governing body needs to delegate normal day to day liaison regarding operation of the managing agent management contract to a co-op officer (normally the chair). Other governing body members may be delegated to liaise with the managing agent as appropriate in relation to their specific roles (such as governing body members who may have been appointed as a repairs officer, a rents officer or an allocation officer).
- 4 Only governing body members who have been formally delegated to do so should normally be able to raise matters on behalf of the co-op with the managing agent.







- 5 Co-ops should identify how emergency issues in relation to the managing agent are delegated.

### Outsourcing service provision

- 6 The co-op has determined that it wishes to purchase the following services from one or more managing agents:

- *a listing of the services that the co-op outsources to a managing agent*

- 7 *The co-op may wish to specify the process that would be used if it wished to re-tender all or part of its management services (the proposals listed might be potential options);*

If the governing body considers that there is a need to re-procure some or all its management services, it will, dependent on the nature and scope of the services to be procured:

- a) *If the co-op is a Registered Provider, Consult with the co-op's membership if the service to be changed is one that will affect the services that members receive. It is a regulatory requirement to consult tenants regarding changes of services. The co-op's governing body will consider issues raised in the consultation before taking decisions to make service-related changes;*
  - b) Hold a General Meeting of the co-op to consider the issue and potentially take a vote on proposed changes (unless the service to be procured is purely administrative and unlikely to impact or be of interest to the general membership);
  - c) Ensure that it complies with the terms of the existing contract with its managing agent;
  - d) Ensure that it has access to demonstrable procurement skills, knowledge and experience to facilitate a tendering process, possibly using an external contractor; and
  - e) May also seek legal advice from its solicitor regarding its approach to procurement for a managing agent.
- 8 If the governing body wishes to procure an element of the services listed above which is not currently covered by the contract with the managing agent and:





- if the governing body wishes to procure the additional element or elements from the managing agent, it will negotiate a revision to the contract and may seek legal advice from its solicitor regarding the proposed revised contract
  - if the governing body wishes to procure the additional element from another source, it may seek advice and support from the existing managing agent or from another source to give advice to facilitate procurement of the services from an external organisation.
- 9 Procurement should be carried out in accordance with the co-op’s Procurement Policy.

### The management agreement

- 10 The following terms will be defined in the management agreement with the managing agent:
- a definition of the parties to the agreement
  - the period of appointment of the managing agent
  - how the agreement can be terminated
  - how the agreement can be varied
  - a statement of formal delegation to the managing agent in respect of the services it provides for the co-op
  - information about how the managing agent will keep records on behalf of the co-op
  - a statement regarding both party’s compliance with General Data Protection Regulations
  - how the managing agent will be paid for providing services
  - how the managing agent will be accountable to the co-op’s governing body – how liaison will take place between the co-op and the managing agent; and how the agreement and performance will be reviewed
  - how any complaints about the services provided by the managing agent will be managed and approaches to dispute resolution, including through arbitration or mediation
  - a statement regarding both party’s commitment to equality and diversity
  - a listing of the co-op’s properties covered by the agreement.





This list is not exhaustive and additional areas may be covered in the management agreement.

11 *Statements should be included in the policy that:*

All services within the contract will be carried out in accordance with co-op policies and under the direction of the governing body.

The managing agent will be expected to use its best endeavours to bring the governing body's attention to all matters pertinent to compliance with legal and regulatory requirements and to providing a co-operative housing management service.

### Management of the managing agent relationship

*The policy should identify how the managing agent and the co-op will liaise with each other:*

12 The managing agent will identify a named individual who will be the liaison officer to the co-op.

13 The liaison officer will:

- manage the managing agent relationship with the co-op
- attend the co-op's governing body meetings unless requested not to do so by the chair. Where the liaison officer is not available to attend governing body meetings, they will ensure that another staff member attends on their behalf and will discuss attendance (in advance of the meeting where possible) with the chair. Usually it would be expected that the liaison officer would attend in person, but in exceptional circumstances, the liaison officer may attend the meeting by digital means.
- ensure that the managing agent accounts formally to the governing body on at least a quarterly basis regarding delivery of services included in the management agreement. A standard agenda will be developed for contract review and records will be kept of any issues raised. The managing agent will particularly report on performance targets set and achieved, and account for targets not achieved.





- attend monthly operational meetings and informal meetings (where mutually agreed) with the chair and/or other governing body members as determined by the governing body
- maintain an issues log of actions agreed with the governing body which shall be reported on at governing body meetings and liaison meetings.

14 The managing agent will produce performance reports in accordance with:

- the Performance Reporting Framework in relation to provision of services
- the Financial Standing Orders in relation to financial performance.

### Internal audit

*The co-op may use an internal auditor to examine particular areas of service in the co-op:*

- 15 The co-op uses an internal auditor to audit aspects of the co-op's services and operations on a periodic basis. The governing body will agree what functions will be audited with the internal auditor, and the internal auditor presents reports to the governing body with recommendations for change.
- 16 The managing agent will be expected to provide information regarding the co-op's services to the internal auditor.
- 17 The chair will consider issues highlighted in internal audit reports with the Managing agent on at least a quarterly basis.

### Under performance or failure to perform

*This section seeks to address how the co-op will address issues of perceived under performance of the managing agent:*

- 18 The chair or the governing body may raise matters of concern regarding delivery of services with the managing agent. The chair and managing agent will ensure that any such issues raised are recorded. Where possible, the chair and the managing agent will seek to agree actions (within the terms of the management agreement) that will remedy the matter of concern. Actions will be recorded on the issues log and





thereafter progress to remedy the matter of concern will be reported on in liaison and governing body meetings until resolved.

- 19 On at least a quarterly basis, the managing agent will account for progress made on the issues log and any outstanding matters of concern raised by the co-op.
- 20 If matters recorded in the issues log are not being resolved and the co-op considers that there is a need for formal action to resolve problems, the co-op may escalate issues as follows:
  - **Service of a warning notice** - detailing the area of service failure, the ways that the co-op expects the failure to be remedied, and a clear timeframe for resolution
  - **Service of a breach notice** - detailing the prior failure to comply with the warning notice, the ways that the co-op expects the breach to be remedied, and a clear timeframe for resolution
  - **Service of a notice of termination** - of a specific service or the entire management agreement (within the terms of the management agreement). Where a breach is severe, a temporary suspension or immediate termination may be considered appropriate.
- 21 The co-op may only serve warning notices, breach notices or termination notices when it has been agreed to do so (and it is minuted as such) by the governing body.
- 22 Once a warning notice or a breach notice has been served, the managing agent will be given ten working days to formally respond in writing to the notice, and the governing body will be required to formally consider their response. The governing body's views of any response will be recorded in meeting minutes.
- 23 This procedure for seeking redress is intended as a structured framework for resolving any issues that may arise. The procedure is sub-ordinate to the management agreement the co-op has with its managing agent. The co-op may seek legal advice from its solicitor regarding the serving of any termination notice and, if advice is sought, it will be presented to the governing body for consideration.





### **Potential risks to be avoided**

- unrealistic expectations being placed on the managing agent or managing agents
- a lack of a formal procedure for addressing failures to perform
- multiple governing body members seeking to engage with the managing agent without authority from the governing body or to inappropriate managing agent staff
- the perception amongst members that the managing agent is the landlord
- a lack of clarity regarding which party is responsible for providing specific parts of a service
- the co-op believing that it has delegated all responsibility and liability to its managing agent
- setting unclear expectations and non-specific performance expectation leading to outcomes that do not meet the co-op's or members' required levels of service
- vague performance management processes that prevent corrective actions being taken in a timely manner
- allowing contract review meetings to become hostile and unproductive





## Appendix Two

### HEADINGS FOR A CONTRACTOR CODE OF CONDUCT

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*The following are a set of possible headings a co-op may include in a Contractor Code of Conduct. The details of expectations of contractors need to be considered by the co-op's governing body, working with directly employed or managing agent staff.*

#### General conduct with members

- Contractors remembering always that they are working in someone's home and treating it as such
- Contractors conducting themselves in a professional manner
- Contractors not entering a member's home without their permission

#### Delivery of works

- Receipt of job orders
- Contacting the member to arrange a date and time to carry out works
- Works normally during working hours except by prior arrangement
- Priorities and target timescales
- Keeping appointments
- Communication with the member in advance of arrival
- Informing the member if the job is delayed
- Identification cards and checking legitimacy of the contractor
- Appropriate dress code including safety clothing where necessary
- Explaining works to be done to the member and how this will affect them
- Asking about leaving equipment as necessary
- Informing the member when leaving or returning to the property

#### Care of the member's home and possessions

- Treating members and their homes with respect, and discuss the removal of delicate or valuable items from the work area with them, and the moving of furniture and other items if required
- Limiting any disruption to just one room at a time
- Taking necessary precautions to keep carpets and floors clean and protected by using dustsheets or plastic floor protection sheets
- Getting permission from the customer before using sinks, electricity and other services in the property
- Ensuring that all rubbish is removed on completion of works
- Reconnecting and testing services such as gas, water and electricity at the end of each working day





- Compensating members for any damage to their property resulting from negligence by the contractor

#### **Conduct whilst in a member's home**

- Not introducing additional hazards eg. stored material blocking access routes, tools left in communal areas
- Not smoking, eating, drinking or playing audio equipment
- Not consuming alcohol or taking drugs
- Not carrying out works in the home without the member being present, unless their express consent is obtained and a key is left for access
- Not carrying out works if only minors (children) are present at the property
- Not using foul or abusive language or threatening behaviour
- Not causing offence, inconvenience or harassment to a member

#### **On completion of the job**

- Ensuring that all works are complete to a satisfactory standard
- Removing all surplus material, equipment and rubbish, leaving the area of work clean and tidy
- Informing the member that the work is complete
- Instructing the member how to operate and maintain all new equipment and providing operation manuals.

#### **Additional work**

- Informing the co-op if a member requests additional work

#### **Valuing diversity and inclusion**

- Contractor compliance with the Equality Act 2010 not to discriminate in any way in the provision of services to the public
- Contractor compliance with the co-op's Equality and Diversity Policy
- The contractor supplying the co-op with their own Equality and Diversity Policy which should aim to ensure equality of opportunity and treatment for including their operatives and sub-contractors.

#### **Working in the home of:**

- a disabled member's home
- a deaf or hearing-impaired member
- a visually impaired, blind, or partially sighted member
- female members
- a member who does not speak English
- a member where religious or ethnic issues need to be considered.

#### **Harassment**

- Compliance with the co-op's Harassment Policies and how allegations of harassment or violence against members will be dealt with.







### **Difficult situations and violence at work**

- Advice to contractors who may come across situations where violence or the threat of violence to them or others becomes apparent.
- Advice to contractors who may feel uncomfortable about the circumstances or the behaviour of a member (for example, if the member is under the influence of drugs or alcohol, is verbally abusive, or makes sexual advances).
- Advice to contractors if valuables are left within their working area (eg. purses, cheque books or jewellery) to protect contractors in case the valuables go missing.

### **Confidentiality**

- Maintaining confidentiality regarding any personal data supplied to contractors.
- Not discussing the co-op's business with members, including work on other properties, standards of service and other matters

### **Private work**

- The co-op's policy on members requesting co-op contractors to carry out private work for them
- Members being required to seek permission for alterations to their homes
- Not receiving gifts or additional payments from members

### **Declaring conflicts of interest**

- Contractors required to declare any interests that a co-op governing body members has with them

### **Working in void (empty) homes**

- Only removing belongings from void homes with co-op permission

### **Legal and financial requirements**

- Compliance with the Taxation Construction Industry Scheme (CIS).
- Having current public liability insurance cover to a minimum value of £2 million payable for any one event.

### **Safeguarding, subletting, illegal activity**

- Ensuring that the contractor is aware of issues relating to safeguarding children and vulnerable adults; subletting; and other illegal activity and knows what to do if they are concerned that such activities may be occurring

### **Health and safety**

- Compliance with the co-op's Health and Safety Policy which relates to all aspects of work carried out by contractors
- Awareness of the Health and Safety at Work etc Act 1974, Construction (Design and Management) Regulations 2007 (CDM) and other statutory legislation
- Compliance with their own health and safety policy
- Compliance with a lone working policy and risk indicators where a member may be a cause for concern



## Housing co-ops – working with managing agents and contractors



- A named person responsible for health and safety
- Use and storage of dangerous substances
- Emergency evacuation procedures
- First aid procedures
- Safe passage for members and members of the public where applicable
- Use of scaffolding, ladders, work above ground level and work on roofs
- Work with asbestos
- Precaution against fire and explosions and fire safety integrity
- Reporting of accidents
- Work with sub-contractors





## Appendix three – GUIDE PROCUREMENT POLICY

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The following are aims of the procurement policy:

- To ensure appropriate procurement arrangements for goods, works and services

### Delegated Authority

*The co-op needs to ensure that it defines delegated authority in relation to procurement appropriately:*

- 1 The governing body has responsibility for procurement. The governing body will either make decisions about contracts for goods, works and services in governing body meetings, or will clearly record in its minutes any delegations for decision-making in relation to contracts for goods, works and services.
- 2 Where procuring the managing agent, the governing body will ensure that it has access to competent skills, knowledge and experience of procurement to ensure legal and regulatory requirements are complied with and appropriate procurement principles are applied. The governing body may also seek advice from its solicitor regarding procurement of the managing agent.
- 3 Where procuring contracts for other goods, works and services, the governing body may seek the advice of the managing agent or from another source to ensure compliance with legal and regulatory requirements.
- 4 When procuring goods, works or services, the governing body will appoint a Procurement Officer who will take responsibility for the management of the procurement process. The Procurement Officer could be the chair, another member of the governing body, a staff member from the managing agent or another external consultant.





## Procurement of suppliers and contractors

*A general description of the contractors and consultants the co-op may procure:*

- 5 Procurement covers the full range of activities related to obtaining goods, works and services from initial assessment of the business need, through contract management to the end of the service contract or useful life of an asset, including disposal.
- 6 The co-op works with a variety of suppliers, contractors and consultants to provide our services. These range from the managing agent to small local businesses to larger organisations.

## Procurement principles

*The co-op will need to agree a set of procurement principles – the below being a standard list of guiding principles:*

- 7 The co-op's approach to procurement is guided by a set of principles as below. The co-op shall require the managing agent and any consultant advising the co-op regarding procurement to comply with these principles:
  - **Value for money** – the co-op will aim to achieve the maximum benefit from goods, works and services considering a mix of quality, cost, relevance to the co-op as a housing co-operative, use of resources, fitness for purpose, timeliness, convenience, reducing wastage and improving service delivery.
  - **Equality & diversity** - the co-op values inclusiveness and is committed to embedding equality and diversity. The co-op is an inclusive organisation, where individual differences are respected, and where members, their families and staff of organisations we work with are treated with dignity and on the basis of their merits, abilities and needs, and where everyone has a fair opportunity to fulfil their potential without suffering discrimination or disadvantage. The co-op opposes all forms of unlawful discrimination, harassment and victimisation. The co-op expects everyone who works with it to comply with our policies and put them into practice.
  - **Anti-Bribery** – the co-op carries out its business transparently and fairly and has a zero-tolerance policy towards bribery by its governing body members, employees,





contractors, agents and other associated persons. The co-op will only work with organisations who commit to doing business without bribery.

- **Competition** – the co-op will not purposely narrow competition without justification or include discriminatory or disproportionate selection or evaluation criteria in its procurement processes that would have this effect. The co-op will treat suppliers, partners, sub-contractors and all economic operators equally without discrimination and shall act in a transparent and proportionate manner.
- **Communication and confidentiality** - communications shall be non-discriminatory, use widely supported technology and shall not restrict suppliers' access to the procurement procedure. In all communication exchange and storage of information, the co-op and the managing agent shall ensure that the integrity of data, and the confidentiality of tenders and tender-related information provided by prospective suppliers are preserved. The co-op and the managing agent may examine tender contents only after the time limit set for submitting a bid has expired.
- **Tenderer engagement** – the co-op shall take appropriate measures to ensure that competition is not distorted by prior engagement with current or prospective tenderers. The co-op will share with all tenderers any relevant information resulting from or in the context of the exchange with a tenderer.
- **Contract award** - the models used for assessing and scoring tenders will be based on objective qualitative criteria directly linked to the subject matter of the contract and information about the contractor and other specified criteria.
- The co-op will encourage active competition and allow the information provided by each supplier to be effectively verified to assess how well they meet the award criteria. All scoring will be fair, impartial, transparent and fully justified. Designated timescales will be followed. Once a supplier has been awarded, the Procurement Officer shall ensure that a written report is drawn up covering key aspects of the process leading to the award. The report shall be kept for a minimum of 3 years from the date of award.

#### Authorisation levels

*The authorisation levels included need to be the authorisation levels in the co-op's financial standing orders. The ones below are for guidance purposes:*





- 8 Services will be procured in accordance with authorisation levels (exclusive of VAT) set out in the Financial Standing Orders as follows:
- **value £1,000 or less** - no quotations necessary and can be approved by the managing agent
  - **value £1,001 to £3,000** – at least two written quotations are required and can be approved by two members of the governing body
  - **value £3,001 to £20,000** – at least three written quotations are required and can be approved by the governing body
  - **value over £20,001** - formal tender arrangements or procurement through an accredited framework agreement will be required and works may only proceed with the approval of the governing body.
- 9 Where there is a requirement to tender through other means than use of an accredited framework agreement, invitation to tender documentation will include:
- a detailed specification of the goods or services required
  - a pricing schedule
  - a number of quality questions
  - scoring criteria.

#### Public Contracts Regulations 2015 (PCR)

*The final three sections relate to PCR 2015 (formally OJEU) which only applies on larger contracts, but which co-ops will need to be aware of in their procurement strategies:*

- 10 The Public Contracts Regulations 2015 (“PCR 2015” or formerly the “OJEU Regulations”) are the UK implementation of relevant procurement legislation. Registered Providers are classified as “contracting authorities” for the purposes of PCR 2015, and so must comply with such regulations. Currently, regulations equivalent to OJEU regulations remain in force following the United Kingdom leaving the European Union, but there are plans to change the regulations.
- 11 All procurement tender procedures must be conducted in compliance with general procurement principles of transparency, non-discrimination and equal treatment of suppliers. Procurement procedures, strategies or projects must not be designed or





run with the intention of excluding the co-op's obligations under PCR 2015 or purposely disaggregating any contracts with the intention of avoiding procedures, internal thresholds or standard procurement thresholds.

#### Procurement thresholds 2020/2021

- 12 In 2020/2021, procurement tender thresholds were (excluding VAT):
  - £189,330 - for goods and services
  - £4,733,252 – for works
- 13 Contracts that are over the thresholds are subject to the full requirements of PCR 2015 and will be advertised in the Find a Tender Service (FTS).

#### Tender evaluation

- 14 The co-op undertakes either a price-only or value-for-money assessment to identify the supplier who will provide the best solution:
  - a price-only assessment is usually used for low-value, low-risk, uncomplicated tenders based on a tight input specification
  - a value-for-money assessment (detailed as Most Economically Advantageous Tender in Procurement Regulations) is based upon a balanced review of quality and price
  - a financial assessment of all bidders is undertaken on all tenders, where appropriate.

#### Potential risks to be avoided

- The co-op does not procure goods, works and services in a fair and transparent way
- The co-op breaches legal and regulatory requirements relating to procurement
- The co-op does not comply with PCR 2015 where a contract for goods, works and services exceeds procurement thresholds

