

AFFORDABLE HOMES STRONG COMMUNITIES

SECTOR STUDY

Stock managed pending transfer: addressing delays

May 2006



This Sector Study examines the reasons why some housing associations (HAs) experience delay in taking full possession of properties which they are managing on behalf of other HAs on the understanding that the title will be transferred to them. These are normally properties which have been developed by a larger HA on behalf of a smaller one, on the understanding that, following a short period of management, the ownership will be transferred. For convenience, the arrangement is described in the Housing Corporation's statistical returns as 'Stock Managed Pending Transfer.' The study also considers whether there are any lessons for good practice which could assist these or other HAs entering into management arrangements. The starting sample was made up of the 91 owning housing associations and 87 managing housing associations identified as involved in the programme in the Regulatory and Statistical Return (RSR) on March 31 2002.

Key Findings:

- By May 2004, forty seven of the HAs which had identified that they managed stock in the programme in March 2002 were still managing stock on behalf of others and waiting for transfer. This stock was owned across fifty six owning housing associations.
- The general feeling about the stock managed pending transfer process, among both owners and managers, was positive.
- Where the transfer of stock had been delayed it was usually seen as being the result of financial difficulties faced by the recipient HA or because the recipient HA was under Housing Corporation supervision.
- In other cases, problems arose from unclear objectives at the outset, the lack of a signed management agreement and timetable leading to misunderstandings and conflicting expectations.
- In some cases staff turnover at both owning and managing HAs had meant that expert knowledge had been lost and the transfer had slipped down the agenda. This was especially true for owning HAs.
- Putting in place relatively straightforward formal procedures would have helped to facilitate many of the transfers. However financial difficulties faced by managing HAs and difficulties in determining transfer terms and conditions presented more fundamental hurdles.
- Almost all owners and managers were confident that the transfer of ownership would take place at some point in the future. In only two cases was this questioned.

The questions

Who is involved?

The process of managing stock pending transfer is perceived in general as both unproblematic and desirable. Large mainstream HAs develop stock on behalf of smaller/specialist HAs and the properties are handed into the ownership of the smaller HA upon final completion. A number of Black and Minority Ethnic (BME) HAs have used this route to expand their portfolios. It can be financially beneficial for the smaller recipient HAs since the larger HAs are better able to achieve economies of scale, while the larger developing HAs fulfil their role as enabler under the Corporation's BME policy. The Housing Corporation's 1998 BME housing strategy¹ acknowledged that in some cases managing stock rather than taking on full ownership could help smaller HAs because of the financial risk associated with ownership. In these cases proper management agreements should be established clearly outlining both HAs' responsibilities. Usually, the process runs satisfactorily for both parties, but in a significant proportion

of cases there are delays. It is possible to examine the nature of these concerns because in 2002 for the first (and only) time a question was included in the RSR asking about stock managed pending transfer into ownership in the future. The data collected provided the Housing Corporation with a census of stock managed in this way. An important finding was that, although it was widely believed that BME HAs were the main managers of stock awaiting transfer into their ownership, in the event many smaller and mainstream and specialist HAs² also found themselves in this position.

The first stage of the study - reported in Sector Study 31 - examined the extent to which the stock identified in March 2002 had actually transferred by May 2004. It analysed the RSR data to identify the extent of delays in transferring stock but because it was quantitative in nature the reasons behind the delays were unknown. Table 1 sets out the number of HAs involved in stock managed pending transfer in 2002 and how many were still managing stock in this way in May 2004, over two years later. It is this subset of HAs on which the second stage of the research focused.

¹ Black and Minority Ethnic Housing Policy, Housing Corporation (1998)

² Stock managed pending transfer into ownership (2004), Sector Study 31, Housing Corporation

Why might we expect there to be problems?

A process such as the management of stock pending transfer can suffer from delays and difficulties because the objectives of the two organisations may be different and circumstances may change. For example:

- the owning HA might decide that it wants to keep the properties within their asset base in order to meet their own objectives;
- the managing HA may find the properties are not consistent with their requirements and changing profile;
- the owners may find that the managers do not meet their criteria of competence;
- there may be problems in agreeing terms and conditions – notably with respect to price;
- the managing HAs may face problems financing the transfer;
- external factors outside the control of either HA may intervene; and
- there may simply be a lack of impetus on one or both sides.

In examining these possibilities it should be remembered that the fact of ownership (and usually relative scale and experience)

will tend to put the owning HA in the driving seat – and that this implicit position of relative power may make it more difficult for both sides to agree terms.

Within this framework the study aimed to understand the attitudes of the owners and managers through qualitative interviews with both owning and managing HAs and to uncover where transfer situations were generating difficulties, the reasons for these difficulties and the extent to which the Housing Corporation could assist in improving the process.

The Evidence

1. Attitudes and Responsibilities Reasons for transfer of ownership

The vast majority of both owners and managers were content that there should be a transfer of ownership and this was usually the intention at the outset.

Table 2 lists the most common reasons stated by managing and owning HAs for setting up a transfer of ownership agreement.

³ In most cases more than one answer was given. Tabulations have been ordered by greatest importance

Table 1 HAs owning or managing stock pending transfer

	Owning HAs	Managing HAs
No. of HAs saying they were involved in managing stock pending transfer in March 2002	91	87
No. transfers completed by May 2004	24	25
No. of co-ops extracted from sample*	2	15
Incorrect reporting in 2002 extracted from sample (no.)	9	0
No. of managing HAs awaiting outstanding transfers in May 2004		47
No. of owners waiting to transfer stock	56	

*Co-ops were excluded because they manage their stock on a different basis.

Table 2 Benefits of transfer³

Reason	Managing HA	Owning HA
Financial benefits	✓	✓
Economies of scale	✓	✓
To increase standing in a Group structure		✓
Provide better management for client group	✓	
To help the managing organisation to grow	✓	
To give support to BME HAs		✓

Table 3 The importance of transfer

Reason	Managing HAs	Owning HAs
Units add to asset base	✓	
Cost effective to transfer	✓	
Growth and security	✓	
Decision to transfer needs acting on		✓
Belief in assisting BME/smaller HAs		✓

- The majority of HAs stated that the transfer of ownership was set up to give the receiving HA greater stability and assets. For the receiving HA (the managers) this was an important way to ensure the growth of stock by securing an asset base against which they could borrow in the future.
- A significant number said that the transfer of ownership between HAs had arisen out of more general partnership and development agreements. Many larger owning organisations are seen as having development expertise that the smaller HAs do not. By teaming up larger and smaller HAs, development costs could be saved and economies of scale achieved.
- The third main reason given for transferring ownership of units was specifically to facilitate BME HAs to gain an asset base. For both sides this was often driven by Housing Corporation policy.

‘The transfer of ownership was because of our recognition to support a BME association by facilitating them to get properties.’ **Mainstream owning HA**

‘We want to increase assets on our balance sheet and raise more finance and reduce bureaucracy. We want to raise our own private finance.’ **Recipient managing BME HA**

The importance of transfer

Table 3 highlights the main reasons given about the importance of transferring units currently pending transfer. Not surprisingly the managing HAs stated that the transfer of units would add to their asset base providing them with more security in the hope of enabling future growth. For owners the main two reasons were that the transfer of ownership arrangement should be honoured and that smaller HAs should gain an asset base, particularly BME HAs. Usually the managing HA already did all the work and acted as landlord.

The vast majority of managers said that if, for some reason, the units could not be transferred into their ownership it was important that they remained within their management portfolio. In the majority of cases this was because the managers provided a specialist service to their particular group of tenants and the tenants already viewed the managers as landlord. Again, financial issues were highlighted - the units being managed were generating income for the HA.

Management responsibilities

In almost all cases the main management functions for units managed pending transfer were the responsibility of the managing HA. Only in the case of buildings insurance, major repairs and in a few cases minor repairs were the owning HAs responsible. The majority of managing HAs said there was no difference in management responsibilities between stock managed pending transfer of ownership and solely managed stock.

The vast majority of both owners and managers viewed the units as owned by the managers in practical terms even though legally they were not. A minority of owning

HAs said that they still viewed the units as owned by them, particularly on their internal recording systems. Nevertheless, none of the owning HAs collected the rents, and not all set the rents on them - although this was varied in practice, particularly where the transfer of ownership was taking years and personnel at the owning HA had changed over time.

Not surprisingly the vast majority of managing HAs said that the rents from the pending ownership units formed part of their income stream and they paid interest to the owning HA. Only one managing HA said the owning organisation collected the rents for the units they managed pending transfer. In this case, the owning HA declined an interview. Only two of the owning HAs mentioned lack of income (via interest owed on the units) as a reason for keeping the units within their own portfolio. Generally this was not raised as an issue. Indeed in a few cases the owning HAs said they actually made a financial loss on pending transfer agreements but were committed to helping smaller HAs and could accommodate the loss.

Almost all of the reasons given for transfer and the management procedures in place, point to an altruistic attitude on the part of

owning HAs together with an understanding by both parties of the benefits of transfer. Where the problems started to emerge was in process and implementation.

2. Processes and procedures

Transfer agreements and timetables

One reason for delay in transferring the stock from the owning to the managing HA lay in the form and nature of the management agreements - in particular whether formal agreements had been set up between the owning and managing HA for this stock or whether the management of stock and the ultimate transfer of units were based on an informal understanding between both parties. Housing Corporation policy⁴ states that:

‘Housing associations must have management arrangements, resources, skills and systems which are appropriate to their circumstances, scale and scope of operation, and ensure the activities:

- are adequately monitored;
- are undertaken efficiently and effectively;
- are backed by proper systems of assurance for internal control.’

Those HAs that had established formal agreements stated that they had been set up right at the outset, during the land purchase and development agreement stage. Table 4 gives the most common types of agreements in place.

Table 4 Use of transfer agreements

Agreements	Managing HA	Owning HA
Formal agreement in place	✓	✓
Informal understanding	✓	✓
Included in the development agreement		✓
Included in the management agreement	✓	

⁴ Regulatory Code, Housing Corporation, 2002

Table 5 Reasons why agreements were not in place

Reasons for no formal agreement	Managers	Owners
Don't know/historical reasons	✓	✓
Correspondence only	✓	
Difficult to track because of changes in personnel on owning side	✓	✓

The majority of HAs said there had never been an agreed timetable for transfer. Agreements were left open ended and often depended on the financial ability of the managing HA to purchase the stock. Table 5 gives reasons why, in some cases, agreements were never established between the owning and managing HAs.

This finding is surprising considering what is at stake both financially and materially. One would have expected that formal safeguards would have been established at the outset to make sure both parties adhered to a schedule. When asked what could have been done to improve the transfer process the majority of respondents said that a timetable should have been put in place at the beginning so that stock transfer would have remained on their agenda and not left to slip.

The minority of HAs that did establish a timetable for transfer had agreed in principle that transfer should occur after practical completion or the defects period. Most said that specific conditions would have to be met before the sale of stock to the managing HA. The ability of the recipient of the stock to obtain a loan facility was seen by both parties as a key condition, along with agreeing the value and costs. However owning and managing HAs had different perspectives on the conditions of transfer. Two HAs talking about the same transfer agreement gave these reasons as to why the timetable had not been adhered to.

‘The deadline was for the end of March 2003 and we are now hoping it will be done by the end of this financial year. In the terms and conditions the main issue is to agree value, which is now based on existing use value, which is driven by rents. As the rents increase in April we would need to go through the whole re-evaluation process again, if it does not go ahead on time.’ **Mainstream owning HA**

‘I think the original timetable was to transfer in about 6 months, but it has been ongoing due to a revision in the S.106 agreement.’ **Recipient managing HA**

These quotes reveal poor communication between both parties. Basic correspondence between the two could have led to a resolution by putting on record the true reasons for the delays.

Setting aside the misunderstandings of the past, it was important to ascertain whether it was now possible to put a timetable in place. Half said it would be possible, half said it would not. It was not known, when the study completed, what practical progress had been made.

Reasons why units have not been transferred into ownership

The majority of both owning and managing HAs cited a lack of finance from the recipient HA as the main reason why transfer of stock had not taken place. In addition, in several cases, no transfer price had been agreed between both parties. The most common reasons are shown in Table 6.

Table 6 Reasons for delay in transferring ownership⁵.

Reason for delay in transfer	Managers	Owners
Recipient is under supervision	✓	✓
Awaiting HC approval	✓	
Legal conditions have yet to be met	✓	✓
Units need to be free from defects	✓	
Difficulties splitting costs	✓	✓
Loss of legal documentation		✓
Problems with Land Registry		✓

The three reasons on which there was a measure of agreement between owners and managers were:

1. The receiving HA needed to be released from Housing Corporation supervision. Some had been in that position for up to four years.
2. Legal conditions had not been met. In these cases, drawing up and agreeing the legal documentation proved to be very time consuming.
3. There was lack of agreement about the costs.

In some cases the barrier to transfer was encountered just a few weeks before it should have taken place. Most commonly, they were defects or legal issues which the HAs believed could not have been anticipated at any specific time.

The evidence suggests that the main reason for delays to transfer relates to the absence of a clear understanding between the parties at the outset about the process, the objectives, the costs or the timetable. Staff changes and shifting priorities may exacerbate the problems, but their impact

would have been limited if they had taken place within a properly documented framework agreement which facilitated the systematic discussion and management of change. The financial fragility of some managing HAs may play a part – but, again, this would be lessened by a structured agreement.

3. Ways Forward

Strategies to improve the transfer process

Table 7 shows that the majority of owning HAs thought recipient HAs should have put loan facilities in place earlier to ensure raising funds for purchase. The majority of managers thought that better documented information and a systematic approach to recording information might have helped transfer to take place earlier. A stumbling block both parties mentioned was the turnover of staff while the transfer process was in negotiation. Because of this transfer was not kept at the top of the agenda and slippage occurred.

⁵ In most cases more than one answer was given. Tabulations have been ordered by greatest importance.

Table 7 Strategies to enable smooth transfers

Reason for delay in transfer	Managers	Owners
Managing HA's ability to raise finance		✓
Continued liaison between parties		✓
Owning HAs need pressure to speed the process along	✓	
Owners do not see as a priority	✓	
Become part of a group structure	✓	

Research carried out for the Housing Corporation⁶ recommended that:

‘The partnership agreements should clearly set out responsibilities, sharing of costs, coverage, liabilities, etc. including arrangements for dealing with disputes, and be signed by all members.’

Two years later, these recommendations for partnership working between HAs appear not to have been incorporated by either owning or managing HAs, in the cases discussed here.

Looking to the future

The vast majority of both owners and managers were confident that the transfer of ownership of the units reported in the RSR 2002 would take place at some point in the future, and by 2004 said they were already far into the transfer process. Of those that could not give a specific date many hoped the stock would be transferred by the next financial year. As one manager commented, ‘the decision that has been taken needs to be acted on’.

⁶ BME Housing Associations: The challenge of growth and viability October 2003, Housing Corporation.

Some owners were uncertain that ownership would transfer because of lack of capacity (either financially or managerially) on the part of the managing HAs. In one extreme case, although a decision to transfer ownership had been taken, the owning HA was reluctant to let the units go because it had no faith in the managing organisation. The owner felt the managing HA should be under Housing Corporation supervision, and it was only a matter of time before this happened. When asked if Housing Corporation intervention could help the HA responded:

‘If they [the recipient HA] were not a BME we would have taken the units back off them, but they play the race card which is very effective...a lot of BMEs struggle and the Housing Corporation are very reluctant to step in and pull the plug.’

To date the managing HA has not been placed under Housing Corporation supervision. It seems unlikely that the transfer of units will ever take place without some form of outside intervention.

Conclusion

It appears from this study that, while various immediate reasons can be put forward to explain the non-transfer of stock in particular cases, they invariably stem from an underlying failure to agree objectives, timetables and terms and conditions at the outset. This leaves the HAs with no framework within which to manage changes in circumstances or personnel.

The issues raised will continue to be of importance in the future. The partnering arrangements introduced under the new investment procedures encourage the development of stock by larger housing associations on behalf of smaller ones. In many cases, this will result in smaller HAs managing the stock pending transfer. If both sides set up relatively common sense arrangements for clarifying, monitoring and revising if necessary objectives and timetables, then the transfer of stock between developing and non-developing HAs need not be problematic.

Further information

This report was written by Fiona Lyall-Grant at Dataspring, Cambridge Centre for Housing and Planning Research, Department of Land Economy, Cambridge University, 19 Silver Street, Cambridge CB3 9EP

Our offices

Maple House

149 Tottenham Court Road
London W1T 7BN
www.housingcorp.gov.uk

CENTRAL:

Attenborough House
109/119 Charles Street
Leicester LE1 1FQ
Tel: 0845 230 7000
Fax: 0116 242 4801

31 Waterloo Road
Wolverhampton
Tel: 0845 230 7000
Fax: 1902 795001

Westbrook Centre
Block A Suite 1
Milton Road
Cambridge CB4 1YG
Tel: 0845 230 7000

LONDON:

Waverley House
7-12 Noel Street
London W1F 8BA
Tel: 0845 230 7000
Fax: 020 7292 4401

NORTH:

4th Floor
One Piccadilly Gardens
Manchester M1 1RG
Tel: 0845 230 7000

1 Park Lane
Leeds LS3 1EP
Tel: 0845 230 7000
Fax: 0161 242 2001

St. George's House
Team Valley
Kingsway Trading Estate
Gateshead NE11 0NA

SOUTH EAST:

Leon House
High Street
Croydon
Surrey CR9 1UH
Tel: 0845 230 7000
Fax: 020 8253 1444

SOUTH WEST:

Beaufort House
51 New North Road
Exeter EX4 4EP
Tel: 0845 230 7000
Fax: 01392 428201

For further copies of the publication please call 0845 230 7000 or e-mail enquiries@housingcorp.gsx.gov.uk

We can also provide copies in large print, Braille and audio cassette, on request. Other language versions may also be available.

