

**The Royal Borough of Kensington and  
Chelsea**

*CREST WILL BE  
ADDED HERE, AS AND  
WHEN REQUIRED, BY  
GOVERNANCE  
SERVICES*

**Key Decision Report dated [1]**

**For Decision by Councillor Fiona Buxton,  
Cabinet Member for Housing, Health and  
Adult Social Care**

**Report by the Executive Director of Housing,  
Health and Adult Social Care and the Chief  
Housing Officer**

**Addressing Governance Issues within RBKC  
TMO Ltd.**

**1. Introduction**

- 1.1 This report outlines the ongoing governance problems within the Tenant Management Organisation (TMO). It also proposes action that the Council can take under the Modular Management Agreement (MMA) to ensure both that the Board are aware of our serious concerns over their performance and to support the new Chief Executive Officer (CEO) of the TMO to assist the Board in working cohesively and focusing on performance.

**2. Background**

- 2.1 In early 2008 after declining performance statistics from the TMO and a damaging Emergency General Meeting (EGM), the TMO and Council entered into a voluntary Deed of Variation to the Management Agreement, agreed by Key Decision. The TMO felt that they needed Council support to see through Constitutional changes which would avert such an EGM being held in the future and the Council wished to increase its influence with the TMO because of the performance issues.
- 2.2 As part of the variation agreement a Partnership Director was appointed, working to the Chief Housing Officer to assist the TMO in the development of an Improvement Plan. The Partnership Director spent significant time with all departments of the TMO and worked with them, amongst other things, on a basic system of performance management. As a result of his investigations and assessment an Improvement Plan was developed in Autumn 2008, which was agreed by the TMO Board in March 2009.

- 2.3 Once the Constitutional changes were agreed and implemented, the TMO Board submitted itself for re-election in November 2008. The new Board has therefore been in place for approximately six months. However despite the Constitutional changes the TMO Board continue to experience difficulties and we believe are not operating cohesively to ensure good governance of the organisation.
- 2.4 A Member of the Executive team of the TMO has refused to attend meetings where a board will be present as they believe he has breached the code of conduct for board members. The interim CEO left on May 8<sup>th</sup>, which was earlier than planned as result of relationship breakdown between the board and executive. A members of the Senior Management team has also resigned within the last two weeks as a result of what he considers to be the unsustainable working relationship between the board and the Executive.

### **3. Need**

- 3.1 As outlined above the situation at the TMO in relation to governance is precarious. While other performance measurements are at present showing some improvement, there are, however, doubts as to whether this can be maintained where the Board are unable to demonstrate clear leadership of the organisation.
- 3.2 The Council believes that good governance is key to good performance and that we jeopardise services to our tenants and leaseholders by standing by and doing nothing. The approach taken by the Council last year in entering into a voluntary agreement with the TMO to develop an Improvement Plan was a response to under performance and we felt that providing support to the CEO to make key changes was the best route at that time. This, unfortunately, does not seem to have been enough to ensure improvements in governance at the TMO.
- 3.3 The Council does not have the locus to require the TMO to remove, or expel Members of the TMO Board. The role of the Council in providing support and assistance to the TMO in dealing with its management functions under the Agreement may on occasion conflict with the Council's continuing statutory, contractual and common law obligations to its tenants and leaseholders.
- 3.4 We do have a responsibility to support and assist the TMO in delivery of their functions if requested.
- 3.5 Under the Modula Management Agreement (MMA) there are two routes for the Council to take if there is underperformance at the TMO, both involve serving a notice either a breach notice or a supervision notice.

- 3.6 If after agreeing an Improvement Plan the TMO fails to implement it:
- i) the Council may serve a Breach Notice under clause 19 of the MMA, specifying where there have been failures to perform against the Improvement Plan. Should the TMO fail to remedy the items set out in the Breach Notice, the Council can then serve a Warning Notice which may result in the Council terminating the TMO's exercise of the functions specified in the Breach and Warning Notices.
- Or,
- ii) where the Council is satisfied that there are serious failings of the TMO, the Council may serve a Supervision Notice in respect of all the TMO's management functions specified in the Supervision Notice. Specific time frames are given, which together cannot exceed 12 months. That is the time during which the TMO is required to take specific action
- 3.7 "Serious failings" are described in the MMA as "serious failings in the financial performance, management or governance of the TMO and that there is no realistic prospect of remedying the situation by taking action under any other provision of (the) Agreement..."
- 3.8 The effect of the Supervision Notice is that the TMO may require the Council to appoint an independent person and the Council will be obliged, under the procedure, to accept any recommendations on the content of the proposed Supervision Notice.
- 3.9 The Improvement Plan while only agreed formally by the TMO Board in March 2009 is, in areas other than governance, broadly on track. However key actions within the plan in relation to improving governance have not been completed and with some members of the Executive Team now refusing to work with a Board member, we are concerned they unlikely to be completed in a reasonable space of time.

#### **4. Options**

##### **4.1 Option 1.**

The Council could do nothing and work with the TMO purely on performance outputs linked to operational issues and not try to effect lasting improvement in governance of the organisation. However given the strong link between healthy governance of an organisation and its performance and the fact that governance has been an ongoing problem for the Organisation for at least eighteen months now, this option seems untenable.

##### **4.2 Option 2.**

As we have no right to step in under the MMA to alter the Board composition or make significant changes to the governance arrangements our options are limited to action under the MMA.

**4.3 Option 3.**

A supervision notice could be served on the TMO under the MMA as described, however this approach, albeit voluntarily agreed, rather than as a result of action under the MMA, has in effect already been tried by entering into the Deed of Variation, appointing a Partnership Director and developing an Improvement Plan.

**4.4 Option 4**

The Council could serve a Breach Notice under the MMA as described, based on governance failings and underperformance against the requirements of the Improvement Plan. This would give a clear indication of the significance of the ongoing governance failings in the TMO to the Council and potentially assist the new CEO of the TMO in his message to the Board that they must work together. The Council would also be prepared, alongside service of the notice, to make clear to the TMO that it is keen to provide assistance to the TMO if requested to allow improvements to be made.

**5. Legal implications**

5.1

**6. Recommendation**

6.1 I recommend that Option 4, service of a Breach Notice on the TMO under the MMA is pursued.

Laura Johnson  
Chief Housing Officer

Jean Daintith  
Executive Director of Housing, Health and Adult Social Care

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**FOR COMPLETION BY AUTHOR OF REPORT:**

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