

The 'MMA Issue' with Hackney Council

1. MMA stands for Modular Management Agreement. It is the contract you make with the Council when you decide to become a Tenant Management Organisation. It is in two parts: The Management Agreement itself; the Schedules. The first part is set down in law, and applies to all TMOs. The second part sets out the details of what is agreed in your particular TMO.

The first part contains a set of options for the TMO to choose from, as to which management functions it wants to take on. For each management function the TMO gets paid a fixed Allowance, which is the TMO's income. The functions the TMO doesn't choose to take on remain the responsibility of the Council. (They are actually carried out by Hackney Homes, which is an Arms Length Management Organisation, or ALMO. Hackney Homes is a private company, limited by guarantee, wholly owned by Hackney Council)

The Schedules provide the details. So, for example, if we choose in our particular agreement to be responsible for Grounds Maintenance, the Schedule gives a list of all the things to be done, the frequency, the standard it must be done to, etc.

2. The MMA also sets out the responsibilities of the Council, (HH, in effect) and there are, or are supposed to be, schedules setting out the details of that. The responsibilities of the Council to carry out *its* functions properly are every bit as important, obviously, as our responsibility to carry out properly the functions we have chosen to take on.

The Council failing to do its functions properly can affect our ability to do ours. For example, we have responsibility for reactive repairs, and we get paid a fixed amount of money to do that, however many repairs turn out to be needed. The Council has responsibility for planned maintenance of the infrastructure. If, as is the case, the Council is not maintaining the drains properly, and they are backing up and causing damage inside people's flats, it is our responsibility to repair that damage, so our costs are greater than they would otherwise be. The amount of money we receive may not be enough to pay for it.

3. The MMA is supposed to be signed before you become a TMO. It is signing the MMA that makes you a TMO. Somehow the Board in place when we became a TMO never signed it, and somehow Hackney Homes never noticed, or didn't seem to mind. We didn't know this until we'd already been operating as a TMO for five years, at which point we started looking at it in detail with a view to signing it as soon as possible.

When the present Board came in we adopted a policy of fully constructive engagement and collaboration with Hackney Homes, which contrasted with a previous approach of suspicion and sometimes even hostility. Our hope, which we expressed in a Strategy document in January 2012, was to find collaborative ways to tackle the estate's large backlog of problems, which included chronic damp, blocked and overflowing gutters, constant problems with drains and many other matters.

By October 2012 almost all of these matters remained unresolved, and we began to think it was perhaps naïve to expect change to happen in the way we had hoped, and that we should pay more attention to the MMA, the actual contract, that was supposed to govern these things.

4. When we looked at the MMA in detail, and in the light of the problems we'd been encountering getting things done, we were struck by the fact that there was a big difference between what the MMA says, and what was happening in practice.

We had recently been asked by our nominated Liaison Officer at HH not to bring issues up with him, but to deal with the individual managers concerned. We found that these managers passed the buck from one to another, said things like 'sorry, I haven't got a budget for that', and were often unhelpful to deal with. They didn't appear to have any understanding of the TMO concept. We asked for an organisational chart for HH, so we could work out who to deal with, and who to go to if that person wasn't helpful. We were told there is no organisational chart for HH. We were eventually supplied with a list of names, but without any indication of their organisational relationship to one another.

Throughout this period we wrote innumerable letters to Hackney Homes, trying to get them the address what we saw as fundamental structural problems in implementing the agreement. Much of what we were saying remained unanswered, but we did succeed in organising a big meeting with the Head of planned

maintenance at HH and other officers in charge of the various matters we were concerned about. On the face of it it was a constructive meeting and ultimately it led on to the works that took place earlier this year. But we learned in the meeting that no one has specific responsibility for something causing constant problems, and expense, for us as a TMO, which is the parts of the drainage system that are above ground. These were frequently blocking, causing damage inside people's flats, and causing repair bills to us, with our limited resources, but in fact being caused by a lack of maintenance by HH, and was a good example of how our responsibilities under the MMA were not joined up in practice to those of HH.

5. We decided we needed to understand better what the wording in the MMA meant, and what options it gave us for remedying matters that weren't working as they should. So we had it scrutinised by a firm of solicitors and asked them to clarify the meaning of various provisions that were there, but not happening in practice. The solicitors sent us a report in November 2012. The report revealed that there were a number of key details missing from what are called the Schedules to the MMA. These specify exactly what the parties are agreeing to in practice about the various chapters in the Agreement itself. We were particularly interested in the following parts of the report:

"Clause 8—replacement repairs: The Council is under an obligation to replace or renew (whether as part of a planned maintenance or otherwise) all component parts of properties which: have deteriorated to the extent that a repair would be ineffective and uneconomic; require a replacement to ensure the safety of the persons using the dwelling; or require replacement or renewal as part of the modernisation or improvement of the dwellings.

The TMO and the Council are to determine whether a case falls within the category of having deteriorated to the extent that a repair would be ineffective and uneconomic in accordance with the procedure set out in Chapter 2, Schedule 1; but we note there does not appear to be any such procedure in this Schedule."

(This seemed to encapsulate, in a way, all the problems we had been experiencing throughout the year: long term neglected maintenance, leading to the need for repairs beyond the scope of the TMO to undertake, and no effective routine mechanism for discussing it with HH to get the problem solved).

The report also pointed out missing or inadequate Schedules in relation to the role of our liaison officer in HH.

"[Schedule 3] should identify the person responsible for providing liaison and support to the TMO, and the type and level of support that will be provided. It should describe the extent of the liaison officer's responsibilities in relation to strategic and policy matters as well as day to day contact and support for the TMO. Where other parts of the Council are responsible—for example in dealing with specific problems or monitoring of the Agreement—there should be a procedure for the TMO to contact the relevant person in the Council. There should be clear reporting lines between the TMO and the liaison officer, and the TMO and other parts of the Council.

The Council is also under an obligation to be open and accountable in all dealings concerning the TMO and the operation of the Agreement except where this would breach confidentiality or the Data Protection Act 1998."

6. We sent these observations to HH on 6 November 2012. They responded on 4 January 2013. On the matters highlighted above their response was:

(Replacement repairs) : "There is no set procedure, these are determined on a case by case basis. Clause 8.2 of the Agreement has been amended accordingly." (They had changed the wording of the MMA, which can't be changed, from "...in accordance with the procedure set out in Chapter 2 Schedule 1" to read "on a case by case basis". In other words they had ignored the issue raised by our legal advice.

(Responsibilities of Liaison Officer): "The new client liaison post Job Description is now attached." The job description did not set out the matters the legal advice said were necessary.

7. These matters were raised in my report to our Board meeting on 11 Feb 2013, which was attended by Imamul Choudhury, our HH liaison officer, and the issues were thoroughly discussed. At this meeting we created a sub-committee to deal with this and other matters. However at this point the TMO's agenda became dominated by certain urgent issues to do with staffing matters.
8. At their request our April Board meeting was attended by Ruth Clapham and Kam Sandhu-Shinger, and they spoke to Andy, Lynsey and me (the sub-committee mentioned above) before the meeting. They said, more or less, that if we didn't sign the Agreement they would stop our funding, on the basis that we're not a TMO if we haven't signed the Agreement. We said we can't sign the agreement, because we don't yet agree, and we have been trying for many months to find agreement. There was a suggestion that this position was not shared by the full Board, but we pointed out that it had twice been formally and

unanimously decided at Board meetings. The upshot of this meeting was that they asked us to draft Schedules that covered the matters we were concerned about, and we undertook to do that.

9. We asked Richard Briden, our part-time development worker, to draft the relevant clauses covering Replacement Repairs, Liaison and planned maintenance. After carefully researching the statutory guidance about what should be in the MMA and its schedules he came up with draft procedures to cover the points we had been advised were missing from the Schedules. (Initially he made the same mistake HH had made in amending the MMA itself (which can't be changed), but this was later corrected so as to incorporate procedures in the Schedules and Annexes.)
10. HH responded in various ways, none of which addressed the basic points at issue. In many cases matters which should be included in the Schedules, as part of a specific contract between the Council and the TMO, were answered by HH by sending us hyperlinks to various Council publications destined for tenants, saying things like:

"We aim to deliver excellent customer service by putting our customers at the centre of everything we do and by having regard to their diverse needs.

Our service standards...

Our Neighbourhood Housing Offices and the Leasehold and Right to Buy office are open Monday to Friday between 9am -5pm. Some offices may offer extended opening times. Full details of extended opening times are given on our website www.hackneyhomes.org.uk and are displayed in these offices. The Housing Contact Centre (for reporting repairs) is open Monday to Friday 8am to 7pm and Saturday 9am to 1pm

We offer online services, including online rental payments and repairs reporting, 24 hours a day at www.hackneyhomes.org.uk. This website is updated weekly. It provides comprehensive information about Hackney Homes' services"

Plainly this is not what was meant by the statutory guidance that the Schedules should set out in detail what is agreed between the Council and the TMO.

11. There followed a number of exchanges between Richard and HH which failed to move the matter forward.
12. Ruth asked if she could attend our June meeting to talk about the MMA, but before the meeting changed the date to our July meeting.
13. Ruth and Kam attended our July meeting and restated the case that the MMA must be signed, and we restated our case that we hadn't yet reached agreement, and indeed hadn't yet properly discussed the issue, as our proposals tended to be batted back without discussion. Again the suggestion was made that our position was not shared by the full Board, and we pointed out that it had been reconfirmed, unanimously, at our May meeting. The outcome of this was that Ruth proposed that Kam have a meeting with Richard to see if they could better identify the sticking points, which we felt would be useful. The meeting was arranged for 16 July, but because of an oversight Kam failed to turn up to it. It was rescheduled for 22 July, and I understand that some progress may have been made, but we won't know until Kam has some discussions with Property Services at HH.
14. Conclusion. We are firmly committed to having a constructive relationship with HH. We are even more firmly committed to improving the quality of our old and long-neglected housing. We are a TMO. That gives us a significant burden of work to do, that would otherwise be done by HH. The other side of the coin is that it gives us contractual rights, which have not been being observed. The Statutory Guidance on TMOs requires the practical application of these rights to be spelled out in detail in the contract. That is what we are insisting on. We need to come to a genuine agreement with the Council on this, and when we have done so Property Services staff, and others, need to be trained so as to have an understanding of what their obligations to the TMO are.

As you know, a lot of work was done on the estate at the beginning of this year. This was done following a huge amount of nagging, letter writing, lobbying Councillors to help us get meetings with HH personnel. That is not sustainable indefinitely. The work that has been done is in the main work that has been scheduled and then cancelled repeatedly over many years. We must make sure that now this work has been done we don't get forgotten again, and neglected for another 20 or 30 years. Maintenance should be an ongoing process, and improvement, after so many years of neglect, should be taking place little by little, year on year, even if only to a limited extent.