

# The Case Against Transfer

Transfer of council housing to a housing association (registered social landlord or RSL) means the loss of our secure tenancies, higher rents and charges, less democratic control of the housing service, increased homelessness, big pay rises for senior managers and profits for the banks, and more risk for us.

Housing associations are lobbying for deregulation and to float on the stock exchange. The new landlord may get into financial trouble, and if it goes wrong there is no return. With the credit crunch the risks now are much higher. Housing associations' dependence on the private market has meant that their business model is coming apart at the seams, more are expected to merge/get taken over, and some are now expected to fail.

### Transfer Means Privatisation

Housing associations are private companies in law and borrow directly from the private market. "Walker (2000) characterises housing associations as behaving increasingly like private sector organisations 'property-driven' and managing stock as an asset to maximise returns" (Changing Boards, Emerging Tensions, Liz Cairncross, Oxford Brookes University, Spring 2004)

Transfer means privatisation in law and in practice. Many housing association board members are paid, executives are on fat-cat salaries, and banks and lenders are in the driving seat.

Talk of 'not for profit', community-based ownership or co-operatives is just window dressing to disguise these basic facts. Housing associations may be technically 'Not for Profit' today but they are lobbying for that to change (see Profit, Deregulation and Market Forces below).

Many transfer associations set up group structures to get into private housing – market renting, new development and building luxury houses for sale. They get all the land our estates are built on – as prime development sites. Transfer plans often include demolition and higher density rebuilding, including new private luxury homes our children won't be able to afford.

Transfer is risky. One fifth of transfer associations have had to be placed under supervision by the Housing Corporation. "Such action, which involves the appointment of external experts to the board of the association, is only triggered by poor performance or serious management irregularities" (The Guardian, 25 May 2005). And if things go wrong, there is no return to the Council.

The risk has increased with the recent credit crunch and recession. "What associations will not admit is that they have now become dependent on private lenders... the crisis in private funding that threatens housing associations has not been



caused by over-regulation by the state. It is the private funders – faced with a credit crunch – that have closed down on associations. Loans are more difficult to obtain. Those with loans are being asked to adhere to the minute detail of loan agreements. What the events of September have exposed is that, in an under-regulated world, the reckless competition of a few puts the homes and livelihoods of millions at risk." (Morag McDermot, Lecturer in Law University of Bristol, writing in Roof November/December 2008)

### Loss of secure tenancy

See page 4, Secure v Assured Tenancies, for details.

### Wasted Money and Broken Promises

According to the National Audit Office, privatisation costs £1300 per home more to improve homes after transfer, than it would cost if councils were given the money to do the work themselves. (Improving Social Housing Through Transfer, 2003)

Councils, as public bodies, are able to borrow money at a lower rate of interest than housing associations. The 'management costs' of housing associations are also higher – they pay fat-cat salaries to senior executives (some over £200,000), and spend a fortune on new office buildings and glossy self-promotion. Someone has to pay for this.

Parliament's Public Accounts Committee found only a 3% increase in tenants satisfied with the condition of their home

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(81% from 78% before transfer) – even after improvements (but often before rent guarantees ran out). Only 85% of tenants considered housing services were as good as before transfer; while satisfaction with the quality of repairs went down (63% against 68%). (Improving Social Housing Through Transfer, Public Accounts Committee report, March 2003)

A report by the Council Housing Group of MPs details broken promises. When promises are broken, tenants can do little, because offer document promises are a contract between the housing association and the council, not with the individual tenant. “To win tenants’ votes, promises are made to them in an offer document. But the question that tenants need to be asking is whether these promises are legally enforceable. After all, the offer document is not a contract with individual tenants but with the tenants as a whole. There is an agreement between transferee RSL and council” (Housing Today, 21 January 2005)

We don’t know of a single case in which a council has taken legal action against a transfer landlord to enforce promises made to tenants (see Accountability section below where one council has got as far as ‘considering’ it). In a recent case (Thompson v Sunderland City Council 2008) a tenant took their council to court because they had failed to challenge the transfer landlord on its restructuring plans which, by ‘reducing the involvement and removing the control of tenant representatives and the city council over the company’ broke promises made at the time of transfer. The court however dismissed the challenge (Inside Housing, 13/06/08).

### Less Protection on Rents

Housing Association rents are much higher than council rents (12% higher in 2007 – based on Housing Corporation figures). Our council ‘secure’ tenancies guarantee us the legal right to a ‘reasonable’ rent. Housing associations are allowed by law to charge a market rent and only government policy prevents this.

Councils claim that the government’s policy for ‘rent convergence’ by 2012 means that rents will increase by the same amount whether tenants transfer or not. But the policy of converging council and housing association rents by 2012 has been abandoned: “to protect tenants from both high and variable increases in inflation... the rent convergence date will change depending on what the actual rate of inflation is in the September prior to the draft determination being issued. For -... the convergence date has to be pushed back to 2024-25” (DCLG, letter to councils 29/10/08)

In addition to the pressure to keep rents affordable for council tenants, housing associations are lobbying to increase their rents faster. See for example Building Neighbourhoods, by the National Housing Federation, September 2007; and Sharing Our View, by the G15 Group of Housing Associations.

Even if they did achieve rent convergence the protection for tenants would not be the same:

- Service charges are not covered by the formula. The housing association simply has to describe part of the rent as a service charge, known as ‘unpooling’. The small print in the offer document shows service charge rates are only guaranteed for a few years, if at all. Some housing associations demand £20-plus a week in service charges on top of rent.

- Housing associations can immediately raise the rents of new tenants to the ‘target level’, creating a two-tier system and an incentive to get existing tenants out.

- Housing associations can change the valuation method used to calculate the rent. In the words of TPAS: "changing the valuation method and therefore achieving higher 'Target rents' can [drive] a horse and carriage through the rent policy guidance and guarantee" (email from Tony Bird, TPAS ITA in Brighton, to Anne Kirkham, Department of Communities and Local Government, 09/08/06)

In Scotland and Wales the old 5-year ‘rent guarantees’ are still used instead of a convergence formula. But in Scotland, rent rises in transfer associations are now running higher (4%) than the Scottish average housing association (3.8%). Scottish Borders had the highest increase – 5.5%, despite a promise of inflation plus 1% (figures from Communities Scotland).

And what happens at the end of the 5-year rent guarantee? Research in our Case for Council Housing pamphlet shows that 16 of the 20 fastest increasing housing association rents 1997-2005 were in housing transfer districts. The rents for Ten-Sixty-Six, the transfer association in Hastings, rocketed after the end of the five year period, up 10% in one year (2003/2004, Housing Corporation figures)

### Less accountability

Don't be fooled by talk of 'community ownership'. A 'Community Gateway' or 'Community Mutual' is a housing association in a fancy wrapper. The key thing about any registered social landlord is that they depend directly on and are accountable to the banks.

Tenant 'shareholders' in a community mutual or gateway organisation won't even have the right to elect the whole board.

As tenants of a local council we elect our landlord. Individual tenants and tenants associations can lobby local councillors and, if we don't like the way they run our homes, vote them out. This direct democratic relationship is lost if we are privatised. Promises of tenants on the board is a con. The role of tenant board members is “primarily symbolic, providing a fig leaf to cover the unpalatable fact that the real power lies elsewhere.” (Cairncross, 2004)

Tenant Board members are bound by company law and not allowed to represent the tenants who elected them. “At the time of transfer, tenants are often led to believe that they will have an explicit role in representing the interest of their fellow tenants on the board. This is not compatible with the accepted principle that dictates that as a board member they have to work for the interest of the organisation.” (Housing: Improving services through resident involvement, Audit Commission, June 2004).

Sacked resident board members at Island Homes in Tower Hamlets were accused of 'acting as delegates' and being 'influenced' by other residents. This rips up transfer Offer Document promises: 'Toynbee Island Homes will be resident-led. A tenant and a leaseholder from each estate will be elected to the Board of the new organisation where they will make up the majority'. Tower Hamlets Council have said they will consider legal action – but nothing has happened yet:

“A council is considering legal action against a stock transfer association, amid concerns that promises to tenants have been broken. East London’s Tower Hamlets Council handed over the management of four estates on the Isle of Dogs to housing association Toynbee Island Homes in December 2005. The tenants on the estates, which comprise 2,100 homes, were promised they would be heavily involved in the running of their homes. One Housing Group became the parent organisation of Toynbee Island Homes last year and in April this year sacked the housing association’s entire board – mainly made

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up of residents – and appointed an interim board.” (Inside Housing, 31/10/2008)

As a report on Community Mutuals in Wales has shown, transfer associations and genuine co-operatives have almost nothing in common (Housing, Mutuality and Community Renewal: a review of the evidence and its relevance to stock transfer in Wales, Welsh Assembly Government, Sep 2004); it is outrageous that the government is trying to hijack the ideas of the co-operative movement to support privatisation.

### Mergers and Takeovers

Promises of a locally-based post-transfer organisation do not last long. There is a high risk the new landlord will get into financial trouble and be taken over, or will expand and diversify into a huge business empire.

Smaller associations tend to become part of a group structure (with more pay for senior managers!) The most recent study for the Housing Corporation found that between 2002 and 2007 nearly 500 housing associations were involved in restructuring activity (mergers, takeovers, forming and consolidating groups). This is a quarter of the housing associations in existence in 2002, and involved 60% of the homes. By 2007 “The largest 20 housing association groups owned 29 per cent of total association stock”. Stock transfer associations were “particularly active” in this kind of activity. Only 32% of transfers since 1988 were set up as and still remain as independent, stand-alone organisations (84 out of 260 whole and partial transfers). (Sector restructuring, Housing Corporation, June 2008)

Tenants don't get a vote on takeovers or mergers. And the take-over association is under no legal obligation to keep promises made at the time of transfer: “The mortgagee exclusion clause... means that if the RSL gets into financial difficulties and as a result the funder takes control and transfers to another RSL, the “new” RSL is not bound by any of the promises made to the tenants.” (Housing Today, 21 January 2005)

### More Homelessness

Councils have a statutory duty to house the homeless while housing associations do not. Research into homelessness after transfer has found significant problems.

A report by homelessness charity Shelter (Out of stock: Stock transfer, Homelessness and Access to Housing, 2001) found that 46% of stock transfer authorities reported more difficulty in discharging statutory duties after transfer; contracting out homelessness services gave ‘mixed’ results; and transfer landlords operating restrictive lettings policies were a problem, so were inadequate transfer agreements.

A report in Scotland concluded that there has been a decline in service provision for homeless households after transfer, including problems with access to services, problems in the relationship between social services and the transfer authority, and concerns over how applicants are handled. (“But what about me...?” Homelessness after stock transfer, Scottish Council for the Single Homeless, 2001).

An investigation by Housing Today revealed “that many applicants have found it more difficult to access permanent accommodation since the transfer... 20.1% of allocations by large-scale voluntary transfer housing associations are to homeless families. This compares favourably to housing associations not involved in stock transfer (9.4%), but it is less than the 34% by local authorities.” ((29 April 2005)

“Key concerns over stock transfer are: at a time when homelessness and housing need is escalating, this option... may offer even more restricted access to social housing” (Homelessness and Stock Transfer, Shelter Cymru, Sep 2005)

### Profit, Deregulation And Market Forces

In the future things could get much worse.

Councils claim that transfer is ‘not privatisation’ because registered social landlords cannot legally distribute profits to shareholders or investors (though banks and consultants make huge profits out of stock transfer).

But this is changing. Many housing associations are lobbying to become direct profit-takers. Seven of twelve housing associations asked told Inside Housing they would like to be allowed to float on the stock exchange (26.1.07). See also Inside Housing: ‘Providers told to look at fresh avenues for finance’ 23.11.06; ‘Landlord explores Flotation’ 5.1.07)

Last year the Housing Corporation began funding private developers to build new ‘social housing’. The new Housing and Regeneration Act allows profit-making companies to register as social landlords for the first time – with less regulation and accountability than non-profitmaking ones. The bill as originally drawn would have allowed existing social landlords to turn themselves into profit-making companies, but was amended after protests.

Registered Social Landlords are regulated at present by the Housing Corporation and in December 2008 this will change to the Tenant Services Authority. Housing associations are lobbying through their trade body, the National Housing Federation, for as little regulation as possible (see Inside Housing, 9.3.07). There is also pressure from bankers and developers and right-wing ‘think-tanks’ to end security of tenure and bring in market rents, creating a 2-tier system with the best housing having the highest rents (see DCH Briefing on Defending Secure Tenancies).

They call this ‘competition’ and ‘choice’. But the real reason for all this lobbying to bring profit, deregulation and market forces into council housing is because the land our homes stand on is worth so much. A report by the Smith Institute (Rethinking Social Housing, June 2006) calls for an end to security of tenure, with investors making money out of increasing land values. To benefit from increased land values landlords have to be able to get rid of their tenants – so they want to end our security of tenure.

As for council tenants we have a much better chance of fighting off these attacks. The only way to be sure your landlord is not about to profiteer at your expense is to reject transfer and defend council housing. ■

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# DEFEND COUNCIL HOUSING FACTSHEET **Secure v Assured Tenancies**

On transfer tenants lose our special 'secure' tenancy and get an 'assured' tenancy.

Jan Luba QC summarises the meaning of a secure tenancy: "Most tenants of local authorities enjoy security of tenure as secure tenants, protected by arguably the most generous charter of rights available in the residential sector. That security is lost on transfer. The tenants will at best be assured tenants of the purchaser. Likewise the Statutory obligation on a council to charge only a reasonable rent has no application to a purchaser." (Large Scale Voluntary Transfer: not all honey and roses, Jan Luba QC, (2000) 4 L. & T. Rev. 6).

A recent pamphlet from Tower Hamlets Law Centre summarises the differences in law between the two tenancies.

"If the council wants to evict you, they must prove both the ground for possession (e.g. rent arrears, anti-social behaviour) AND that it would be 'reasonable' to evict you.... A RSL can seek to evict you without the court having to consider 'reasonableness' in 8 out of 17 grounds for possession. For example if you are more than 8 weeks in arrears of rent on the day of the court hearing, the court will have to make a possession order even if the arrears are not your fault. (Ground 8)." (Stock Transfer: Essential Reading Before You Choose, Tower Hamlets Law Centre)

Councils claim that the new landlord will write additional rights into the new assured tenancy contract which will make it the equivalent of a secure tenancy. A promise by the new landlord not to use certain powers is not the same as the statutory rights 'secure' tenants have in law.

Of promises written into RSL tenancy agreements the Tower Hamlets Law Centre pamphlet says: "RSLs are likely to honour the agreements they have made. However, if an RSL wants to ignore the promises they have made in a tenancy agreement, and rely instead on the weaker rights set out in law, they may be able to do so. In a leading court case a judge found that a housing association were entitled to override the promise they had made to always give notice before issuing proceedings, because this was allowed by statute."

The court case they refer to is *North British Housing v Sheridan* 2000 in which the tenant had an assured tenancy agreement which expressly stated that the Housing Association would not use certain statutory provisions. However, the Housing Association ignored the tenancy and relied on these provisions. The Court of Appeal said the Housing Association was permitted to do this notwithstanding what the tenancy agreement said.

A survey carried out for the government found that 17 per cent of stock transfer associations admitted to using ground 8 (The Use of Possession Actions and Evictions by Social Landlords, ODPM, June 2005, section 5.4).

In addition, there is no guarantee that new tenants after transfer will be given these extra contractual rights. As the Law Centre put it: "This may lead to two classes of tenants living side by side on the same estate." Over time, the tenancy rights of future generations will be eroded.

## **The Use of Ground 8**

The most draconian measure which RSLs can use against their tenants is the notorious 'ground 8' – a 'mandatory' ground for eviction which means that the court has to order eviction even the arrears are not the tenant's fault. The Court of Appeal recently upheld this in *North British Housing Association v Matthews* 2004. The tenant in question was waiting for a decision on a backdated housing benefit claim which she eventually won – but too late to save her tenancy. The judge's concluding remarks recommended "that the Housing Corporation expand its advice about the need for effective liaison with housing benefit departments because of the 'potentially draconian' impact of the Ground 8 provisions." However, according to the Citizens Advice Bureau, "As it stands, the Housing Corporation guidance is minimal in the extreme" (Unfinished business: Housing associations' compliance with the rent arrears pre-action protocol and use of Ground 8, May 2008)

'Ground 8' was introduced in the 1988 Housing Act, which defines an 'assured' tenancy. An unpublished survey of 116 of the largest housing associations carried out by the National Housing Federation in the year 2000, found that as many as 16 per cent of possession orders were granted on the basis of Ground 8 ('Nine tenths of the law', *Inside Housing*, 13/1/01).

At the same time evictions were rising: "The number of evictions carried out by Has increased by 36 per cent between 1998 and 2000 to some 6,800." (Stock turnover and evictions in the housing association sector, *Housing Corporation*, February 2002)

There are no adequate statistics published to show the use of ground 8 by RSLs in England – however in Wales, where statistics are published, the use of mandatory grounds has increased. In Wales the percentage of outright possession orders granted on mandatory grounds against assured tenants of RSLs dou-

bled, from 13 per cent to 26 per cent of all orders granted, between 2004/05 and 2005/06 (Social landlords possessions and evictions in Wales 2005/06, National Assembly for Wales, 2006)

As a result of criticism over rising evictions, which were adding to the homelessness problem, in October 2006 the government introduced a 'rent arrears preaction protocol' to try and ensure that social landlords did everything possible to sort out arrears before starting court action. A recent report by the Citizens Advice Bureau found that while this has been very effective in bringing the total number of evictions down, there is still a huge problem with ground 8.

"Use of this ground... effectively bypasses the pre-action protocol which cannot be invoked by the court to prevent an order being granted. In contrast, the use of Ground 8 is not an option available to local authority landlords." (Unfinished Business)

The report also found that "half of the associations using this controversial remedy were not able (or willing) to provide statistics on its use"; but of those who did, one association used ground 8 in 93% of possession cases.

The reasons they found for RSLs' use of ground 8 are also chilling: "none of the responses referred to a previous history of court action and suspended orders as being a reason for finally resorting to Ground 8. Rather it would appear that, in given circumstances, notice is served using Ground 8 as soon as a decision to take court action is made... Advisers thought that such associations tended to use Ground 8 in situations where their motivation was clearly to get rid of the tenant, perhaps because there was a history of anti-social behaviour and it was easier to evict on rent arrears grounds... advisers also reported that a few associations used Ground 8 wherever this was a legal option regardless of the circumstances of the case... CAB evidence... suggests that some associations are particularly failing to identify where there are issues of tenant vulnerability or unresolved benefit problems"

The report's conclusions are damning: "It seems reasonable to assume that a housing association's motivation for using Ground 8 is that it provides certainty that they will be able to evict a tenant in circumstances where, had a discretionary ground been used, outright possession might not have been granted.... It seems unarguable from the evidence of this report that the use of Ground 8 by housing associations is resulting in some households becoming homeless where this would not otherwise have been the case." □