

Housing Learning & Improvement Network

Mixed Tenure in Extra Care Housing

This Technical Brief is intended to help housing and care providers with mixed tenure developments to anticipate and avoid some of the problems and risks inherent in mixed tenure Extra Care Housing.

Written for the Housing Learning & Improvement Network by
Nigel King of Housing Support Partnership Ltd &
John Mills of the Association of Retirement Housing Managers

The Health and Social Care Change Agent Team (CAT) was created by the Department of Health to improve hospital and social care associated arrangements. The Housing Learning & Improvement Network, a section of the CAT in the newly formed Care Services Improvement Partnership, is devoted to housing based models of care and support for adults.



MIXED TENURE GUIDE

Contents

PART 1	INTRODUCTION TO MIXED TENURE	
Introduction		3
Scope		4
Why mixed tenure		5
PART 2	LOW COST HOME OWNERSHIP AND MIXED TENURE	
Low cost home ownership in mixed tenure		9
Models of mixed tenure		11
Shaping shared ownership		13
Decisions required		14
PART 3	LEGAL ISSUES IN MIXED TENURE	
Leases		17
Issues and clauses for lease in mixed tenure		17
Consultation		21
Right to manage and enfranchise		23
PART 4	FINANCIAL ISSUES	
Service charges: Fixed or variable		25
Reserve funds		30
Consultation on repairs and mixed tenure		34
Supporting people and mixed tenure		35
Housing Benefit and Pension Credit		36
Relets and resales		37
Voids		37
PART 5	MARKETING MIXED TENURE	
Marketing mixed tenure		39
Lesson from ECCT		40
Case Study		44
Product		44
Price		45
Place		45
Promotion		46
Lesson from Market Research		48
CONCLUSION	10 KEY ISSUES	
Annex A	Guide to Leasehold Legal Requirements for Mixed Tenure	51

PART 1 INTRODUCTION TO MIXED TENURE IN EXTRA CARE

Introduction

This technical brief is intended to help housing and care providers with mixed tenure developments to anticipate and avoid some of the problems and risks inherent in mixed tenure, extra care.

Almost half of the “extra care” schemes approved by the Department of Health over the last 2 years include a mix of tenure. Nearly all the large retirement villages recently completed or under construction are mixed tenure. Managing mixed tenure housing estates generally has proved challenging. Managing just leasehold housing for older people i.e. mono tenure, for older people can also prove particularly challenging. Evidence suggests that these for sale developments provide a disproportionately large number of referrals to the housing ombudsman.

Housing Ombudsman

3500 complaints approximately per annum
10% complaints from leaseholders (only 5% of stock)
40% of all complaints are older/disabled people
53% of complaints by those over 75 concern repairs
Half of all leaseholders complaints concern service charges
In recent years the Ombudsman also referred many complaints on to the Leasehold Valuation Tribunal

Source: Housing Ombudsman Annual Reports 2003 and 2004

In addition there is:

- Very little experience of tenure mixing in retirement housing generally
- What there is indicates a set of new and complex issues that will be faced by both developers and managers
- There is even less experience of “extra care” mixed tenure, where there is the added ingredient of care provision, possibly by an organisation separate from the landlord and for a generally frailer and more vulnerable group of people.

Extra care may also add a further layer of complication and opportunities for things to go wrong or be established in ways which may prove legally and financially difficult to unravel when mistakes emerge. This is because for example:

- Social Services are often leading extra care development but knowledge and experience of housing may be limited. Leasehold or shared ownership for older people in an extra care context is very new and knowledge is still restricted.
- Extra care will often incorporate shared equity or other novel funding arrangements which bring a further, separate set of issues and complexity
- Housing associations acting as developers of extra care may or may not have experience of retirement housing for sale. Even if they have developed or managed retirement housing they may have no experience of mixed tenure retirement housing. There are complex issues which may not be known about for example the relationship between eligibility for Housing Benefit and landlord's maintenance responsibility, or the scope for ISMI (Income Support for Mortgage Interest)
- Where private developers have experience of retirement leasehold housing this will not normally extend to dealing with older people who may be eligible for income support or housing benefit (although there are one or two exceptions like Retirement Securities Ltd). Private developers may have little experience of shared equity sales. Some private developers also pass the management of retirement schemes on to a housing association.

Scope

This guide concentrates on legal and financial issues of mixed tenure and the practical management and maintenance consequences and solutions. The guide also touches on but cannot address in detail, issues particular to mixed tenure in relation to:

- Design
- Care provision
- Marketing

The origin for some of the difficulties that have arisen in mixed tenure retirement communities has been in failing to understand that leaseholders have distinct legal rights. These differ from the rights of tenants. Leaseholders also tend to articulate a different set of expectations and aspirations in respect of extra care housing.

Leaseholders are more often paying directly for services or care (as well as owning their homes). They are likely to assert their rights which have been designed to offer them some control and protection. What is in the best financial interest of tenants may not always coincide with the interests of leaseholders. This brief explains and identifies the differences in the legal and financial frameworks. It is intended to help:

- Avoid serious mistakes in how legal and financial arrangements are set up
- Offer guidance on practical solutions to address problems in arranging and managing and maintaining mixed tenure developments for frailer, older residents.

As one manager of mixed tenure extra care puts it “It is not that leaseholders challenge services it is that mixed tenure presents challenges to managers”. Having mixed tenure development can be seen as a positive mechanism for driving up the quality of service.

Why mixed tenure?

The reasons for considering mixed tenure include:

- Changing **demographics** and the rise in older owner occupiers seeking specialist accommodation; to meet a demand and a need
- Leasehold retirement housing is an **accepted** model. There are in excess of 100,000 retirement for sale dwellings in the UK
- Encouragement by the Department of Health; encouraging tenure diversification and increasing a range of extra care housing **choices**.
- The **high demand** for leasehold extra care found in some of the first retirement communities that offered shared ownership alongside renting providing empirical evidence of the market
- To make **social rented housing affordable** by using receipts from sales to reduce borrowing and/or a route to cross subsidy

We look at each in turn.

Demographics

At the point of retirement three out of four households are now owner occupiers. And this is expected to continue to rise. The market for “extra care” must therefore encompass home owners.

In order to cater for less well off owners whose properties have a market value which is less than the cost of providing a new “extra care” dwelling, shared equity arrangements are also being introduced in extra care¹. Shared equity may also in effect provide a way for an older home owner to release equity providing a cash sum to live on – or indeed to purchase care.

¹ Shared equity is where someone buys part of a property (say half) and rents the other half of the equity from the landlord. For a more detailed explanation see Technical Brief on funding.

Tenure by age of household – Great Britain 2003			
	65-69	70-79	80+
Owner occupied, owned outright	65	66	64
Owner occupied, with mortgage	11	5	2
Total owners	76	71	66
Rented from Council	14	16	18
Rented from housing association	6	9	9
Total social rented	20	25	27
Rented privately	3	4	7

Source: Office of National Statistics

Trends

In just 10 years between 1993-2003:

- The number of owner occupiers in Britain increased from 13.4 million (68%) to 14.8 million (71%)
- There was a corresponding fall in social rented housing from 4.3 million households (22%) to 3.8 million (18%). While private renting remained around 10%.

Part of this change is the effect of social housing tenants buying under “right to buy” or similar housing association arrangements. This is now one source of demand from less well off owners seeking more specialist, extra care housing.

Tenure Diversification

Since the 1980s housing policy has been to promote “tenure diversification”. The reasons have included concerns that mono-tenure areas were associated with social problems and lack of choice in the housing market. The means of achieving mixed tenure have included Right to Buy/Acquire and Low Cost Home Ownership through housing associations.

The principle policy focus has been on tenure diversification in large, local authority estates, and more recently new housing association developments and regeneration programmes. For the last 10 years mixed tenure has been associated with orthodoxy of “sustainable communities”. The 1995 Housing White Paper said “*we want to help construct sustainable communities where home owners and renters live alongside each other*”. The latest Government 5 year Housing Strategy continues to put emphasis on “Sustainable Communities” and a major part of this new ODPM policy is low cost home ownership and a new version of Homebuy (more details on page 10).

The policy reasons suggested for tenure mixing generally are:

- To avoid concentrations of social rented housing
- To avoid concentrations of people on low incomes
- As an alternative to high concentrations of social housing
- To avoid mono-tenure owner occupation

It is argued mixed tenure can effect **positively**:

- Residents’ attitudes
- Residents’ behaviour
- Impact on “community”

It is not entirely clear what the mechanisms for these effects are. It is variously suggested:

- Because it allows a shift between tenure without moving leading to greater stability in an area
- Role model
- Through interaction between people - “conversion by conversation”

Note that private developers’ doubts about mixed tenure are based on the belief that social interaction will have a **negative** effect on owners. It is not clear to what extent these arguments, mostly about mixed tenure estates of family housing, also apply to the new concept of housing for older people in extra care schemes and village communities. (Cf “*Developing, Designing and Managing Mixed Tenure Estates*”, Dr Michelle Norris, paper to Housing Studies Association Annual Conference, 2004).

Funding

Offering some properties for sale outright on shared ownership terms helps to make schemes financially viable in three ways:

- i. When a property is sold the developer gets a receipt which immediately repays some of the borrowing reducing loan requirements
- ii. It is possible that the market value of the property sold will exceed the cost of provision. This surplus is obviously the incentive for a private developer to be in the market. In the context of social housing the

margin can be used to cross-subsidise the rented dwellings and/or be viewed as a way of funding the communal facilities

- iii. To the extent that shared ownership/Homebuy can meet the same need as a purely rented property, from the Housing Corporation/Treasury perspective, this is a better option. This is because the social housing grant required is effectively about half that necessary to provide the same property for rent. Thus SHG goes twice as far. In the case of Homebuy the grant is a temporary loan free of interest.

At the time of writing the ODPM has announced that changes will be made to the Low Cost Home Ownership arrangements. For details on this and Homebuy arrangements see Part 2 of this Technical Brief.

PART 2 LOW COST HOME OWNERSHIP AND MIXED TENURE

Low cost home ownership in mixed tenure

Low Cost Home Ownership For Older People

Shared ownership is one of the low cost home ownership (LCHO) programmes funded with an element of Social Housing Grant (SHG) by the Housing Corporation and provided by some housing associations.

The principle of shared ownership is that you buy part of the property (equity) and rent the balancing portion from the housing association. The minimum initial share that can be purchased is 25% in the Housing Corporation programme, the maximum 75%.

The purpose of shared ownership is primarily to help people who cannot afford to purchase outright get into home ownership. Traditionally, the programme has been targeted at first time buyers and younger couples. More recently it has been seen as aiding economic development and sustaining communities by providing affordable housing to key workers. Around a quarter of the Housing Corporation £1.7bn annual programme is LCHO.

Shared Ownership

Aims of shared ownership are:

- To free up social rented accommodation and in the case of older people in particular larger family housing
- To encourage sustainable home ownership
- To contribute to mixed communities
- Widen choice and meet continuing home ownership aspirations

There are a variety of home ownership programmes. Those most relevant to older people have been:

- Leasehold Schemes for the Elderly (LSE). This programme ran until 1989. The purchaser acquired a fixed 70% of the equity. No rent was paid on the remaining 30%
- Shared Ownership for the Elderly (SOFTE). The maximum equity which can be purchased is 75%. When this level is reached no rent is paid on the remaining 25%. (Homebuy can only buy 75% equity)
- Privately financed shared equity

In England and Wales a programme called Homebuy is available under which a fixed 75% (70% Wales) of equity is purchased. The balancing 25% (30% Wales) is funded by grant and treated as an interest free loan to the purchaser. This is therefore virtually the same as the old LSE arrangements but not restricted to purchasers over 55 years. Homebuy differs from shared ownership in that there is no flexibility in the amount of equity that can be purchased it therefore cannot be tailored to individual circumstances.²

To be eligible for Housing Corporation funded shared ownership an applicant must be:

- A tenant of a registered Social Landlord (housing association) or Local Authority
- On a housing waiting list and nominated by a local authority as in housing need

Shared ownership is financed by a combination of:

- a) private mortgage taken out by the individual purchaser
- b) Social Housing Grant (SHG)
- c) RSL private finance or RSL reserves

SHG funding is subject to a similar funding regime to rented provision with the same Total Cost Indicators (TCIs) and subject to the same Scheme Development Standards (SDS) set out by the Housing Corporation.

Thus far the explanation of shared ownership has been based on grant aided, Housing Corporation funded schemes. It is possible for enterprising housing associations and private developers to offer purely privately financed shared ownership. The advantages are to:

- Expand the market for extra care
- Develop without the aid of grant
- Avoid cost limits and other constraints implied by Housing Corporation regulations
- To develop schemes in areas where the Housing Corporation will not provide an allocation
- Reduce dependence of Housing Corporation funding

The box above summarised the principle policy reasons for shared ownership. In the context of older people in extra care there are some different or additional reasons for having shared ownership.

² Note: the description here applies to England. Subsidised shared ownership is not available in Wales and also there are differences in the operation of Homebuy.

- Acceptable face of social housing linked with PPG3/S106 agreements. Private developers may find shared ownership (or other LCHO model) more attractive than pure social renting.
- Equity release in disguise - it is possible for some older people to in effect release equity by buying a part share after selling their previous home. Careful advice is needed because of the ongoing rental cost in some models and interaction with state benefits
- Meet aspiration to continue to own
- An option for owners in poor condition property/low value. Shared ownership can enable some people to move to the kind of accommodation they now need but cannot afford to buy outright
- Meet demand from ex-"right to buy" owners
- Way of retaining an asset and becoming eligible for range of benefits
- Financially beneficial in revenue terms if on Housing Benefit – which will fund management and maintenance if get lease right.

Models of Mixed Tenure

There are three basic tenure options – to buy all the equity **outright** or with a mortgage, **shared ownership** (or Homebuy equivalent) where the leaseholder buys part and rents part from the landlord or to **rent**, normally as either a secure or assured tenant.

MIXED TENURE AND LAYOUT

Tenure

Dwellings Layout	Outright ownership	Shared ownership/low cost ownership	Rented
Integrated			
Segregated			
Hybrid			

There are also at least three design options which a development of mixed tenure must take some decisions about.

An integrated model means properties available to buy or rent are next door to each other usually with nothing to distinguish whether a property is owned or rented.

A segregated model is based on some physical separation or distinction between properties offered for sale or rent.

A combination of these is a hybrid model which offers some elements of both on the same site and/or different ways of occupying the property.

The matrix shows there are nine permutations of mixed tenure. To illustrate some of the alternatives:

- An integrated model with a range of tenure is exemplified by recent Extra Care Charitable Trust villages. They in effect offer shared equity, outright ownership and properties for rent. The properties available for each arrangement are pepper potted throughout the scheme and are indistinguishable. Indeed, it is possible for a property to switch tenure. One previously owned may be let to the next resident. High levels of care are provided in the individual's own home. There is no separate care home. (See Housing LIN Factsheet no.4 – “Models of Extra Care Housing & Retirement Communities”)
- St Monicas in Bristol (See Housing LIN Case Study no.5 – “Village People: A Mixed Tenure Retirement Community, Bristol”) offers a range of tenure in the village but in physically separate blocks – a segregated model
- Joseph Rowntree Hartrigg Oaks village is a hybrid with elements of both integrated and segregated building layout and a range of methods of occupying property which in effect run from renting to ownership although there are some special and unusual arrangements for paying for the right to occupy the property and for care. While tenure is integrated across most of the dwellings there is a separate care home in the village thus an element of segregation. (See Housing LIN Factsheet no.4)
- Denham Village – a large redevelopment of a retirement village is another example of a semi-segregated model. Owners and tenants are mixed across the site but in groups of owned and rented properties. A key reason for this is because of the different legal and financial arrangements, in particular in relation to accounting for and consulting on major repairs. (See Housing LIN Technical Brief no.1 – “Care in Extra Care Housing)

A developer of mixed tenure has to decide:

- Which of these combinations is appropriate in all the circumstances. These will include results of local market research, views of local authority, needs of the area, expertise of the provider/developer and many similar considerations
- The type of shared ownership model or low cost home ownership model to offer, if any. (You should not mix Homebuy and SOFTE type models on the same site).
- The details of the low cost home ownership offering such as buy back provision, staircasing up and/or down limitation, minimum and maximum percentage of equity to dispose of and other details set out later in this guide.

Shaping Shared Ownership

Where mixed tenure treats shared ownership (or other low cost home ownership models like Homebuy) as a distinct tenure the developer has to take a series of decisions about the nature of the product. To aid the process a checklist is provided overleaf to act as a guide to key decisions. There are likely to be a number of additional decisions for each scheme/circumstance/housing to be worked through. The tenancy and the lease must be drafted to ensure it matches the model derived.

Decisions required on shared ownership - checklist

1. Maximum equity to be sold %

2. What price to sell at between cost and full open market value?

Mark up %

(Note: Is more complex than this and will need individual or at least property type valuations in practice).

3. Will you buy back on re-sale? Yes No

4. At what price will you buy back?

- Full market value
- Discounted market value (how determined)
- Original purchase price
- Other

5. Will you charge a rent on equity you retain? Yes No

(Note if Housing Corporation funded Homebuy/LSE/SOFTE no rent charged if maximum equity purchased)

If yes at what level of equity owned? %

6. How are rents to be reviewed?

Link to an index (Which?)

Other

7. Can people staircase up? Yes No Max %

8. Can people staircase down? Yes No Min %

9. Can people occupy by renting prior to completion of purchase? Yes

No

10. What is included in service charge? (list)

(Note: see example on page 29 but needs to be prepared carefully for each scheme)

11. How are service charges reviewed?

(Note: see section on service charges for possibilities)

12. How are major repairs to be funded?

% purchase price p.a

% sale price p.a

Service charge

Flat fee

Other

13. Will there be a major repairs holiday for first purchasers?

Yes No How many years?

14. Pepper pot or segregation layout? Pepper pot

Segregated

Hybrid

15. Will the local authority have a right to nominate to some or all the properties?

Yes No %

(Note: if yes consider carefully the financial impact and risk implied, how to get a process that works smoothly in practice, how to achieve the scheme care/age profile if there is one).

16. Voids. How will you deal with void costs?

- Prior to first occupation
- On re-letting
- On re-sale

In relation to:

- Rent and management and maintenance costs
- Service charges
- Care costs and overhead element of care provision

(Note: if landlord and care provider are different organizations impact may vary)

PART 3 LEGAL ISSUES IN MIXED TENURE

Issues for leases in mixed tenure

The lessons from the existing extra care and mixed tenure retirement for sale are that:

- The lease must be very carefully considered and debated
- The definitions of maintenance and repair responsibilities and services to be provided need particularly close attention – these are normally set out in a schedule to the lease
- Ensure as far as possible terms of the normal tenancy and lease for properties sold are similar and consistent for example in relation to landlord repairing obligation. If you decide for some reason to offer tenants and leaseholders a different service be clear about why you are doing this and what the practical day to day implications may be for management, staff, relations with residents
- Normally do not put details of care or support in the lease. Make the agreements or contracts separate from ownership (or tenancy) of the property.

Set out below is an initial checklist of the clauses and some of the issues to consider in drafting an extra care lease (and the parallel tenancy) which may be different to standard leases (or tenancy). Most of these points and the reasons why they are issues are considered in greater detail in the subsequent sections.

1. Who is an “Approved occupier”?
 - by age e.g. over 55, 60 or 65s
 - someone in need of sheltered housing
 - someone in need of personal care(?) or support(?)
2. Is it in plain English? – explain terms e.g. “assign” if assignable lease, “successor in title”..... These may be unfamiliar jargon.
3. What’s the rent – if any i.e. in shared ownership?
 - how is it increased for example – link with an index like Retail Price Index.
4. What is the service charge?
 - is it fixed or variable?
 - how is it increased – link with an index, if so which?
5. How do you control re-sales?
 - only dispose to an “approved occupier”? What is the approvals process? Can there be an appeal to a refusal?

6. Does it provide for access to give care to occupier in some way? Extra Care requires by definition access to provide care but a defining feature of a person's own home for the purposes of a genuine tenancy (and lease) is control of who enters the premises – the right to refuse entry. Open access to provide care may tend to suggest registration as a care home rather than this is someone's own home so probably **not** to put in lease/tenancy.
7. Is there provision for occupier not being owner but without creating a tenancy? This is so, for example, relatives can buy for parents. It also allows for a buy to let market.
8. Is there an obligation to adhere to regulations “for the better management of the scheme/village”? This is to allow the landlord to set down general rules of behaviour for the scheme/village which have some enforceable basis.
9. Is there a catch all clause to ensure you can recover costs of “advice and assistance”, “repairing damage” etc? Without this you may find there are activities necessary for extra care that cannot legitimately be charged for.
10. Does it state clearly extent of landlords maintenance obligations e.g. does it extend to internal repairs? Internal redecoration? Could be a separate service but not an obligation under the lease.
11. Does it state clearly landlord service obligations e.g. gardens? – does this include private areas? All window cleaning? What if bungalows? If white goods supplied how often will they be renewed? How will you apportion costs of services like window cleaning to different properties if they vary in size/type?
12. Do you employ a manager of the extra care scheme, answer emergency calls? Need to be careful exactly what you are committing yourself to for the next 30-40 years.
13. Is there a clause to allow you to add to or vary services?
14. Does it define who takes responsibility for arranging medical or personal care?
Is there a separate care agreement - with landlord?
- with care provider?
15. Re-sales – this is a critical area
 - re-purchase options – if so at what price?
 - at original price
 - at market value
 - at % market value
 - at % to vary according to period of occupation
 - provision for landlord approval of purchaser - in order to ensure letting profile of the scheme is maintained and properties are occupied by people who will benefit from extra care constraints may affect values/marketability–the more limits there are the narrower the market and consequently possibly lower values

16. How do you define what you will deduct from sale proceeds?
 - service charges
 - rent
 - sinking fund contributions
 - costs of resale/granting new lease
 - needs separate understanding on care charges from say death to point of resale.
17. What happens if resale extensively delayed? This will impact on running costs including increasing the average overhead cost of care provision if there are long periods when properties are empty and it becomes impossible to have a charge for services.

More Detail on Clauses in Leases

1. Payment Periods

The lease will require a statement of when the service charge should be paid. It makes sense to have the same periods as for rent, so calendar monthly is the most likely option.

2. Financial Year End

The lease should state the financial year end to be used for drawing up service charge accounts. Use the same as for service charges for rented tenants to avoid extra accounting costs and confusion, but also add a condition that the year end may be varied in case the association or local authority decides to change its accounting year in future.

3. Audited and Certified Accounts

It is customary for leases to say that independently audited accounts will be produced each year for lessees. The ARHM (Association of Retirement Housing Managers) code of practice requires an independent audit as best practice. (www.arhm.org)

The Government intends to introduce regulations to make all leaseholders be given “certified” accounts, whether the lessees require them or not. The level of certification proposed is less than a full audit, so you need to consider whether it is preferable not to put a requirement for independently audited account in leases from now on. If you do you will have to produce “audited” **and** “certified” accounts each year.

Consideration also needs to be given as to whether or not to put a requirement in a lease for the landlord or accountant or auditor to “certify” the accounts. This could lead to unnecessary administration costs because to certify means a very high level of checking to an accountant.

4. Ground Rents

Ground rents are traditional for leasehold schemes. Many social sector providers have shunned them as too commercial, but think twice. The only income management organisations make from managing leasehold schemes is the management fee. Most social sector leasehold organisations really struggle to recover in fees enough to meet their costs of management. Those managing mainly right to buy properties often state that it is impossible to balance costs and fees for management.

A separate ground rent income allows for when things go wrong (e.g. compensation for disputes) and for a higher level of management than the fees alone would allow.

In many instances ground rents are expected so why not charge one. £100 per annum increasing every 21 years is not perhaps unreasonable. Be aware that there is a legal requirement for all ground rents demanded to be accompanied by a prescribed notice, and your accounting systems will have to cope with this. One of the lessons from retirement housing is how difficult it can be to find relatively small sums of money to do things desirable but which only benefit a limited number of people and consequently not all leaseholders will agree the expenditure. A ground rent provides a small pot that can be used for this purpose.

5. Alterations and Improvements

It is common in leases to put clauses that ban all structural alterations by lessees and make non-structural ones subject to prior written consent. A complete ban is unreasonable, especially for extra care schemes where adaptations for disability may be required. The Disability Discrimination Act 2005 attempts to tackle such clauses in leases as well. Far better simply to make structural and non-structural alterations subject to consent.

6. The List or Schedule of Services to be Provided

When drawing up leases and tenancy agreements it is far better to be detailed and specific about the services you will provide. Why? Because you will only be able to recover through the service charge what you name in the lease.

Sweep up or “inter alia” clauses have been challenged by the Housing Ombudsman; and the phrase “no say, no pay” is often used to sum up the courts’ way of interpreting leases.

This adage does not mean that you cannot vary or add to services. As leases last for 99 or 125 years it is best to have a variation clause. But do add to the clause that it is subject to consultation with lessees and not just at the landlord’s discretion.

7. **Sanity Clause**

These are clauses which are designed to allow the landlord to ask a frail leaseholder to leave if they are unable to live independently with the services on offer from the provider or other agencies. Such clauses are contentious and are probably unenforceable today with human rights legislation. However, up to date legal advice may be required/advisable. It is commonly argued, in relation to residents who develop behaviour which becomes impossible to manage, for example, because it involves violence to other residents in schemes not designed to cater for people with severe dementia, that breaches of the tenancy/lease are likely to occur which becomes the basis on which a property is repossessed.

8. **Re-sales Clauses**

See the section below on re-lets and re-sales.

Key Points about Leases

1. The lease is fundamental to defining your relationship with the owner - it is a legally binding contract
2. You **must** manage in accordance with terms of the lease
3. You must **get the lease right at the outset** – it is difficult/expensive and almost impossible to vary the terms of a lease
4. Leaseholders **will** enforce the terms
5. Your ways of presenting information, accounting, and consulting will probably be different for tenants. This is in itself a source of difficulty and conflict.

Consultation

Legal Rights

Leaseholders and tenants paying variable service charges have legal rights to be consulted prior to certain types of service charge expenditure. In summary these rights extend to major works (over £250 per tenant) and long term agreements (contracts for more than 12 months and £100 per annum per tenant). The consultation process is extensive with detailed prescribed contents of notices which must be sent out. Failure to follow the procedures can mean failure to recover most of the cost of works or services.

So if you decide to charge “fixed” service charges for the rented units on a mixed tenure scheme you could avoid what is a lengthy and costly process of consultation. But you cannot avoid it for the leaseholders – their service

charges are by definition variable (freeholders of bungalows or houses do not have these rights). Rather than treat leaseholders and tenants differently and have to explain why, a better choice would be to give all the same legal rights whether they apply or not.

Good Practice

In addition to the above legal rights the ARHM code of practice recommends the following for leaseholders.

- Managers should hold an annual meeting to allow residents to comment upon proposed changes to the service charge, and the extent and quality of services provided. In practice many managers hold a minimum of 2 meetings, one for the budget and one for the accounts.
- A minimum of 2 weeks notice should be given for any meeting.
- Papers for the meeting should arrive with residents at least 7 days in advance of the meeting.
- Any commitments made at a meeting shall be confirmed in writing.

Once again this does not apply to rented tenants but it would be foolish to treat lessees and tenants differently in the long term. Many social landlords already offer similar good practice for their tenants, so far better to set out similar high standards of good practice for all.

Variation of Services

The new version of the ARHM code (due late 2005) contains a specific chapter on the variation of essential services. It is aimed at how to handle changes to support services and communal facilities.

The first and most important point to make is that if a lease contains specific wording that a service will be provided, then you or a Supporting People Administering Authority has no right to remove it. If a lease says there shall be a resident scheme manager, then that is what the landlord is contracted to provide (not a visiting one), and you can be sued for non-performance. Even if 99% of residents are in favour of change you are wrong in principle, and any complaint against you or court case will succeed. Even if a lessee changes her mind after voting for a change, you will be wrong not the lessee.

But what if the lease is not specific and a change is proposed, say from a resident to a non-resident scheme manager service, or to off-site alarm monitoring. The ARHM code sets out a process that ends in a secret ballot of residents, after written papers and a meeting given pros and cons of various (always more than one) options.

Residents' Associations

All managers usually have a commitment to encourage the formation of residents' associations. What is less well known is that leaseholders and tenants paying variable service charges have a legal right to seek recognition of an association. They can ask for a Rent Assessment Panel to grant recognition. The Panel can give recognition to more than one association per scheme for example if there are several blocks.

Right to Manage and Enfranchise

Lessees have two other powerful rights called the right to manage and the right to enfranchise. Right to manage gives lessees the right to choose a manager of the scheme of their choice, and remove the provider as manager. Right to enfranchise is the right to collectively buy the freehold of the scheme; the effect will be the same, the provider will lose control of the scheme.

This potential impact of these rights is in practice severely limited on mixed tenure schemes. The rights do not apply to any shared ownership lessees until they have bought 100% of the equity) nor to rented tenants paying variable service charges. And 2/3 of units on a scheme have to be owned by lessees for the rights to be used.

There is one snag however that may arise. The right can be enforced by lessees on a block by block basis. So if there is a large scheme built as several blocks with lessees concentrated or segregated in a 2/3 majority in certain blocks, the lessees of those blocks could seek to enforce their rights against the manager or landlord.

Rights about Service Charges

- 1 Lessees and rented tenants paying variable service charges have the right to obtain a summary of the costs from which the service charge is calculated.
- 2 They will have the right to an annual accounting statement for the service charge in a prescribed format within 6 months of the financial year end. This is a new right which is expected to start in 2006 or 2007. Backing this new right will be another new right. A leaseholder will be able to withhold payment of service charges if the annual accounting statement is not received on time and in the prescribed format.
- 3 Once a lessee or tenant paying a variable service charge has received a set of accounts, they have the right for a period of 6 months to look at the receipts and invoices and other documents that make up the figures. For example, invoices for repairs, gardeners and window

cleaners. The management organisation can insist that they travel to its offices to view these documents. However, it is in the ARHM code of practice and good practice that copies of the receipts and invoices be made available for inspection at the scheme.

- 4 If after looking at the receipts and invoices lessees or tenants do not think some or all of the costs were reasonable, or the work not carried out well, they have the right to challenge the service charge at a Leasehold Valuation Tribunal (LVT). The LVT, an independent body, can decide if the service charges disputed were reasonable or payable at all. There is a fee to apply to the LVT. The LVT however does have the power to direct that none, part, or all of the service charges are payable.
- 5 What about budgets and estimated costs? Lessees and tenants paying variable service charges can challenge estimated service charges before the money is spent. Once again they can ask an LVT to decide whether the proposed expenditure is reasonable, or payable at all under the terms of your lease.

Rights about insurance

The landlord will arrange the building insurance policy but it is obviously vital to you that this is done properly. So lessees and tenants paying a variable service charge have the right to see the policy and proof of payment of premium. They can either ask to inspect it at the relevant office or be sent a copy. The management organisation has 21 days to provide a copy or arrange the inspection.

Right to replace a failing management organisation (not applicable to rented housing or if the landlord is a housing association or local authority)

Any individual or a group of leaseholders who is unhappy with the management organisation can ask an LVT to appoint another manager. To do this they would have to pay a fee to the LVT, and prove to the LVT that the management organisation is seriously failing in carrying out its obligations. For example had it failed to follow what the lease says about service charges and accounts, had it not followed important parts of the ARHM's code of practice, and not complied with relevant Landlord and Tenant Law (say failing to consult about major works).

The right to extend or renew a lease (not applicable to rented housing)

Lessees also have a right to extend or renew their leases at any time, but the catch is at a price. The right gives a new lease for 90 years at a peppercorn ground rent (i.e. no money), after the end date of the existing lease.

PART 4 FINANCIAL ISSUES IN MIXED TENURE

Service Charges: Fixed or Variable

Managers of rented stock of housing associations have a choice: service charges can be fixed or variable. The distinction is not commonly understood but it does matter.

Variable service charges can be varied to cover costs, certainly an annual review is possible and any deficits or surpluses at the year end can be brought forward. Fixed service charges are fixed for the next rental period (annually for assured tenants). If the budgeted figure is too low then the landlord has to bear the cost of the deficit. Many housing associations using fixed service charges lose money on the provision of services, so reducing rent surpluses. Government rent restructuring rules that apply to housing associations and local authorities can also restrict the ability to recover the full cost of services. This is because they limit annual increases in charges to residents.

The choice of fixed or variable is not so straight forward however. Choosing variable service charges means detailed separate accounts for each rented scheme, drawing up of annual accounting statements, repaying surpluses or additional billing of deficits. In addition, tenants paying variable service charges have legal rights to challenge service charges, demand an independently audited summary of accounts, and inspect all invoices/receipts for expenditure. The cost of accounting for and administering variable service charges is significant and many providers do not have accounting software to handle the detail necessary.

So what of leaseholders? There is no choice. Service charges will be variable and leaseholders **will** have legal rights. Even if you write in the lease clauses to restrict increases or link increases to RPI the service charges will still be variable in law.

So what choice to make on a mixed tenure scheme? The most obvious one is to choose variable so all tenants and lessees receive a similar regime and legal rights for service charges. However, if the lessees and tenants are in quite separate blocks, a segregated model of mixed tenure, then it would be easier to run different regimes. If lessees and tenants are living side by side in the same building, paying different levels of charge, as will happen with fixed and variable, is a recipe for conflict.

What services go into the service charge?

Even if you have decided that the service charges for tenants and leaseholders will all be administered as variable ones this does not mean everyone will pay the same charges.

For lessees and shared owners the service charge has to cover all of the costs of repair, maintenance, insurance and communal services. (Shared owners pay a rent for the unsold equity plus a full service charge.)

For rented tenants the rent will pay for repairs and maintenance of the structure and exterior of the property. The service charge will only include upkeep of common parts (halls, landings, staircases) and communal services (gardens, cleaning, door entry, alarm systems, scheme manager costs). So when planning the management of mixed tenure schemes one of the first steps is to draw up two lists: start with the services that will be paid for by lessees, and then one for rented tenants. If you do not do this you will end up with the wrong budgets and charges, followed by endless queries and challenges by residents.

Attached at page 29 is a simple example based on an integrated single block scheme, of how this exercise may look for a mixed tenure scheme.

Many mixed tenure schemes are more complex than the example attached and may have several different blocks with different facilities in each. In such schemes it is common to have two or three parts to the service charge. A block charge for each of the buildings calculated separately, and a communal services charge for services used by all residents. A similar exercise to the example given would need to be carried out for each block charge and the communal services charge.

It should become obvious here that the complexity of calculating, collecting and accounting for and explaining service charges on mixed tenure schemes is reduced if lessees and tenants occupy separate blocks on the same scheme. Practitioners and policy makers put forward social and other arguments against this feeling that it is socially more desirable to completely mix owners and renters – integrated, “pepper potting” approach. One of the largest providers of mixed tenure, Extra Care Charitable Trust, does this. Others have however decided that the legal and financial differences and complexities are such that it is necessary to physically separate owners and tenants.

Apportionment of Service Charges

By “apportionment” is meant the way in which the total cost of services is split between the residents.

For rented properties the usual method has been to make an equal apportionment, because the service charge includes costs of communal facilities and services only, services which all residents can take advantage of.

For lessees there is not one approved method. The service charge for lessees will include the cost of external decoration and structural repairs and maintenance. There is a clear argument that schemes with several blocks should separate the block charges for apportionment and not be shared equally across blocks, particularly if there are different dwelling types, for example a terrace of bungalows and a flat block.

There is another argument about whether apportionment should be made on size of dwelling. It is common in the private sector for 1, 2 or 3 bed flats to pay different shares. Sometimes floor area is used which will often result in many different figures. Or a typical ratio of difference is used, say 2 bed flats pay 25% more than 1 beds.

When planning the management of a mixed tenure scheme a decision has to be made on the apportionment. Whatever choice is made the following factors should be taken into account.

- **Reasonableness** – Can you defend, explain and justify how you have apportioned costs to tenants and lessees.
- **Certainty** – Anyone buying will prefer to know exactly how their share will be calculated, otherwise it is unfair. A fraction or a percentage (more than one if there are layers to the service charge) are usual in leases. Just to say a “fair proportion” gives no certainty and gives every lessee and tenant the opportunity to argue every year what is fair.
- **Flexibility** – Even though there is a need for certainty of calculation it still makes sense to have a get out clause in leases and tenancy agreements that the proportions may be varied after due consultation with residents. However remember that if you want one resident to pay less that means someone else has to pay more.

Accounting for Service Charges

For rented tenants paying a fixed service charge there is no legal requirement to produce an annual account; the landlord is taking the risk that the budgeted charge is correct.

For lessees and tenants paying variable service charges there is no legal requirement to produce an annual set of accounts yet. (Unless required by a specific clause in the leases and agreements.) But the Government has taken the power to introduce such a requirement in future. There is an existing legal right for variable service charge payers to demand an annual statement on request. So good practice is not to wait for a demand but produce one annually for all payers.

The ARHM code of practice goes further:

- Accounts should be drawn up annually using the accrual basis, and show income receivable and received (i.e. debtors);
- The accounts should be presented in a form which follows any budgets to allow comparison.
- The ARHM has a model layout for accounts which it recommends to members, which includes an income and expenditure statement and a balance sheet.
- The accounts should be independently audited.
- Copies of accounts should be sent to residents within 6 months of the end of the financial year.

For mixed tenure schemes there will be by the nature of them quite complex breakdowns and allocations of accounts. The same formats can be used for lessees and tenants but the actual figures will vary.

A policy of complete transparency and openness about the accounts for service charges is a must for any mixed tenure scheme. The level of detail given to lessees or tenants should be such that a resident can follow how the total costs for the scheme or block have been allocated according to the lease to tenants and lessees.

EXAMPLE OF SERVICE CHARGE ANALYSIS FOR A MIXED TENURE SCHEME

Expenditure	Total (1)	Rented (2)	Comment
Scheme Manager/relief cover costs	15,667	13,317	15% inc in rent
Travel expenses	100	0	
Emergency call monitoring	1,841	1,841	
Emergency call maintenance	1,257	1,257	
Emergency call telephone	306	306	
Garden maintenance	5,061	5,061	
Cleaning – common parts	5,219	5,219	
Cleaning – properties	1,796	1,796	
Fire equipment hire & maintenance	630	630	
Laundry/kitchen equipment maintenance	100	100	
Heat & light (electric only)	2,153	2,153	
Water rates – communal facilities	350	350	
Communal lighting repairs	500	500	
Communal aerial repairs	0	0	
CCTV maintenance	175	175	
Insurance	4,001	307	Communal areas only
Postage	0	0	Inc in rent
Stationery costs & office equipment	175	175	Inc in rent
Telephone	525	525	
Audit fees	540	0	
Sundry costs	125	125	
Communal renewals provision	3,933	3,933	
General repairs & maintenance	9,516	0	Inc in rent
Scheme improvements	<u>0</u>	<u>0</u>	Inc in rent
Sub-totals	53,970	37,595	
Management fee	<u>13,500</u>	<u>5,639</u>	
Totals	<u>67,470</u>	<u>43,234</u>	

NOTES TO EXAMPLE

1. This is a scheme of 54 units, 14 of which are leasehold. Service charges are apportioned equally between 54 units.

2. The estimated costs of services for the whole scheme is calculated first, and from this total the service charge for each lessee can be calculated. Each lessee pays 1/54th of column 1 total.
3. The rented column shows the total service charge less elements which are charged to rent. From this column the service charge for each rented unit can be calculated. Each tenant pays 1/54th of column 2 total.

Reserve Funds

Why Provision is necessary

The landlord will be responsible for maintaining the structure of the building and the communal areas and during the life of an extra care scheme some major capital expenditure must be anticipated.

This might be a new roof, replacing windows, re-surfacing the road and car park, replacing the lift, a new ventilation system, renewing bathrooms and kitchens, and similar items to ensure buildings are kept up to a good contemporary standard.

The usual way to provide for this type of expenditure is to build up a reserve or sinking fund so that when large lumps of capital expenditure are required the funding is available.

Historically, local housing authorities may not have done this adequately hence in part the necessity to transfer the housing stock to housing associations in order to be able to borrow additional money to bring properties up to the “decent homes” standard³.

Housing associations’ finance works slightly differently but those doing retirement housing for sale (and most private developers) have recognised the potential problem and tackled it by creating a reserve from the outset of the scheme. The Housing Corporation has for a long time suggested housing association constructing new social rented housing create a reserve based on 0.8% p.a of the re-building cost.

Some recent schemes paying close attention to building standards and specifying components with a long life have reduced sinking fund provisions to as low as 0.25%.

Principles

The basic principle is that all those who live in a development like extra care housing should make some contribution to the eventual major repairs. All those who live in a scheme have the “use” of the roof (and any other facilities)

³ Note: The Decent Homes Standard are a set of Government requirements all public sector and housing association housing must meet by 2010

while they are residents and should make a contribution to the eventual replacement. It would (in principle) be wrong for those who happen to be living in a scheme at the time re-roofing is required to pay for this. Furthermore, even if older residents (mostly on limited fixed incomes) had the means to pay, what makes up the “product” in extra care is security and peace of mind. This includes reasonable financial security with no large, unexpected bills.

How do you build up a reserve? What is the technique?

Tenants generally will contribute to a sinking fund through the rent. For owners it is not quite so easy. In the planning stages of the Joseph Rowntree Housing Trust’s “Hartrigg Oaks” retirement village the Housing and Support Partnership completed a survey of how providers of retirement housing for sale established a repairs service.

The study found there is no one single, accepted method of collecting sinking funds. There are two broad approaches:

- i. To include an element in the service charge
- ii. To recover a capital sum when the property is sold and there are three main ways of achieving this:
 - Percentage of initial purchase price multiplied by period of ownership
 - Percentage of eventual re-sale price multiplied by period of ownership
 - Fixed percentage of sale price **not** tied to period of occupation

Methods involving a capital contribution covered 50% of schemes. Almost as many schemes (45%) built up sinking funds exclusively or primarily from service charges. There are other less common variations such as linking the payment to period of occupation and initial purchase price but applying an indexation to the purchase price.

Methods of collection – range of formulas and charges	Range	Norm
% of purchase price for each year of occupation	.33-1.1%	1%
% of sale price for each year of occupation	.25-8%	.5%
Fixed % of sale price not tied to period of occupation	0.5-4.75%	1% - 2.5%
From the service charge	£50 - £330 p.a	

Source: Housing and Support Partnership Study for Joseph Rowntree Housing Trust. Note cash figures are now out of date.

Formulas based on a percentage of the sale or purchase price and period of occupation are typically producing contributions double those generated by

taking either fix percentage of the sale price or through a regular service charge payment. While this is a “typical” picture in practice contributions vary from scheme to scheme.

The table above shows how much is collected using different methods.

Those organizations who use a formula based on sale or purchase price multiplied by the number of years typically set the percentage at 0.5% or 1.0% respectively and assume that re-sales will take place every 12 years. In extra care the re-sales are expected to be much quicker and this will be affected by the lettings and sales policy in relation to levels of need and dependency at entry.

Those who collect through the service charge typically (at the time of the study) set the contribution around £140 - £150 per annum.

The result of these formulas tends to be that where the service charge is used much less is collected than if a capital contribution is made.

Defining major repairs to be paid for from the sinking fund is potentially a significant issue and there is considerable variation in practice:

- As many organizations include cyclical maintenance in sinking funds as exclude this item
- One in five managers provide for some repairs and renewals within the curtilage of the individual dwelling
- Some define major repairs by reference to a minimum expenditure limit but two different levels were commonly found, £1000 and £500 (at the time of the study)
- As a matter of policy one group of managers have deliberately avoided defining sinking fund items in order to maintain more flexibility.

Pros and cons of different methods of collection

The key advantage of approaches where a contribution is collected from the proceeds of sale of the property is that they do not reduce the income of the resident. The contribution to the sinking fund is obtained from the proceeds of the re-sale, which in extra care will commonly be on the death of the resident and thus from their estate, and is consequently a relatively painless way of making a payment. The disadvantage is that the precise contribution that will be made cannot be calculated in advance by either the landlord or the resident if the percentage is based on resale value.

Of the two percentage formulas the advantage of setting the figure as a percentage of re-sale price is that it automatically incorporates an element of inflation linking since the contribution will go up (or down conceivably) in line with property values. As a consequence the percentage figure adopted can be

lower and less off putting to potential purchasers than if there is no inflation linking.

Determining the appropriate level of provision to make is a second problem. The best approach is to either ask a surveyor to appraise each scheme using tables of expected component life or use a life cycle costing model. The latter is preferable.

A clause in the lease will specify what formula is to be used. A schedule is usually attached to the lease explaining what major repairs consist of. Note that leaseholders may dispute what items are legitimately funded from the sinking fund and what should come from the annual service charge maintenance element so the schedules need to be carefully considered and defined.

In addition to a specific clause in the lease requiring the setting up of a sinking fund the lease should also have a fall back clause allowing the landlord to recover the additional costs of repairs in the event that the sinking fund is inadequate.

Other Issues about Reserve Funds

It is good practice to set up a reserve fund for leasehold properties, whatever method for building up the fund you use. However, collecting reserve funds raises some issues to consider on mixed tenure schemes.

The Housing Corporation requires housing associations to hold reserve fund payments for lessees in "trust". (Regulatory Guidance 2002 ref.3.4). Private sector providers are required to hold all service charge monies including reserve funds in trust (S42 of Landlord & Tenant Act 1987). Holding funds in trust will mean that any interest earned may be subject to taxation, depending upon the charitable status of associations. This is a difficult area that needs good advice. One option is for housing associations to make the decision to hold all service charge monies in trust in a separate bank account for the scheme. This is a good, positive message and easy to explain to residents, even though taxation on the interest earned may occur.

You will collect a reserve fund for the leasehold properties on a mixed tenure scheme, but should you do the same for the rented ones? The large items of expenditure that reserve funds are used to save up for, external decoration and replacement of windows, doors, roofs, etc. are paid for out of rent, not any service charge collected from tenants.

The arguments for making a contribution to reserve funds for the rented properties are:

- It demonstrates fairness of contributions to the leaseholders.
- It means that the money is available for repairs at the scheme when needed, and not subject to other priorities of the landlord at the time it is

needed. (Many right to buy leaseholders suffered from years of disrepair to external windows because their landlords never had funds available to carry out maintenance programmes).

- It reassures leaseholders that if the landlord were ever to go into liquidation or the freehold of the scheme be sold or transferred, the reserve funds are fully paid into and available. (It can happen. A leasehold subsidiary of a housing association has been put into liquidation in the past.)

The argument against making a similar contribution is that it ties up the money of the landlord which might be wanted for other purposes e.g. meeting decent homes standards for older stock.

There is another difficulty. If you decide to use a deferred payment method based on sales prices and payable when a leaseholders sells on, then it is impossible to show fairness of contributions. It would still be possible for the landlord to contribute the fair proportion of expenditure at the time it is spent, but the arguments about insecurity and other priorities are relevant.

If you do use a contribution on sale method to build up reserve funds, you also put leaseholders who are claiming benefits in the situation that the reserve fund contribution, which is eligible, will not be paid as a benefit.

If the different tenures are in separate blocks or buildings on the same scheme the question of payments to reserve funds for rented tenants will not apply to structural repair and maintenance if the blocks are treated as separate accounting units. There will however still be the question of any funds used for external communal areas and shared facilities such as residents' lounges, restaurants, kitchens, etc.

Consultation on repairs and mixed tenure

One of the challenges to managers in mixed tenure schemes arises in relation to consultation on major repairs. Leaseholders have a right to be consulted on major repairs. Leaseholders have a right to be consulted before capital expenditure over a threshold level incurred. They can also propose tenders are obtained from specified contractors. A manager of a mixed tenure scheme has to decide how to manage this consultation where tenants do not formally have the same rights.

Second, tenants should be contributing to a major repairs fund but through their rent. Some of the residents will in practice in a social rented scheme have the cost met through Housing Benefit. Leaseholders will probably be contributing from the capital value of the property or their own resources where major repairs are collected via a monthly charge. In terms of presentation this may look inequitable.

Supporting People and Mixed Tenure

The operation of Supporting People for leaseholders (including shared ownership ones) is quite different from that for rented tenants.

For rented tenants the Supporting People Administering Authority (SPAA) will wish to negotiate a contract for the scheme with the provider. The SPAA will require performance up to certain quality standards, monitoring information and will carry out performance reviews.

For leaseholders there are no contracts with providers. Each leaseholder has to make an individual claim to the SPAA. If the leaseholder is in receipt of pension credit then, up until now, there has been an implied obligation on the SPAA to meet support costs.

This throws up a number of challenges to those planning mixed tenure extra care schemes.

- Some SPAA's are insisting upon tendering the support services for new schemes. One provider had decided upon its leases, received a lot of interest in sales, and was planning an open day to take reservations. At the last minute the SPAA decided it wanted the support services tendered. The provider had to pull out of sales and so lost income and incurred more interest charges. The leases would commit it to provide certain support services for 99 years. It could not promise to do this if it was not going to be the provider.
- There is a basic conflict between the long term commitment that a buyer of a lease would want and the short term funding and review mechanism put in place by SPAA's. A choice is to keep all support/care services out of leases into a separate agreement. However such a choice may well make the properties less saleable.
- Even if there is a separate agreement the provider has to cope with the reality that an SPAA may carry out a review or reduce funding which means that support services have to be varied, amended or withdrawn. It would only be reasonable that the separate agreement for support/care services makes this reality perfectly clear. Indeed the provider must put clauses to do this in a separate agreement (or the lease). There is then a question of unfair terms in contracts. If the provider gives itself absolute power to change the services with no mention of the rights of leaseholders and tenants to be consulted, or indeed for residents to change services themselves, such powers may be viewed as unfair terms in a contract.
- When selling make sure all buyers are given explicit written advice that SP payments are not guaranteed. To do otherwise would put you at risk if giving misleading information.

There is no straightforward option for providers of mixed tenure extra care in dealing with SP. The main options appear to be:

- Make sure there are clear clauses about how services may be reviewed, varied or withdrawn in any separate agreements. But also set out what protection or rights the leaseholders and tenants may have if such decisions are to be made.
- If an SPAA insists on contracting out the support services how will you meet your legal obligations to tenants and lessees to provide the services? You need a direct contract with the provider if you are to have any control of the service.
- Market the leasehold units on the assumption that no buyers will be claiming SP. But this means lessees are less likely to accept changes to services imposed by SPAA's.
- Consider (technically the resident who has a social care assessment asks) asking Social Services to fund the package of care and support by means of a Direct Payment rather than as part of a care contact and support contract with the care provider and/or landlord. There are pros and cons of this approach but Government policy is to promote the use of Direct Payments and extra care potentially provides an environment and infrastructure where residents who want a Direct Payment could be supported to use a direct payment for example by offering a service to administer the payment, deal with National Insurance where a payment is used to employ a personal assistant. Note that the cost of this support can be met by the Direct Payment.

Housing Benefit and Pension Credit

Tenants that want help with service charges and rent claim housing benefit. Leaseholders that want help with service charges claim a top up to their pension credit. Pension credit is a means- tested benefit and the regulations for assessing what services are payable are identical to those for housing benefit. To make a claim a leaseholder will need a detailed budget for the service charge and an explanation of what parts of it are support services.

Relets and Resales

When a rented unit is relet the landlord has full control over the allocation process and can make sure any tenants meet whatever criteria are relevant for an extra care scheme. When a leasehold unit is sold the landlord will only have control over who buys to the extent set out in the lease. If the clauses required in the lease are not specified clearly, then you will not be able to control resales. Here are the main options:

1. Do not try to control resales. Make the leases assignable and as easy to sell on the open market as possible. Such an approach is not a problem if the leasehold units are sold at 100% of value. Most purchasers are sensible about their care needs and you will not be flooded with persons putting unreasonable demands on your care and support services
2. Surrender or assignable lease. An option commonly used in the past by housing associations is to enforce **surrender** of the lease on resale. In effect the provider buys the lease back and then sells a new one to a buyer of its choice. It is also possible with a lease surrendered for the landlord to change the tenure of the property. The next occupant could be a tenant or shared owner rather than outright owner. There are arguments against surrender. Surrenderable leases are not liked by many solicitors and more importantly lenders. So you may make it more difficult for a buyer to be able to release equity to boost income. If the surrender clauses are not drawn very carefully the landlord may end up paying void service charges, council tax and utility bills for properties between the date of surrender and completion of the resale.
3. Assignable leases can be used with several ways of giving the landlord some control over resales. The most common are:
 - Nomination rights for the landlord. Usually for a fixed period of say 4 weeks
 - Any assignment will need the consent of the landlord. Consent could include an interview and assessment process if the conditions of health for residents are set out in leases
 - An additional clause can also be added that the landlord can request an independent medical report to assist the decision regarding consent.

Voids

For those managing rented property voids are a common factor in performance measurement; relet periods are kept as short as possible in order to reduce loss of rent.

But what about voids in leasehold properties? Quite obviously for the landlord there will only be voids on service charge payments (except for shared ownership schemes). (There is a separate issue of the impact on the average costs of care to the care provider if properties remain empty and care is required).

The main period for voids for leasehold units will be during the initial sales period. At the date of the first sale of the first leasehold unit on a mixed tenure scheme, the clock starts. It starts for drawing up service charge accounts, and for payments by the first lessee. From that date the landlord will have to pay an equivalent service charge for unsold units into the service charge account for the scheme. Payments should be made at the interval for any other service charge payments by leaseholder, for example monthly in advance.

It is usual to budget for voids service charges in the development budget, for say an anticipated 12 months sales period a sum of half the full year's service charge budget should be earmarked.

But what of voids on re-sales? If the leases are assignable, the payment of service charges will always be the responsibility of a lessee and voids will never be a problem. It should always be possible to recover arrears upon resale and no budget for arrears or voids is necessary.

If surrenderable leases are used there may be voids. It is possible to make the surrender clauses specific to limit the impact of voids so take advice if you choose to use surrender. Remember any void costs will come straight out of your funds. You will have to pay the equivalent service charge for any void period, you cannot expect other leaseholders to pay for void periods and you cannot budget for voids in the service charge budget.

There is an argument that properties which are being sold mostly because of death of the owners should not have to pay voids particularly for the extra care support services which will not be used. If the support services are in a separate legal agreement to the lease then there can be flexibility in handling voids. However, any voids will be a "loss" of income to the landlord and one way or another will have to be budgeted for and funded.

If the majority of support services are provided in a hotel style menu with additional payments upon use, then this is a fairer deal for leaseholders upon resale.

PART 5 MARKETING MIXED TENURE

Marketing Mixed Tenure

Marketing of retirement housing is a major subject in itself. We simply highlight some of the lessons from those who have pioneered mixed tenure extra care.

The text book 4 P's approach to marketing applies as much to extra care as any other product. This is obvious in respect of properties to be sold. It is perhaps less obvious that:

- i. Taking a broad view of the marketing the "concept" of extra care may need marketing to a wide range of bodies and individuals
- ii. The rented properties –whether subsidised local rent or market rent - may also need marketing.

The approach of Extra Care Charitable Trust (see box) who spend considerable time and effort in building up an understanding of the "product" with commissioners exemplifies the "relationship" marketing approach.

4 P's

- Product
- Price
- Place
- Promotion

It has become a cliché but do research the market. Do you know the customer – who is the customer? At one level if you are a developer or care provider the "customer" may be the commissioner in a local authority. At another level it is the resident. If you are doing mixed tenure you will probably be selling some properties direct to the resident:

- Have you researched property price differentials?
- Do you know the catchment area from which purchasers will be drawn?

The importance of proper market research is exemplified by Anchor Trust's preparatory work before building Anchor Village. (See box on pages 48/49)

Lessons from ExtraCare Charitable Trust on Managing and Marketing Mixed Tenure

Extra Care Charitable Trust is pre-eminent in the development of extra care villages. All the most recently completed villages are mixed tenure, as are villages in the pipeline. As a matter of policy 50% of properties in the villages, which are around 200-300 dwellings, are offered for sale. The Trust probably has more experience of mixed tenure extra care, than any other organization in the UK.

The Trust offers six levels of care which range from a standard sheltered housing service with no personal care, through to nursing care at the other end of the scale. During the development phase the Trust agrees with Social Services commissioners a profile for the letting and sale of the scheme based on dependency levels and age. The initial lettings and sales are designed to achieve that profile with a certain number of residents falling into each category and subsequent sales and lettings being designed to maintain the agreed profile. The villages are always developed in partnership with the local authority and in particular Social Services. Social Services block purchase the agreed profile for owners and social renters.

Design/layout

The villages are based on a mix of flats and bungalows laid out around streets. The Trust adopts a complete pepper potting approach. It is impossible to distinguish between properties for sale and those for rent. The Trust believes that any attempt to segregate owners and renters would be counter productive and tend to set up a “gladiatorial” position between different groups. The model is of the full range of tenures, integrated.

Culture

It is fundamental to Extra Care Charitable Trust that all residents are supported to be as independent as possible. The philosophy of the organization is to be as person centred as possible and to pass over responsibility to residents. Some of the consequences of this, for example in relation to consultation with residents and leaseholders, as required under the Landlord and Tenant Acts, is that the Trust believes that the Housing Corporation’s approach to having “representatives” is inappropriate and possibly counter productive. Tenants and leaseholders are treated identically for the purposes of consultation and provision of information. Consultation takes place on a street basis and as part of the culture of the Trust a wide range of activities are encouraged and promoted. Around each type of activity interest groups are formed and these become a centre for involving and passing over responsibility to residents.

Marketing

The Partnership approach of the Trust means that marketing takes on a very wide meaning. During the development and initial feasibility phase of each village extensive discussions take place with the local authority and other stakeholders so that in the end all parties fully understand the model and implications. Marketing is not viewed as something unique or restricted to those properties for sale but all the scheme is “marketed”. The Trust learnt that it is vitally important to provide the fullest information and advice to both tenants and potential leaseholders both before they move in and subsequently. A purchaser’s information pack (PIP) required for

leaseholders, is provided to everyone but there is substantial amount of face to face conversation, explanation and dialogue takes place.

The Trust has learnt that it is important to correct misunderstandings or misinterpretations.

A significant marketing budget is required to turn the large volume of interest found into actual purchaser. As a guide £2000 per dwelling.

Management

Key lessons.

1. View the whole of the development phase as an integral part of the ultimate marketing scheme. The scheme has to be marketed to both tenants and owners.
2. Involve residents from the outset and inform them as accurately as possible. Explain clearly what the scheme is aimed at and what it will be like to live in the scheme. Be upfront about the fact that the scheme will house some people who are very frail.
3. Correct misunderstandings as soon as possible. Do not let them remain or fester. Be aware that people tend to “hear what they want to hear.”
4. The idea promoted by Housing Corporation of “representative” groups may not be the best way to go about consultation in larger extra care schemes. Consider the idea of interest groups, consultation on street basis. Be aware that a few individuals may seek or tend to dominate, also that the minority of the males in the scheme may seek to dominate the majority female members. Provide similar information to tenants and owners.
5. Communication can help take the heat out of potential disputes and disagreements. Leaseholders will tend to present demands – they want the service that they are paying for – they may seek to challenge what you as a care provider, treating all equally, normally do. Extra Care Charitable Trust has learnt to answer all questions in a reasonable and considered way. Also giving residents the opportunity to be directly responsible for as much as possible of the decision making on how activities are run, how for example profits of the bar are to be spent and so on helps to meet challenges.
6. View the challenges presented by leaseholders as a challenge to management. See it as a positive mechanism for driving up standards and quality for all.
7. Everybody entering one of the Trust extra care schemes shares in common with everyone else a health or social care need. This tends to have a leveling effect and take the heat out of some issues that might otherwise arise in for example traditional leasehold, retirement housing, mixed tenure schemes. The scheme is providing a mechanism for meeting a health care need, it isn't simply housing. Ultimately if a leaseholder does not like a service they can elect to leave.
8. Research for the Trust has said that if residents feel that they are forced to move in and feel negative about the move they tend to remain negative. It is difficult to win them round. It is far better for people to feel they have had a real choice.

9. Pepper pot rather than segregate development. Treat all residents equally in every respect whether it be services, care, or information.
10. Understand that the decision to enter an extra care development is a lifestyle decision for both tenants and owners.

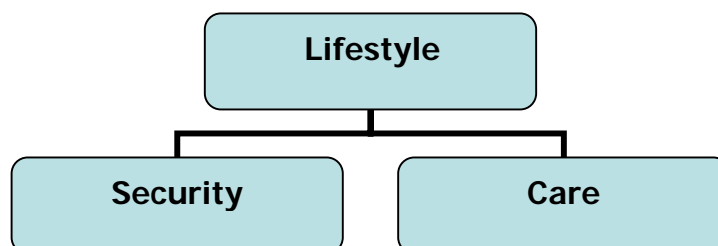
Two problems that large mixed tenure developments face which remain unresolved are:

- i. planners approach to car parking – owners in particular are likely to be also car owners and planners are tending to minimize the number of car parking spaces provided in the belief that public transport is the answer. People moving into retirement schemes are generally very unwilling to give up car ownership for a variety of reasons but including the ability to remain mobile
- ii. The ability to resell properties quickly in order to minimize voids and covering at least the overhead costs of care services, if not all the direct costs, in unstable housing markets and chains where older people may be at the end of the chain, is a challenge for the management of mixed tenure developments.

Product

Central to traditional retirement housing “product” is security – that is what you are selling. This in marketing speak is “the offering”. In mixed tenure, extra care, it is more complex:

- Extra care is offering a choice of a certain **life style** part of which is independence and personal space. This is particularly obvious in village communities with a wide range of facilities and activities
- **Care** is an integral part of the product.



- **Security** means a variety of things including
 - financial – no unexpected bills
 - physical – theft, assault, warm, good health
 - environment – can go out, no barriers
 - personal – illness, accident, emergency
 - mental health – not isolated

The product is a holistic concept.

- Services – including care – are part of the “product”. The key point is you are not just marketing a building – it is more complex.

Case Study

Problems marketing Shared Ownership in Mixed Tenure

This extra scheme consists of 35 dwellings to rent plus eight properties for sale on Housing Corporation shared ownership for the elderly terms (75% equity sale, 25% retained by landlord, no rent payable).

The development in the Midlands was by a large, very experienced housing association. It has a specialist retirement for sale arm. The arrangement was that the parent body would carry out the development and manage the rented dwellings. The relevant for sale part of the organization would manage and market the shared ownership dwellings. The properties for sale are spread throughout the scheme an integrated approach.

Shared ownership properties

Dwellings	Sale price (75%)	Service charge
4 x 1 bed	£113,000	£130 p.m
4 x 2 bed	£170,000	£177 p.m

Marketing followed the traditional route with a brochure, show flat, Open days and sales staff available on site on specified days.

Initial interest was high with more than 200 people visiting over a few Weekends. Sales however failed to materialize and after many months Only 3 of the shared ownership properties have been sold.

The reasons are not absolutely certain and it is possible a general softening Of the market has contributed to slow sales. Lessons suggested by the

Developers include:

- i. At the outset the housing association was also to be the care provider. The Local Authority changed their mind and insisted on a separate care provider. This meant at the start of the sales process who would provide care and how was uncertain. This undermines the “product” of which care is an integral part. In marketing speak “the offering” was unclear.
- ii. Moves to rented extra care take some time and a proportion are still a

response to a crisis. It may be reasonable to expect a longer sales period as well

- iii. The marketing budget proved inadequate
- iv. The dwellings are an open plan layout. They have been tested in other rented schemes. The feedback is as many people like them as dislike them. It might have been better to have a mix of layouts to widen choice
- v. A re-cycling centre adjacent to the site may have deterred some purchasers. As always location is a key ingredient in sales and must always be part of the site appraisal considerations
- vi. Although both parts of the same organizations the retirement for sale and social rented management is viewed and run as separate operations. Both have their own district brand "image". This was confusing to prospective purchasers. It would have been better to present simply one or the other.

Price

Price is not simply a case of buying a leasehold property or paying a rent. It includes a service charge and in extra care includes care cost. Leaseholders in particular and those renting without recourse to benefits, will be acutely aware of costs and will call the landlord to account.

The cost of major repairs provision is particularly sensitive. Mixed tenure, which includes shared ownership allows you to tailor to individual financial circumstances thus widening the market. Price also means value – what is long term value to person/their estate? In developing the "product"....be aware of any aspect that may tend to depress the eventual re-sale value of leasehold properties. What is price to consumer? Will HB pay rent? Will ISMI pay mortgage?

Place

Demographics are key to deciding on a site suitable for mixed tenure extra care. Typically variables considered will include:

- Level and trends in population over 65 in area
- Adequacy of supply of sheltered housing and residential care in area in relation to population using ratio of dwellings/places/1000 population over 65
- Level and trends in tenure of locality
- Price differentials between 2 and 3 bed properties characteristic of the area and selling prices of leasehold properties and trends in values.

A private developer usually expects to sell the majority of properties to people living within 10 miles or so of a scheme. Occasionally people move much further primarily pulled towards relatives or friends already living in an area. A good site for sheltered housing as for example in Housing Corporation guidance is traditionally taken as an indication of a good site for mixed tenure, extra care. However with larger extra care developments a central location may be less critical. This is because you can afford to provide/build in services of facilities to counter balance negative features of a traditional sheltered site. For example a more isolated site may be acceptable because buses can be persuaded to service the site, a shop can be provided on site. Place also needs to be considered in relation to service delivery – within your own home.

Promotion

As already explained marketing extra care means rather more than simply selling a physical property.

- Market research will (or should) have shaped the product and helped determine prices of both dwellings and services
- Be clear who you are selling to – the Anchor Trust scheme featured is clearly targeting better off owner occupiers. Mailing lists produced (or purchased), choice of estate agent, who mailouts are sent to, which media are used, what is the best local magazine or newspaper to use are all effected by this.

A range of traditional sales techniques are likely to be relevant including:

- Scheme brochure
- Mailing shots
- Newspaper/magazine advertising
- Show property/on-site marketing suite
- Open days
- Signage
- Editorial/articles in local papers

There are many subtleties and techniques relevant to marketing retirement schemes. There are also an array of newer marketing techniques.

Some points particularly to consider for mixed tenure extra care are:

- A Purchasers Information Pack is required – keep this simple and unambiguous
- A lease and a plain English guide to the lease are required. Ensure this is available early on and does not delay sales

- Sales staff (or whoever is dealing directly with potential residents) will need more thorough training than is common in both the PIP and lease also in the services and care provision and funding of shared ownership
- A financial and care assessment or process may be required
- Make provision for seeing purchaser/tenants several times and also possibly relatives
- Two unique aspects of marketing extra care will be first, the necessity to liaise with and in some cases get prior agreement on letting or sales from Social Services. Second, the need to give benefits advice to some applicants
- Location of show flat/bungalow near entrance with accessible approach is particularly important
- Have a mechanism and process for getting feedback from enquiries so you can adjust approach/details
- It is valuable to provide a briefing to local solicitors also a simple guide to how extra care works and any unusual or special aspects of the lease
- Prior to sales/lettings possibly part of market research phase or building up relationship with commissioners, it is often possible to establish a substantial waiting list. One major provider for example routinely carries out several major “consultation” events in the planning phase. The result is that by the time the development is completed there are large numbers interested in viewing.

The Housing LIN has a model leaflet “Thinking About a Move” which can be used to provide an introduction to extra care. It can be downloaded from the Change Agent Team website and adapted to local needs and circumstances.

Lesson from Market Research for Design

A fundamental message for mixed tenure extra care to be successful is “know your market”. For a large multi-million development to make proper decisions and manage risk this means doing the market research.

In the case of the £62 m re-development of Denham Village by Anchor Trust research into every aspect of the “product” and market included:

- Large scale, street interview, survey of over 65 age group in different geographical areas on perceptions of retirement housing and what was good and bad about it. What they thought of their present housing and what would they prefer
- Revised plans and the “Vision” for the village were then tested with three targeted groups:
 - tenants in the existing village

- the landlord of the present tenants
- older owner occupiers living in properties over a certain value
- Details of the building design, layout, materials and fittings were all tested with additional focus groups of older people
- A local estate agent was appointed to help market the development. They were involved in dwelling design at an early stage bringing in another aspect of market knowledge.

Anchor Trust learnt a considerable amount from the market research now reflected in extra care developments generally and indeed work with older people. To pick out a handful of lessons:

- There was a surprising lack of knowledge of how leasehold housing worked even amongst existing owners of retirement housing – concepts like sinking funds, reserves, maintenance responsibility
- Clarity of communication is critical
- A surprise was a consistent message from those retiring of, “don’t treat us as old fashioned, older people – give us contemporary”. In concrete terms when prospective residents had an opportunity during the research to specify services and buildings they would choose what emerged was a concept very similar to a Centre Parcs village
- Less surprisingly (but in conflict with some aspects of present housing policy) residents did not want developments to be monotonous, standardised buildings – they did not want developments that resembled social rented housing. The lessons lie in briefing architects/design team and choice of architect and possibly builder
- The fact that the village would be mixed tenure did **not** discourage purchasers. However, in this particular case the local authority has no nomination rights, the initial cohort of tenants is already in place, and Anchor Trust will control lettings
- The level of rents to be charged in the tenanted property was a crucial factor in making mixed tenure acceptable to potential owners
- The market research influenced both the layout and range of facilities created. All dwellings are built to lifetime homes standards. Detailed design and choice of building components has been directly influenced by the need to minimise the level of sinking fund contribution required
- Lessons for detailed design of dwellings include:
 - Gas hobs were preferred to electric in this locality
 - In the houses and flats a focal point gas fire is preferred to electric
 - Bulky low temperature radiators are not liked
 - Avoid putting a dispersed alarm unit in a prominent position

- Level access, drive-in showers, to the main bedroom which can also be accessed from circulation area are liked. People would however prefer some form of enclosure to the open shower arrangement
- Specify modern fittings that are more easily useable by an older person with some physical frailty. Select a manufacturer with marketing brand appeal/fashionable then select appropriately from the range. This choice of fittings relates to the idea of selling a particular “life style” in modern extra care. This applies particularly to kitchens and bathrooms

CONCLUSION

In conclusion these are 10 key issues anybody considering mixed tenure extra care should be able to answer.

10 Key Issues about Mixed Tenure Schemes

1. Why am I developing mixed tenure?
2. What model of mixed tenure scheme will I develop?
3. Will leaseholders be in a separate building or be pepper potted?
4. Will care and or support services be part of the leases and tenancy agreements or will they be a separate legal agreement?
5. Who will be the care/support provider? What is attitude of SPAA to all in one service? Is there funding available for leaseholders?
6. Can I draw up a detailed list of the services that will be charged to the owners and tenants? What will be the differences and why?
7. Will I charge the tenants fixed or variable service charges?
8. Who will pay for void services and what will be the budget?
9. What are the main clauses I want in leases?
10. How will reserve funds be collected?

ANNEX A

GUIDE TO LEASEHOLD LEGAL REQUIREMENTS FOR MIXED TENURE

legislation	HA lessee Non-charitable	HA shared owner	Local authority lessee	Private sector lessee	Rented tenant with variable service charge
Right to manage	yes	no	no	yes	no
Collective enfranchisement	yes	no	no	yes	no
Extend leases	yes	no	yes	yes	no
S20 consultation on major works and long term agreements	yes	yes	yes	yes	yes
Right of first refusal on sale of freehold	no	no	no	yes	no
Keep service charge funds in trust	no	no	no	yes	no
Open separate bank accounts for each scheme/group of lessee	no	no	no	Yes (not yet in force)	no
Provide statement of account in prescribed format(not yet in force)	yes	yes	yes	yes	Yes
Provide accountants' certificate with accounts (not yet in force)	probable	probable	maybe	yes	possible
Supply statement of rights with service charge demands	yes	yes	yes	yes	yes
Right to challenge service charges at LVT	yes	yes	yes	yes	yes
Ground rents demands in prescribed form	yes	No ground rent	yes	yes	No ground rent
Right to inspect invoices and receipts	yes	yes	yes	yes	Yes
Right to inspect buildings insurance	yes	yes	yes	yes	Yes
Appointment of another manager by LVT if fault proven	no	no	no	yes	No

Other Housing LIN publications available in this format:

- Technical Brief no.1: **Care in Extra Care Housing - A Technical brief**
- Technical Brief no.2: **Funding Extra Care Housing**
- Factsheet no.1: **Extra Care Housing - What is it?**
- Factsheet no.2: **Commissioning and Funding Extra Care Housing**
- Factsheet no.3: **New Provisions for Older People with Learning Disabilities**
- Factsheet no.4: **Models of Extra Care Housing and Retirement Communities**
- Factsheet no.5: **Assistive Technology in Extra Care Housing**
- Factsheet no.6: **Design Principles for Extra Care**
- Factsheet no.7: **Private Sector Provision of Extra Care Housing**
- Factsheet no.8: **User Involvement in Extra Care Housing**
- Factsheet no.9: **Workforce Issues in Extra Care Housing**
- Factsheet no.10: **Refurbishing or remodelling sheltered housing: a checklist for developing Extra Care**
- Factsheet no.11: **An Introduction to Extra Care Housing and Intermediate Care**
- Factsheet no.12: **An Introduction to Extra Care Housing in Rural Areas**
- Factsheet no.13: **Eco Housing: Taking Extra Care with environmentally friendly design**
- Factsheet no 14: **Supporting People with Dementia in Extra Care Housing: an introduction to the issues**
- Factsheet no 15: **Extra Care Housing Options for Older People with Functional Mental Health Problems**
- Factsheet no 16: **Extra Care Housing Models and Older Homeless People (**
- Case Study Report: **Achieving Success in the Development of Extra Care Schemes for Older People**