

# Tenant's Choice and the Torbay Tenants Housing Association



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## Summary and conclusions

### Introduction

- 1 This report sets out the findings of a National Audit Office examination of the Housing Corporation's grant funding of £1.87 million for Torbay Tenants Housing Association's unsuccessful bid to acquire some 2,700 properties from Torbay Borough Council under the Tenants' Choice Legislation. The investigation was undertaken to address concerns raised with the National Audit Office about the value for money obtained from this expenditure.
- 2 Tenants' Choice was one of a series of initiatives aimed at giving tenants of public sector landlords more choice over the management of their homes. The initiative, introduced by the Housing Act 1988, gave organisations approved by the Housing Corporation the right to acquire housing owned by the public sector landlords where a majority of tenants did not oppose the transfer in a ballot. The Corporation paid £4.2 million in grants to Tenants' Choice schemes, and estimates that its own costs of administering the initiative amounted to around £2 million. In addition, there was the unquantifiable effort committed by tenants and others, on a voluntary basis, to support and organise individual schemes.
- 3 The Corporation's grants supported two promotional consultancies and 17 Tenants' Choice schemes, covering over 6,800 properties. Of these, five schemes involving around 1,000 properties resulted in a change of landlord, including three schemes which involved tenant controlled bodies. The Corporation's grant expenditure per property finally transferred was about £4,200. Following discussions between the Department of the Environment\* and the Housing Corporation about the high cost and low success rate of the initiative, the Tenants' Choice legislation was repealed by the Housing Act 1996.
- 4 Torbay Tenants Housing Association was the largest Tenants' Choice scheme supported by the Corporation. Its total grant of £1.87 million, excluding a final repayment to the Corporation of £49,000, represented 44 per cent of the Corporation's total grant expenditure on Tenants' Choice. In the event, no properties were transferred. Torbay Borough Council estimated they incurred negotiation and valuation costs on the scheme amounting to £650,000.
- 5 In June 1991, the Association applied to Torbay Borough Council to acquire 3,175 of its properties under the Tenants' Choice legislation. Following negotiations between the Borough Council and the Association, it was agreed in June 1993 that the proposed transfer would include some 2,700 properties, over 85 per cent of the Council's housing. A price of £25.7 million was fixed by the District Valuer in May 1995. However, when the ballot of tenants was held in August 1995, only seven per cent voted in favour of a transfer,

\* It became part of the Department of the Environment, Transport and the Regions in June 1997.

on a 93 per cent turn out. After the ballot, the Association applied to the Corporation to be de-registered in December 1995.

## **Main findings**

### **Did the Corporation adequately assess Torbay Tenants Housing Association's application to become an approved landlord?**

- 6 Tenants' Choice applicants were required to obtain Housing Corporation recognition as an approved landlord before their application could proceed. The Corporation took appropriate steps to assess Torbay Tenants' application to become an approved landlord. Torbay Tenants Housing Association applied to become an approved landlord in September 1990. The Corporation's regional and headquarters staff examined the Association's financial procedures and business plan, and found that there was a satisfactory system of control. The Corporation had also scrutinised a petition indicating that a third of tenants, considerably more than the ten per cent required, was in favour of transfer.

### **Did the Corporation have authority to pay grants to Torbay Tenants in support of its Tenants' Choice bid?**

- 7 The Tenants' Choice legislation, under Part IV of the Housing Act 1988, did not include any powers to provide direct financial assistance although it did allow the Corporation to provide a service of information, and assistance to Tenants' Choice applicants. The Corporation paid grants to Torbay Tenants Housing Association amounting to some £700,000 prior to its registration as a housing association in June 1992. These grants were paid under the Corporation's powers to give grants to promote and give advice on the formation of registered housing associations. However, these grants were also used to meet other items of expenditure connected with the transfer of a significant portfolio of properties including, for example, initial feasibility work and negotiations with the Council on the terms on which the properties could be purchased. There are now grounds for doubt that these expenses fell within the scope of the relevant legislation. Grants made to Torbay Tenants after June 1992 were made under the Corporation's other powers to give grants to registered housing associations.
- 8 The Corporation consider that all the funding prior to June 1992 was within their statutory powers taken as a whole. The grants were made with the consent of the Secretary of State and the Treasury; and the Corporation believed that they were fully within the contemplation of Parliament when it approved the Tenants' Choice legislation, since tenant groups would not have been able to proceed with a Tenants' Choice bid without grant assistance, as they had no alternative source of funding.

**Did the Corporation ensure that activities funded were necessary and appropriate?**

- 9 Over six and a half years the Association incurred expenditure almost entirely financed by grants from the Corporation - the total net cost to the Corporation amounted to £1.82 million. Fifty nine per cent of the Association's expenditure related to consultant costs which were used by the Association to progress its bid through the statutory stages of the Tenants' Choice scheme. The longer than expected time taken to complete transfer negotiations resulted in additional costs being incurred. Before grant payments were released, applications were checked by the Corporation's regional office staff, including the Regional Director, and a Senior Manager at headquarters. In addition, the Assistant Chief Executive of the Housing Corporation took a personal overview of the Association's expenditure and progress in the early stages of the scheme.

**Did the Corporation ensure that Torbay Tenants Housing Association let contracts on the basis of competitive tendering?**

- 10 The Corporation's guidance required their staff to check before releasing grants that the applicant had given acceptable reasons for not seeking competitive tenders on contracts in excess of £5,000. The Association let eight contracts over £5,000 during its lifetime. Five were subject to competition, but not the other three. Two consultancy contracts were re-awarded without competition. The contracts let after competition amounted to about £526,000; those let without competition came to about £554,000. All contracts were approved by the Corporation.

**Could the Corporation have acted to reduce the time taken by Torbay Tenants Housing Association to complete the Tenants' Choice bid?**

- 11 Torbay Tenants was in existence for some six and a half years, and it took just over four years from June 1991, when the Association applied to the Council to purchase the housing, to the ballot of tenants in August 1995. The protracted negotiation period, reflecting in part legal complexities associated with the potential transfer of a large and varied portfolio of properties, resulted in increased costs being incurred by the Association which were met from Corporation grants. However, once Torbay Tenants had received approved landlord status in 1991, the Housing Corporation had no statutory power to intervene to speed up negotiations between the Association and the Corporation.

**Did the Corporation monitor Torbay Tenants Housing Association's chances of success in the ballot?**

- 12 In January 1991 when Torbay Tenants became an approved landlord, the Corporation had evidence, based on a petition organised by the Federation of Torbay Tenants and Residents Associations in February 1990, to suggest that Torbay Tenants had the support of about a third of the tenants compared to the minimum of ten per cent required for approved landlord status at that time. Subsequent monitoring of the scheme was based upon the statutory requirement that a scheme would go ahead if it was not opposed by a majority of tenants in a ballot with a turnout of at least half the tenants. Additional criteria issued in 1993 for grant support to new Tenants' Choice

schemes were, with the agreement of the Department, not applied to existing schemes such as Torbay Tenants provided these schemes continued to have a reasonable prospect of transfer.

- 13 Based on the information available to them, the Corporation took the view that, on balance, this criterion continued to be met during the period up to the final ballot in August 1995. In January 1991, an opinion survey undertaken by the Association had found that 81 per cent of the tenants surveyed were in favour of a tenant managed housing association. However, in February 1991 Torbay Council informed the Department that in the opinion of its locally based housing officers at most 20 per cent of tenants were in favour of a change of landlord, and informed the Housing Corporation that other estimates of support were in its view suspect. Canvassing returns organised by the Association between April 1994 and the ballot suggested that support for a transfer was rising, and the Association could be successful if the “don't knows” abstained in the ballot or voted for a transfer. Whilst the proportion of tenants positively in favour was around 20 per cent, the inclusion of “don't knows” brought the potential support to around 60 per cent throughout this period. The Corporation also believed that canvass results could only be indicative until such time as tenants had firmer information about maintenance and likely rent levels under their new landlord. However, when the ballot was held in August 1995 only seven per cent of the tenants voted in favour of transfer, on a 93 per cent turn out.

#### **Did the Corporation control the total grants costs of the scheme?**

- 14 The Corporation relied on monitoring spending against six monthly budgets, coupled with monitoring visits, to assist their control of expenditure on the Torbay Tenants bid. Because of the size and complexity of the Torbay Tenants bid compared to other Tenants' Choice projects, the Corporation decided not to apply its system of cost ceilings to assess the reasonableness of grants paid to Tenants' Choice schemes.

### **Conclusions**

- 15 At the time of its creation, Torbay Tenants was one of the first bids to be prepared under the Tenants' Choice scheme and, as it turned out one of the largest and most complex. Whilst the Corporation had previous experience of overseeing voluntary transfers of stock between local councils and housing associations, it had little experience of overseeing the type of transfer envisaged under Tenants' Choice and therefore had to learn as the scheme progressed. The Torbay Tenants scheme incurred considerable cost, took a long time to reach a conclusion, and ultimately received very little support from tenants when it was finally put to a ballot. Shortly after the final ballot for Torbay Tenants, and in view of wider concerns about the high cost and low success rate of the initiative, the Tenants' Choice initiative was ended and the legislation repealed.

- 16 There will therefore be no further expenditure under these arrangements. The National Audit Office have nevertheless identified the following lessons from experience with the Torbay Tenants scheme, which could be applied to future schemes with similar features:
- firm control should be established at the outset over the levels of public funding, to be provided and, subject to any legal constraints, the circumstances in which further funding could be discontinued should be made more explicit from the outset;
  - there should be a timetable for the completion of any relevant negotiations, so that progress can be monitored, and cost implications considered if slippage occurs; and,
  - where the support of tenants or other interested parties is required, it should be assessed under arrangements independent of the grant recipient - including the assessment of support at the outset.

There is now some uncertainty over whether the Housing Corporation had powers to pay some grants to Torbay Tenants even though the Corporation believed they were fully within the contemplation of Parliament. This is a useful reminder that where public bodies seek to use existing statutory powers to make grants for new initiatives, legal advice should be sought to confirm that the proposed payments fall within the scope of the legislation.

## Part 1: Introduction

- 1.1 This report sets out the findings of a National Audit Office examination of the Housing Corporation's grant funding of £1.87 million for Torbay Tenants Housing Association's unsuccessful bid to acquire some 2,700 properties from Torbay Borough Council under the Tenants' Choice legislation. The investigation was undertaken to address concerns raised with the National Audit Office about the value for money obtained from this expenditure.

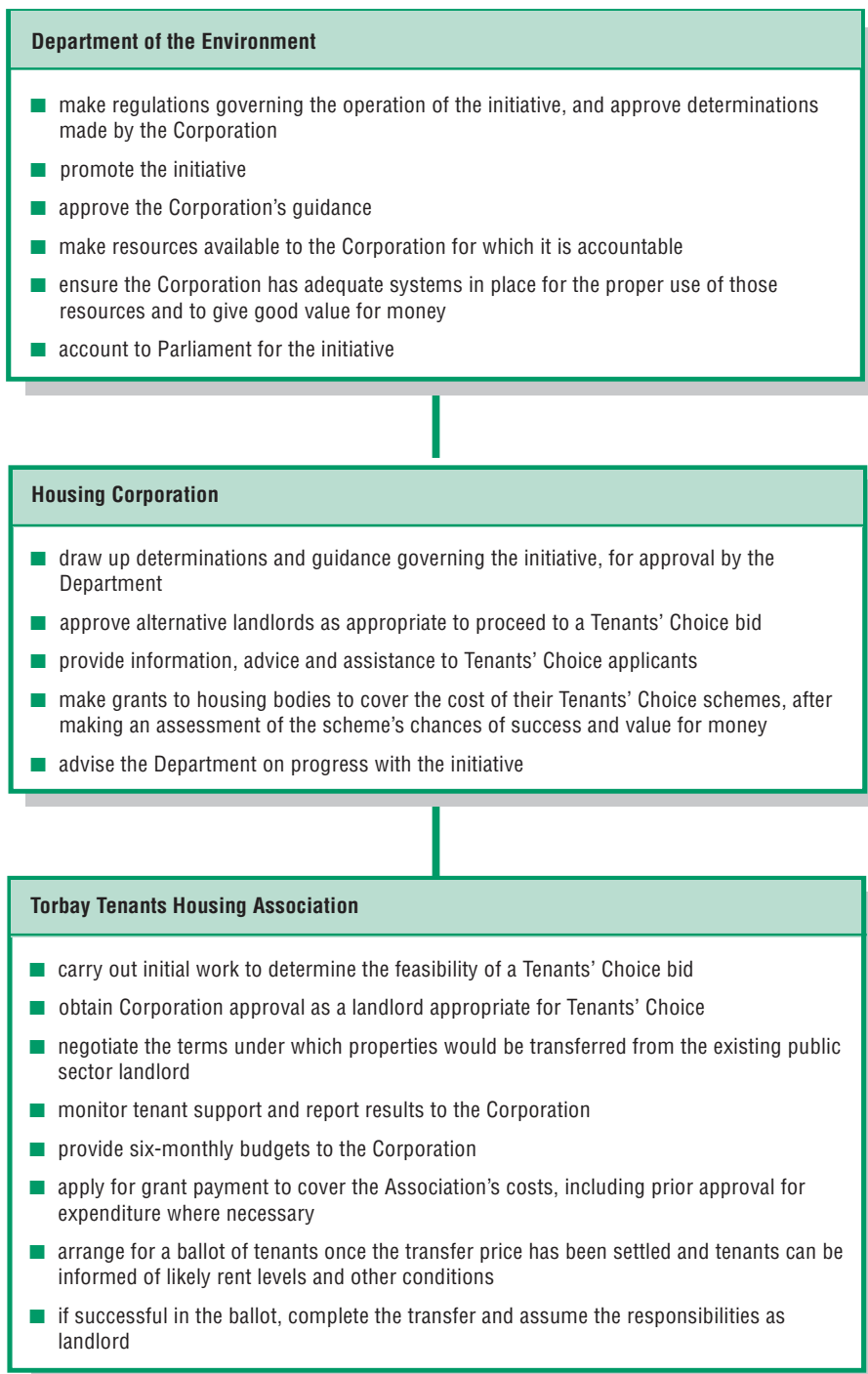
### Tenants' Choice

- 1.2 Tenants' Choice was one of a series of initiatives aimed at giving tenants of public sector landlords more choice over the management of their homes. It was introduced by the Housing Act 1988, which gave organisations approved by the Housing Corporation the right to acquire housing owned by public sector landlords where a majority of tenants did not oppose the transfer. Tenants' Choice was repealed by the Housing Act 1996. The objectives of the initiative were to:
- broaden the choices open to secure tenants by giving them an alternative landlord of their choosing for their homes;
  - offer tenants better services, whether through a change of landlord or through the effect of competition on existing public sector landlords; and
  - open up the stocks of rented housing held by local housing authorities to diversity, competition and the influence of the best housing management practices of other landlords specially approved for the purpose.
- 1.3 The Housing Corporation, a non-departmental public body sponsored by the Department of the Environment, is responsible for the funding and regulation of social housing provided by the 2,200 registered housing associations+ in England. For Tenants' Choice, the Corporation was responsible for making grants to housing bodies to cover the administrative costs incurred on individual schemes, and had the statutory responsibility to:
- approve alternative landlords, which could be a commercial landlord, registered housing association or tenant controlled body; and
  - provide a service of information, advice and assistance to approved landlords, those considering applying for approved landlord status, and tenants of public sector landlords.



- 1.4 The Secretary of State for the Environment is responsible to Parliament for the resources made available to the Corporation, and the Accounting Officer at the Department of the Environment is responsible for ensuring that the Corporation has adequate systems in place for those resources to be used properly and to give good value for money. For Tenants' Choice, the Department was responsible for making regulations governing the operation of the initiative, for general promotion of the initiative; for approving the determinations under which the Corporation made grants towards the administrative expenditure incurred by prospective landlords on Tenants' Choice schemes; and for approving guidance drawn up by the Corporation. The respective roles and responsibilities of the Department, the Corporation and Torbay Tenants Housing Association are set out in Figure 1.
- 1.5 The Corporation paid £4.2 million in grants to Tenants' Choice schemes, and estimates that its own costs of administering the initiative amounted to around £2 million. In addition, there was the unquantifiable effort committed by tenants and others, on a voluntary basis, to support and organise individual schemes. The Corporation's grants supported two promotional consultancies and 17 Tenants' Choice schemes, covering over 6,800 properties (Figure 2). The Corporation funded initial feasibility work for eight schemes which did not progress to the preparation of a bid: of the remaining nine, seven proceeded to a ballot of which five schemes involving around 1,000 properties resulted in a change of landlord, including three schemes which involved tenant controlled bodies. The Corporation's grant expenditure per property finally transferred was about £4,200.
- 1.6 A Tenants' Choice scheme involved five stages:
- initial feasibility work;
  - the award by the Corporation of approved landlord status;
  - applying to the existing public sector landlord to acquire some of its housing stock, and negotiating the terms of the acquisition and the price to be paid under Regulations made by the Department of the Environment;
  - balloting tenants on the proposed change of landlord once the transfer price had been settled and tenants could be informed about future rent levels and repairs and improvements; and
  - where a majority of tenants do not oppose the change of landlord, transferring the properties of tenants to the approved landlord - except the properties of tenants voting to remain with the Council.

**Figure 1: Roles and responsibilities for Tenants' Choice**



**The Department had overall responsibility for the initiative; the Corporation administered the initiative and oversaw individual schemes such as Torbay Tenants.**

**Figure 2 Recipients of Tenants' Choice funding**

Association	Grant £000	Number of properties	Number of properties transferred	Grant per property transferred £
<b>Schemes which did not progress to a ballot</b>				
Dawson Heights, Southwark <sup>(1)</sup>	370	297	-	-
Trowbridge Community Homes, Hackney <sup>(2)</sup>	339	260	-	-
<b>Sub-total</b>	<b>709</b>	<b>557</b>	<b>-</b>	<b>-</b>
<b>Schemes which were not successful in a ballot</b>				
Torbay Tenants Housing Association	1,869	2,709	-	-
Wheathampstead, St Albans	143	500	-	-
<b>Sub-total</b>	<b>2,012</b>	<b>3,209</b>	<b>-</b>	<b>-</b>
<b>Schemes which were successful in a ballot</b>				
Walterton and Elgin Community Homes, Westminster	737	918	918	803
Holtsfield, Buckinghamshire	280	55	55	5,090
Hayles Community Housing Association, Southwark	130	21	21	6,190
Family Housing Association, Merton	24	8	8	3,000
Minster Housing Association, Peterborough	0	1	1	0
<b>Sub-total</b>	<b>1,171</b>	<b>1,003</b>	<b>1,003</b>	<b>1,167<sup>Average(4)</sup></b>
<b>Other projects</b>				
Initial feasibility work on eight schemes	292	2,114	-	-
Two consultancies to promote Tenants' Choice	20	-	-	-
<b>Sub-total</b>	<b>312</b>	<b>2,114</b>	<b>-</b>	<b>-</b>
<b>Total</b>	<b>4,204<sup>(3)</sup></b>	<b>6,883</b>	<b>1,003</b>	<b>4,191<sup>Average(4)</sup></b>

Source: *Housing Corporation*

Note: (1) The alternative landlord found that the price determined by the District Valuer for Dawson Heights made acquisition no longer viable.

(2) The Corporation refused further funding as insufficient tenants were likely to support a transfer.

(3) This figure shows the gross expenditure on grants. The Corporation received repayments of £76,000, representing unused grant on schemes which had not been successful. Of this £49,000 was refunded by Torbay Tenants Housing Association.

(4) Overall average = total grant paid/total number of properties transferred.

**Grants to Torbay Tenants Housing Association, where no properties were transferred, accounted for 44 per cent of the Corporation's grant expenditure on Tenants' Choice.**

- 1.7 In appraising applications for grant support the Corporation sought to satisfy itself that the scheme had a reasonable chance of success and represented good value for money. The Corporation was aware from legal advice taken in 1992 that once grant support had been approved, recipients would have a legitimate expectation that this support could not be withdrawn subsequently without good reason. To ensure that the grants paid out to meet administrative costs were used efficiently and effectively the Corporation monitored five key aspects:
- the chances of success of the scheme;
  - progress made towards acquiring the properties;
  - the need for the activities to be funded by grants from the Corporation;
  - tendering processes being followed for contracts, where appropriate; and
  - the cost of the scheme.
- 1.8 The Corporation's regional offices had the main responsibility for appraising grants for individual schemes and monitoring progress, whilst a team at the Corporation's headquarters was responsible for paying grants and overseeing the programme as a whole.
- 1.9 In April 1995, the Corporation published the results of an external review of its grants paid in respect of promoting and giving advice on the formation of registered housing associations, which included grants paid in support of Tenants' Choice schemes. It recommended that such grants should be focused more sharply, subject to regular monitoring reviews and integrated more fully with the Corporation's development programme and other research and development activity both within the Corporation and with other agencies. On Tenants' Choice grants, the review concluded that these did not represent value for money because of the high cost per property transferred.
- 1.10 In September 1995 the Chief Executive of the Housing Corporation wrote to the Department of the Environment, shortly after the Torbay Tenants' ballot rejected the proposed change of landlord, to recommend that the Tenants' Choice programme should be terminated. This advice followed up earlier discussions and correspondence between the Corporation and the Department about the high cost and low success rate of the initiative. Tenants' Choice legislation was repealed in the Housing Act 1996, which also amended the Corporation's responsibility for promotion and its corresponding powers to provide financial assistance. Under this new legislation the Corporation's promotional responsibility is redefined as being to facilitate the proper performance of social landlords for which it may also provide grants known as Innovation and Good Practice Grants.

## Torbay Tenants Housing Association

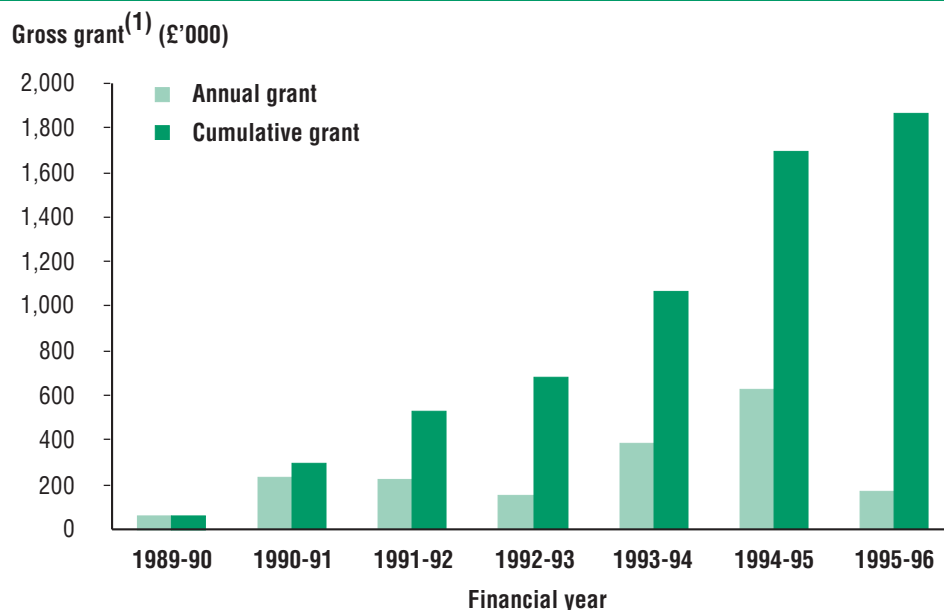
- 1.11 Torbay Tenants Housing Association was the first and largest tenant controlled body to which the Corporation provided grant support under the Tenants' Choice scheme. Its gross cost of £1.87 million represented 44 per cent of the Corporation's total grant expenditure on Tenants' Choice. No properties were transferred. Torbay Borough Council have estimated they incurred negotiation and valuation costs on the scheme amounting to £650,000.
- 1.12 The Association's history began in January 1989 when the Secretary of State for the Environment rejected Torbay Borough Council's proposal to transfer its housing to two registered housing associations under the Department's provisions for Large Scale Voluntary Transfer, a voluntary arrangement where the local authority arranges to sell or transfer a large number of its properties to another social landlord. This proposal had been supported by 15 per cent of tenants in a ballot organised by the Council. Torbay Tenants Housing Association was then created by the Federation of Torbay Tenants and Residents Associations in June 1989, as a vehicle for pursuing the goal of enabling tenants to run their own housing. Torbay Tenants Housing Association proposed to the Council that it should acquire the Council's housing stock on the grounds that it had the support of tenants. When the Council rejected this proposal in November 1989, the Association decided to seek to acquire the housing under the Tenants' Choice scheme.
- 1.13 Torbay Tenants Housing Association was run by a management committee which comprised nine tenants and six co-opted members: two accountants, a lawyer, a chartered surveyor, a professional housing manager and a former businessman. The Council did not take up the three seats allocated to it under the Association's constitution.
- 1.14 The key events in the Tenants' Choice bid were:
- in January 1991, the Housing Corporation awarded Torbay Tenants approved landlord status;
  - in June 1991, Torbay Tenants applied to Torbay Borough Council to acquire 3,175 of its properties under the Tenants' Choice legislation;
  - in June 1992, Torbay Tenants became a registered housing association. Although registration was not a statutory requirement for Tenants' Choice, the Association considered that by becoming a registered housing association, tenants and potential investors would be reassured about its activities and status;
  - in June 1993, the Borough Council and the Association agreed that the proposed transfer would include some 2,700 properties, over 85 per cent of the Council's housing;

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- in October 1993, the District Valuer was asked by the Association to determine a price to be paid for the properties given a substantial difference in the valuations obtained by the Council (£43.1 million) and the Association (£18.3 million). The District Valuer fixed a price of £25.7 million in May 1995; and
- in August 1995, the Electoral Reform Society balloted tenants on the proposed transfer and, on a 93 per cent turnout, only seven per cent of eligible tenants voted in favour of transfer.

The Association applied to the Housing Corporation to be de-registered in December 1995. Between August 1989 and December 1995, the Corporation made grant payments to Torbay Tenants totalling £1.87 million covering the administrative expenditure incurred in taking the scheme forward to a ballot (Figure 3).

**Figure 3: Housing Corporation grant to Torbay Tenants Housing Association**



Source: Housing Corporation

Note: (1) Gross grant expenditure does not take account of £49,000 of unused grant which was refunded to the Corporation by Torbay Tenants Housing Association.

**The Corporation paid a total of £1.87 million in grants to the Association. The largest grants were paid in 1994-95, because of the costs incurred during the District Valuer's hearing.**

## Scope of the National Audit Office examination

- 1.15 The National Audit Office examined the Housing Corporation's oversight and funding of the Torbay Tenants scheme. In particular, the Office looked at the Corporation's :
- assessment of Torbay Tenants Housing Association's application to become an approved landlord;
  - authority for paying grant to support the Association's Tenants' Choice bid;
  - efforts to ensure that grant funding of the Association was for appropriate activities;
  - assurance that contracts were let by competitive tendering;
  - scope for action to reduce the time taken to complete the Tenants' Choice bid;
  - monitoring of the Association's chances of success in securing the support of tenants; and
  - control over the cost of the scheme.

The Office's findings are set out in Part 2 of this report.

- 1.16 The National Audit Office examination was based on an inspection of records held by the Corporation and the Department of the Environment, and interviews with key staff at the Corporation's regional offices and headquarters and at the Department. The National Audit Office does not have a general right of access to the records of housing associations. The National Audit Office were, however, able to examine some of the records of the former Torbay Tenants Housing Association as this Association had been wound up and the records were held by the Corporation. The National Audit Office also held meetings with the former Chief Executive of Torbay Tenants Housing Association, Torbay Borough Council and the District Valuer covering the Torbay area.

## Part 2: Findings of the National Audit Office examination

### Did the Corporation adequately assess Torbay Tenants Housing Association's application to become an approved landlord?

*The Corporation took appropriate steps to assess Torbay Tenants' application to become an approved landlord against clear criteria, and made a recommendation to the Association to improve the range of skills on its Committee.*

- 2.1 The first statutory stage in the Tenants' Choice procedure was for the Housing Corporation to assess whether to approve the applicant as a landlord for the purposes of seeking to acquire housing under the Tenants' Choice provisions. The assessment of the application to become an approved landlord represented a key stage in the Corporation's responsibilities for Tenants' Choice. On the basis of legal advice, the Corporation considered that once it had started to fund it would not be able to withdraw fully from a scheme without the decision being open to judicial review, unless there were reasonable grounds for doing so.
- 2.2 The Corporation used three criteria for assessing applications to become an approved landlord:
- financial control: the organisation must have adequate financial control systems and be able to demonstrate its future viability;
  - managerial competence: the organisation must be able to show that it is controlled by personnel with suitable experience and skills, and has access to the professional skills and experience required for the efficient acquisition, management and maintenance of housing; and
  - tenant support: the organisation should be able to demonstrate that at least 10 per cent of tenants would support a change of landlord.
- 2.3 Torbay Tenants Housing Association applied to become an approved landlord in September 1990. The Corporation's regional and headquarters staff examined the Association's financial procedures and business plan, and found that there was a satisfactory system of financial control. They evaluated the skills of the management board members and the range of consultancy advice commissioned by the Association, and recommended that an additional accountant with experience of private financing should be co-opted on to the Association's Committee. To assess the extent of tenant support for a change of landlord, the Corporation checked the names and addresses of the 1,000 signatories to a February 1990 petition, organised by the Federation which had set up Torbay Tenants, in favour of a tenant controlled housing association to



manage their council houses. The 1,000 signatories represented a third of all council tenants of Torbay Borough Council, considerably more than the benchmark of ten per cent required by the Corporation. The Corporation therefore approved Torbay Tenants' application to become an approved landlord in January 1991.

### **Did the Corporation have authority to pay grants to Torbay Tenants in support of its Tenants' Choice bid?**

*At the time the grants were made, the Corporation were of the view that all the funding provided to Torbay Tenants fell within their statutory powers. Without this support, bodies such as Torbay Tenants Housing Association would have had no other source of funds to meet the costs incurred in progressing a Tenants' Choice bid.*

- 2.4 The Tenants' Choice legislation, under Part IV of the Housing Act 1988, did not include any powers to provide direct financial assistance to Tenants' Choice applicants although it did allow the Corporation to provide a service of information, advice and assistance to applicants. The Corporation paid grants to support Tenants' Choice schemes using two sets of powers (Figure 4):
- those relating to its general responsibility to promote and assist the formation of registered housing associations, set out in the Housing Associations Act 1985 and later amended by the Local Government and Housing Act 1989;
  - its general powers under the Housing Act 1988 to pay grants to registered housing associations.
- 2.5 The Corporation paid grants to Torbay Tenants Housing Association amounting to some £700,000 prior to its registration as a housing association in June 1992. These grants were paid under the 1985 Act, as amended from April 1990 by the 1989 Act, which covered payments in respect of giving advice on preparing to register as a housing association. However, the grant was also used to fund other activities not directly associated with promoting and giving advice to Torbay Tenants on its formation as a registered housing association including, for example, initial feasibility work on the transfer of properties and negotiations with the Council on the terms on which the properties could be purchased. According to legal advice obtained by the National Audit Office, there are now grounds for doubt whether grant used to fund activities not directly associated with promoting and giving advice to Torbay Tenants on its formation as a registered housing association fell within the scope of the 1985 Act, or the 1985 Act as amended by the 1989 Act.

**Figure 4: The statutory powers used by the Corporation to fund Tenants' Choice schemes**

Powers	Statutory basis
<b>Promotional and advisory grants</b>	
(Before April 1990) The Corporation may make grants to registered housing associations and other voluntary organisations towards expenses incurred by them:	Section 87 (1) (a), Housing Associations Act 1985
<ul style="list-style-type: none"> <li>■ in encouraging and giving advice on the formation of housing associations which would be eligible for registration</li> </ul>	
(From April 1990) The Corporation may give financial assistance to any person in respect of the following activities:	Section 87 (1) (a) of the Housing Associations Act 1985, as amended by Section 183 of the Local Government and Housing Act 1989 <sup>(1)</sup>
<ul style="list-style-type: none"> <li>■ promoting and giving advice on the formation of registered housing associations and co-operative housing associations.</li> </ul>	

**Grants to registered housing associations**

The Housing Corporation may make grants to registered housing associations in respect of expenditure incurred by them in connection with housing activities. Section 50, Housing Act 1988<sup>(2)</sup>

Source: *National Audit Office*

- Note:
- (1) *This provision has been amended further by Schedule 3 (paragraph 7) of the Housing Act 1996, which empowers the Corporation to "give financial assistance ... to facilitate the proper performance of registered social landlords".*
  - (2) *A provision has been made in the Housing Act 1996 for making grants to registered social landlords, similar to that in Section 50 of the Housing Act 1988.*

The Corporation used various statutory powers to provide grant to Torbay Tenants.

2.6 The Corporation considered that all the payments made before June 1992 were consistent with the terms of their statutory powers when taken as a whole. They were made with the consent of the Secretary of State and the Treasury; and the Corporation believed that they were fully within the contemplation of Parliament when it approved the Tenants' Choice legislation since such schemes and tenant groups could not have been expected to proceed with a Tenants' Choice bid to transfer properties without grant assistance, as they had no alternative source of funds.

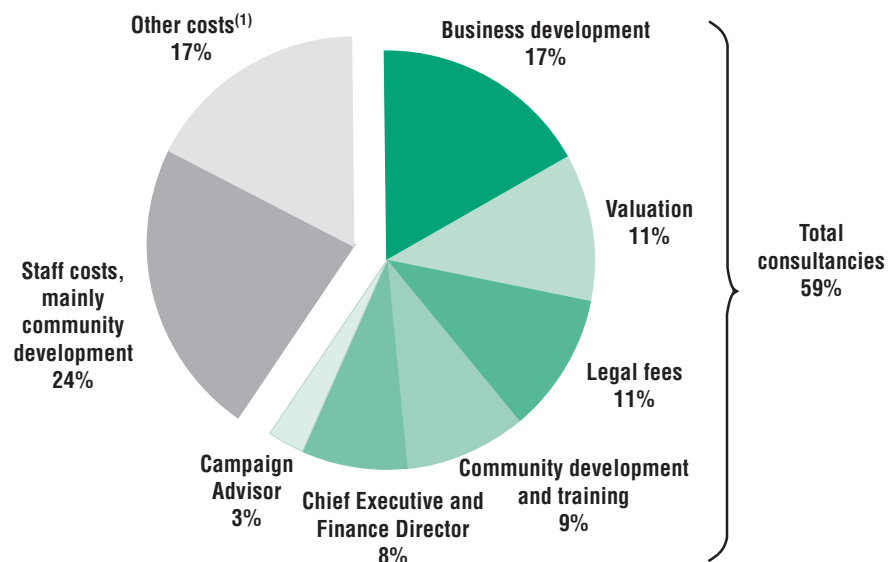
2.7 Grants paid to Torbay Tenants after its registration in June 1992 were paid under the 1988 Act which empowered the Corporation to make grants to registered housing associations.

**Did the Corporation ensure that activities funded were necessary and appropriate?**

*Over six and a half years the Association incurred expenditure of £1.84 million, almost entirely financed by grants from the Corporation. Fifty nine per cent of this expenditure related to consultant costs which were used by the Association to progress its bid through the statutory stages of the Tenants' Choice scheme. The longer than expected time taken to complete transfer negotiations resulted in additional costs being incurred.*

2.8 The Corporation paid a net grant of £1.82 million towards the Association's costs of £1.84 million over the six and a half years it existed. The balance of the Association's expenditure was met by interest received on cash balances. The National Audit Office calculated that 59 per cent of Torbay Tenants' costs were on consultancies, 24 per cent on staff costs and 17 per cent on accommodation and other costs (Figure 5).

**Figure 5: Costs incurred by Torbay Tenants**



Source: National Audit Office

Note: (1) Other costs include accommodation costs such as rent and rates, and publication and distribution costs.

**Torbay Tenants incurred costs of £1.84 million, of which consultancy costs represented 59 per cent.**

2.9 About two thirds of the total consultancy expenditure related to agreeing the basis for transferring the properties from the Council, and preparing the Association's business plans. The property valuation (£208,000) and legal advice (£198,000) consultants were required solely to provide advice in connection with negotiations with the Council. The

business development consultants, whose fees amounted to £306,000, prepared the Association's business plans and advised on what price the Association could afford to pay for the Council's properties. The remaining third of consultancy costs was for community development work (£173,000), strategic advice on campaigning and handling the press (£51,000) and the self-employed costs of the Association's Chief Executive and Finance Director.

- 2.10 Before grant payments were released, applications were checked by regional office staff, including the Regional Director and a Senior Manager at headquarters. The Assistant Chief Executive of the Housing Corporation took a personal overview of the operation of the Tenants' Choice system in the early stages of the scheme.
- 2.11 In its first years, the Association was managed by the Chief Executive, assisted by an office manager, a part-time clerical assistant, two full and one part-time community development workers. The Association obtained the Corporation's approval in March 1993 to recruit a further four community development workers, and a trainee community development worker in December 1993. By the time of the ballot in August 1995, the Association employed 10 staff. The Corporation approved the recruitment of the four community development staff in March 1993 to undertake a final campaigning effort before the ballot, which the Association expected to take place in six months' time. This proved to be unrealistic although the Association considered it to be reasonable at the time based on its knowledge of experiences elsewhere. At that stage, the Association was nearing the completion of negotiations on the properties and rights to be transferred, but had not started negotiations on price. Negotiations on price were unsuccessful and the District Valuer had to be asked by the Association to determine a valuation. This process took longer than expected, with the details not finalised until May 1995. These four community development staff, and the trainee recruited in December 1993, remained in post until the ballot in August 1995.
- 2.12 In November 1993, the Corporation informed Torbay Tenants that it would not provide funds for the community development consultant to undertake casework on behalf of tenants, because such activity was not required for the purposes of establishing the scheme. The National Audit Office found that the consultant did not undertake casework after this date, but that tenants' problems continued to be addressed by the Association's community development staff whose costs were met from grant moneys.

### Did the Corporation ensure that Torbay Tenants Housing Association let contracts on the basis of competitive tendering?

*The Association let eight contracts over £5,000 during its lifetime. Five were subject to competition but three were not. Two consultancy contracts were re-awarded without competition. All contracts were subsequently approved by the Corporation.*

2.13 The Corporation's guidance required their staff to check before releasing grants that the applicant had given acceptable reasons for not seeking competitive tenders on contracts in excess of £5,000. The National Audit Office found the Association had awarded five of its consultancy contracts over £5,000 after competition, but not the other three. Two of the contracts, for business development and community development, were re-awarded without competition (Figure 6).

**Figure 6: Contracts awarded by Torbay Tenants after competition**

Awarded after competition		Awarded without competition	
1. Business development	51,000	1. Community development	£49,000
2. Chief Executive	69,000	2. Finance Director	£75,000
3. The valuation and condition survey of the Council's properties	£208,000	3. Campaign advice	£51,000
4. Legal advice (1989-1991)	£198,000	Re-awarded without competition	
5. Legal advice (1991-1995)		1. Business development	£255,000
		2. Community development	£124,000
<b>Total</b>	<b>£526,000</b>	<b>Total</b>	<b>£54,000</b>

Source: National Audit Office

**Half the Association's contracts over £5,000 were awarded without competition.**

2.14 All decisions to award contracts without competition were approved by the Corporation before implementation. Given the timing and the uncertainties inherent in the Tenants' Choice scheme, the Corporation sought to satisfy itself that, in each instance, the course put forward by the Association represented a sensible and practical approach to securing the services it required on reasonable terms. The Corporation accepted reasons such as the need to maintain stability at certain stages of the bid process. For example, to have changed consultants at one point would have extended timescales unacceptably and reduced confidence in the Association's ability to achieve a transfer.

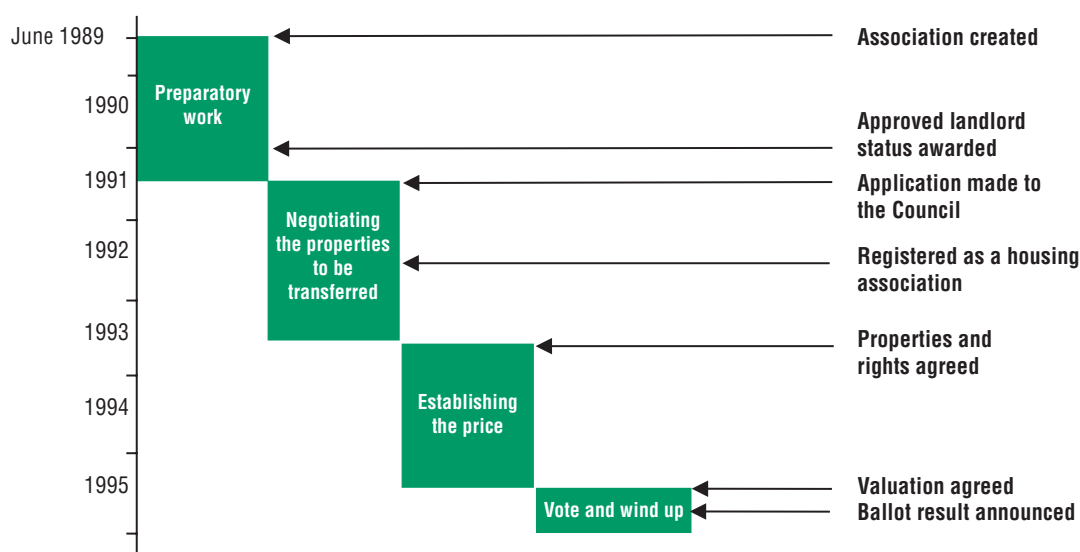
2.15 The Corporation relied on Torbay Tenants' monitoring of consultants' performance to ensure that value for money was obtained from their contracts, through an annual quality review and comparison of charges with market rates. The Association's minutes recorded that the annual quality reviews had been undertaken. The Corporation was aware, through monitoring visits and discussion in committee meetings, of the content and standard of the quality reviews carried out by the Association.

**Could the Corporation have acted to reduce the time taken by Torbay Tenants Housing Association to complete the Tenants' Choice bid?**

*Torbay Tenants was in existence for some six and half years, and it took just over four years from June 1991, when the Association applied to the Council to purchase the housing, to the ballot of tenants in August 1995. The protracted negotiation period, reflecting in part legal complexities associated with the potential transfer of a large and varied portfolio of properties, resulted in increased costs being incurred by the Association which were met from Corporation grants. Once Torbay Tenants had received approved landlord status in 1991, the Housing Corporation had no statutory power to intervene to speed up negotiations between the Association and the Council.*

2.16 Torbay Tenants was in existence for some six and a half years, and it took just over four years from June 1991, when the Association applied to the Council to purchase the housing, to the ballot of tenants in August 1995 (Figure 7).

**Figure 7: Key stages and events in the history of Torbay Tenants Housing Association**



Source: National Audit Office

**Torbay Tenants Housing Association was in existence for six and a half years.**

2.17 Torbay Tenants Housing Association was formed in June 1989. For the next two years, until the formal application for the Council's stock was made in June 1991, the Association was engaged in preparing itself for its application to be an approved landlord. This involved training its Committee members, investment appraisal and assessing whether it would be feasible for it to manage the Council's properties. The Corporation did not discuss with Torbay Tenants how long it should take to complete this stage, but concluded that two years was not unreasonable, given the skills and organisation required to manage around 2,700 properties effectively.

2.18 The process of agreeing what properties and rights were to be transferred to the Association took two years from the initial application for the properties in June 1991 to the completion of the negotiations in June 1993 (Figure 8). The points which took time to resolve included the Council's rights to nominate occupants for vacant properties, together with the terms and conditions under which commercial properties and properties occupied by those not voting for the transfer would be leased back to the Council. The Corporation had no powers to intervene in this process or to force it to a conclusion. To help break the deadlock and conclude this stage, the Corporation offered its services as an honest broker between the two parties. It arranged a meeting in March 1992 for the Council and the Association to identify the issues which were preventing them from reaching an agreement, but agreement was not reached for a further 15 months.

**Figure 8: Key events in negotiating the properties to be transferred**

<b>Date</b>	<b>Event</b>
June 1991	Torbay Tenants applied to the Council to acquire its property.
October 1991	Torbay Borough Council responded to the Association on the proposed properties to be included.
November 1991	Torbay Tenants answered the points raised by the Council.
December 1991	The Council and the Association met to discuss outstanding issues.
March 1992	The Corporation arranged a meeting between the Council and the Association to discuss outstanding issues.
June 1993	The Council and the Association agreed the properties to be transferred.

*Source: National Audit Office*

**It took two years to agree which properties would be transferred.**

2.19 Following agreement on the properties to be transferred it took a further eighteen months, from September 1993 to May 1995, to determine a valuation (Figure 9). In October 1993, the Association requested that the District Valuer determine the price to be paid, as soon as the considerable difference between the Council's valuation of £43 million and the Association's valuation of £18 million became clear. In May 1995, after conducting a substantial programme of inspections, a series of hearings and analysing

other evidence provided by the parties, the District Valuer valued the properties at £25.7 million. The Corporation was not in a position to affect the duration of this phase once the Association had applied for a valuation by the District Valuer.

**Figure 9: Key events in establishing the price to be paid**

Date	Event
September 1993	Torbay Borough Council valued the properties at £43.1 million.
October 1993	The Association valued the properties at £18.3 million, and applied for a valuation by the District Valuer.
November 1993	The Council issued a revised valuation of £38.2 million.
December 1993	The Association issued a revised valuation of £19.1 million.
January - May 1994	The District Valuer carried out inspections and continued collecting evidence for the valuation.
June - October 1994	The District Valuer held hearings.
May 1995	The District Valuer produced a report, valuing the properties at £25.7 million.

Source: National Audit Office

**It took 18 months to establish the price of the properties.**

### Did the Corporation monitor Torbay Tenants Housing Association's chances of success in the ballot?

*In January 1991 when Torbay Tenants became an approved landlord, the Corporation had evidence, based on a petition organised by the Federation of Torbay Tenants and Residents Associations in February 1990, to suggest that Torbay Tenants had the support of about a third of the tenants compared to the minimum of ten per cent required for approved landlord status at that time. Additional criteria issued in 1993 for grant support to new Tenants' Choice schemes were, with the agreement of the Department, not applied to existing schemes such as Torbay Tenants provided these schemes continued to have a reasonable prospect of transfer. Based on the information available to them, the Corporation took the view that, on balance, this criterion continued to be met during the period up to the final ballot in August 1995. The Corporation also believed that canvass results could only be indicative until such time as tenants had firmer information about maintenance and likely rent levels under their new landlord.*

2.20 In assessing the Association's application to become an approved landlord in January 1991, the Corporation established, on the basis of a petition organised by the Federation of Torbay Tenants and Residents Associations in February 1990, that a third of tenants supported the proposed transfer compared to the minimum requirement of ten per cent (see paragraph 2.3). Thereafter, the Corporation had no statutory responsibility to help secure a successful outcome although it did have a duty to ensure that the risk to the public purse of supporting unsuccessful cases was



minimised by rigorous monitoring of the progress of cases. Subsequent monitoring was also based upon the statutory requirement that a scheme would go ahead if it was not opposed by a majority of tenants in a ballot with a turnout of at least half the tenants.

2.21 The Corporation and Department received evidence of voting intentions from various sources in the period between 1991 and 1993:

- an opinion survey undertaken by the Association in January 1991 had found that 81 per cent of the tenants surveyed were in favour of a tenant managed housing association.;
- however in February 1991 Torbay Council informed the Department that in the opinion of its locally based housing officers at most 20 per cent of tenants were in favour of a change of landlord and informed the Housing Corporation that, in its view, other estimates of support were suspect; and
- doorstep canvassing commissioned by the Association staff indicated a potential falling away of support, from 33 per cent of tenants saying they would vote for a new landlord in November 1991 to 22 per cent in August 1992. However, both canvasses revealed a substantial number of “don't knows”, 40 and 49 per cent respectively.

2.22 There was also growing opposition to the transfer from Torbay Council and an apparent weakening of support from tenant groups. By November 1993, of the 12 estates in Torbay, only four had tenants groups affiliated to the Federation of Torbay Tenants and Residents Associations which had founded Torbay Tenants Housing Association.

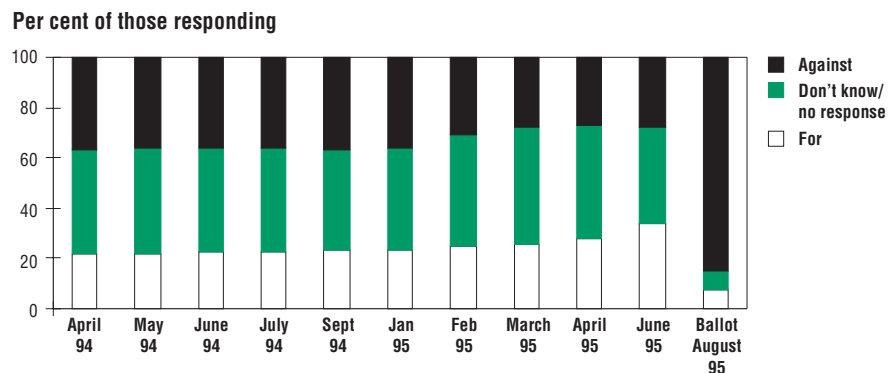
2.23 In November 1993 the Corporation issued new guidance on the appraisal and monitoring of Tenants' Choice schemes. This guidance introduced two additional criteria to be applied to new schemes for which grant support was sought. First, the bid had to have a degree of support from both the local authority and tenant groups; and second, the degree of tenant support should not fall below 40 per cent. The Corporation and Department agreed that existing schemes should be allowed to pursue their course subject, so far as possible, to these new criteria and whilst the scheme continued to have a reasonable prospect of success.

2.24 The Corporation decided in late 1993 that, on the balance of information available, there was still a reasonable prospect of a successful transfer. The Corporation's decision, which was approved by the Department, took account of the high number of “don't knows” appearing in the Association's canvass results and the consequent possibility that the scheme might still meet the statutory requirement that it should not be opposed by a majority of tenants. In addition, the Corporation took the view that the canvass returns could only be indicative of the final result: until a price had been settled for the transfer, tenants could not be given firm information on future rent levels and repairs and improvements. The Corporation's experience with other similar transfers suggested this information would be an important factor in deciding whether and how tenants voted in the ballot. The Corporation also considered that the new criteria

introduced in 1993 could not reasonably have been applied in retrospect to a project already approved: and to have withdrawn funding at that point in time might have invited an application for judicial review from Torbay Tenants Housing Association.

2.25 The Corporation continued to receive evidence from the association of tenants' voting intentions between April 1994 and June 1995. The canvassing returns from the Association suggested that support for a transfer was rising, and the Association could be successful if the "don't knows" abstained in the ballot or voted for a transfer. Whilst the proportion of tenants positively in favour was around 20 per cent, the inclusion of "don't knows" brought the potential support to around 60 per cent throughout this period (Figure 10). However, when the ballot was held in August 1995 only seven per cent of the tenants voted in favour of transfer, on a 93 per cent turn out.

**Figure 10: Torbay Tenants Housing Association's canvass results**



Source: National Audit Office

**After April 1994, fewer than 40 per cent of tenants said they would vote for a transfer, although a large proportion of tenants did not know how they intended to vote or did not respond. When the ballot was held in August 1995, only seven per cent of tenants voted in favour.**

### Did the Corporation control the total grant costs of the scheme?

*The Corporation relied on monitoring spending against six monthly budgets, coupled with monitoring visits, to assist their control of expenditure on the Torbay Tenants scheme. Because of the size and complexity of the Torbay Tenants bid compared to others, the Corporation decided not to apply its system of cost ceilings to assess the reasonableness of grants normally paid to Tenants' Choice schemes. The final net cost to the Corporation of the Torbay Tenants scheme was £1.82 million.*

- 2.26 Under normal circumstances, the Corporation's guidance required that cost ceilings be set for each Tenants' Choice scheme, based on the number of properties and the expected duration of the scheme. The cost ceiling comprised four elements: the initial assessment of feasibility; establishing and running the organisation; seeking approved landlord status; and negotiations on acquisition of the housing. In each case the ceilings assumed that specific costs incurred would still have to be justified. Cost ceilings were set on a graduated scale for transfers up to 1,000 units. The Torbay Tenants scheme was for over 3,000 (and later, 2,700) properties and was therefore made subject to separate arrangements.
- 2.27 Because of the size and complexity of the transfer and the uncertainty over the time required for negotiation, the Corporation decided not to inform the Association of any pre-set expenditure ceiling for the scheme. As an alternative, the Corporation relied on the submission of six monthly rather than annual budgets from the Association. These six monthly budgets were supplemented by annual grant monitoring visits and contacts maintained by Corporation regional staff with the Association.
- 2.28 Until April 1993 the Corporation paid all grant in advance of the costs being incurred, as the Association had no outside funds on which to draw. Thereafter the Corporation paid the Association its consultancy costs, accounting for around 60 per cent of expenditure, in arrears on receipt of invoices. As the duration of each stage was uncertain, with many of the Association's activities determined by its progress in negotiations with the Council, the payment of consultancy fees in arrears, on evidence of costs incurred, significantly improved the Corporation's control. Against a basic running cost of between £20,000 and £30,000 a month, cash balances varied from £22,000 to £137,000. After April 1993, the average monthly cash balance was equivalent to over two months' average expenditure. The Corporation ensured that balances were invested in interest bearing accounts.
- 2.29 The Corporation required that Tenants' Choice applicants should identify the likely cost to complete the scheme when making their six-monthly applications for grant. However, this information was not always provided by the Association, as the Corporation held the view the Association could not predict or control the timing of the stages in the process and that rigorous examination of applications provided a sufficiently effective control over expenditure. In May 1990 the regional office informed

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the Corporation's headquarters that they expected the scheme to cost over £1 million, based on their experience with Large Scale Voluntary Transfer schemes. In July 1991 the Association informed the Corporation that it expected the scheme to cost around £1.3 million. The Association considered, however, that with the Council in a powerful position to influence the length of the negotiations, it would not be in a position to control all future costs.

- 2.30 When the Corporation introduced its revised criteria for appraisal of schemes, in November 1993, the Department agreed that new schemes could be allowed to exceed their cost ceiling if there was a high level of tenant support. At this point, the Corporation informed the Department that although the total grant spent on Torbay Tenants was considerable the expected cost per unit transferred was low in comparison with other Tenants' Choice schemes. The Corporation concluded that grant funding of the Association should not be withdrawn. In taking this decision, it was also mindful that a decision to withdraw grant from an approved landlord once a legitimate expectation of funding had been established could be subject to legal challenge unless there were reasonable grounds for doing so (see paragraph 2.1 above).
- 2.31 The final net cost to the Corporation of the Torbay Tenants' bid was £1.82 million. The unit cost per property for Torbay Tenants was £690 compared with the unit costs of the two other large Tenants' Choice schemes which went to a ballot of £802 for Walerton and Elgin, and £282 for Wheathampstead.