



# Agenda

Meeting: **Cabinet**  
Date: **31 July 2019**  
Time: **5.00 pm**  
Place: **Council Chamber - Civic Centre Folkestone**

To: **All members of the Cabinet**

All Councillors for information

The cabinet will consider the matters listed below on the date and at the time and place shown above. The meeting will be open to the press and public.

This meeting will be webcast live to the council's website at <https://folkestone-hythe.public-i.tv/core/portal/home>. Although unlikely, no guarantee can be made that Members of the public in attendance will not appear in the webcast footage. It is therefore recommended that anyone with an objection to being filmed does not enter the council chamber.

1. **Apologies for Absence**
2. **Declarations of Interest**

Members of the Council should declare any interests which fall under the following categories. Please see the end of the agenda for definitions\*:

- a) disclosable pecuniary interests (DPI);
- b) other significant interests (OSI);
- c) voluntary announcements of other interests.

3. **East Kent Housing - Compliance Update (Pages 5 - 20)**

In late May it emerged that there were serious issues of non-compliance with regards to East Kent Housing's management of gas safety across East Kent's council housing stock.

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As a result, the Monitoring Officer will, in accordance with her statutory duty, report on this breach to Cabinet on 31 July, and the report has been shared with all Members of the Council.

This report sets out the context to these issues of non-compliance and how they are being addressed. The report also sets out the steps the East Kent councils are taking to ensure these issues of non-compliance do not occur again, including the need to consider alternative options for the future delivery of the management of council housing. It will, therefore, serve as the means by which the Council replies (as it is required to do) to the Monitoring Officer's report.

The report also sets out details of wider compliance issues identified within the Council's housing stock which have been identified through an East Kent Internal Audit Investigation of compliance across the housing stock managed by East Kent Housing in East Kent. East Kent Housing has also identified detailed significant areas of non-compliance in respect of the pumping and water treatment plants which it manages. East Kent Housing (EKH) are urgently preparing detailed action plans to ensure that all areas of non-compliance are addressed as a priority.

#### **4. Gas Servicing and Heating Installations Contract (Pages 21 - 30)**

The former contractor for gas servicing and heating installations, P&R Installation Company Ltd (P&R), triggered a no fault break clause under the terms of the contract with a termination date 3/7/19. The four councils, with DDC acting as the lead, started the procurement for a new contract. This report details the outcome of this procurement process and makes a recommendation for reward. The report also outlines risk controls to be implemented by East Kent Housing to improve the management of the next contract.

\*Explanations as to different levels of interest

(a) A member with a disclosable pecuniary interest (DPI) must declare the nature as well as the existence of any such interest and the agenda item(s) to which it relates must be stated. A member who declares a DPI in relation to any item must leave the meeting for that item (unless a relevant dispensation has been granted).

(b) A member with an other significant interest (OSI) under the local code of conduct relating to items on this agenda must declare the nature as well as the existence of any such interest and the agenda item(s) to which it relates must be stated. A member who declares an OSI in relation to any item will need to remove him/herself to the public gallery before the debate and not vote on that item (unless a relevant dispensation has been granted). However, prior to leaving, the member may address the meeting in the same way that a member of the public may do so.

(c) Members may make voluntary announcements of other interests which are not required to be disclosed under (a) and (b). These are announcements made for transparency reasons alone, such as:

- membership of outside bodies that have made representations on agenda items, or
- where a member knows a person involved, but does not have a close association with that person, or
- where an item would affect the well-being of a member, relative, close associate, employer, etc. but not his/her financial position.

Voluntary announcements do not prevent the member from participating or voting on the relevant item

This Report will be made public on 23 July 2019



Report Number **C/19/15**

**To:** CABINET  
**Date:** 31 July 2019  
**Status:** Key  
**Director:** Susan Priest, Head of Paid Service  
**Cabinet Member:** Cllr David Godfrey, Cabinet Member for Housing, Transport and Special Projects

**SUBJECT:** East Kent Housing – Compliance Update

**SUMMARY:** In late May it emerged that there were serious issues of non-compliance with regards to East Kent Housing's management of gas safety across East Kent's council housing stock.

As a result, the Monitoring Officer will, in accordance with her statutory duty, report on this breach to Cabinet on 31 July, and has been shared with all Members of the Council.

This report sets out the context to these issues of non-compliance and how they are being addressed. The report also sets out the steps the East Kent councils are taking to ensure these issues of non-compliance do not occur again, including the need to consider alternative options for the future delivery of the management of council housing. It will, therefore, serve as the means by which the Council replies (as it is required to do) to the Monitoring Officer's report.

The report also sets out details of wider compliance issues identified within the Council's housing stock which have been identified through an East Kent Internal Audit Investigation of compliance across the housing stock managed by East Kent Housing in East Kent. East Kent Housing has also identified detailed significant areas of non-compliance in respect of the pumping and water treatment plants which it manages. East Kent Housing (EKH) are urgently preparing detailed action plans to ensure that all areas of non-compliance are addressed as a priority.

## REASONS FOR RECOMMENDATIONS

1. In May 2019 it emerged there were serious issues of non-compliance with regards to EKH's management of gas safety across East Kent's council housing stock. Therefore, the Council needs to approve a way forward to review future options for the delivery of the management of the four councils' housing stock.

2. An investigation into wider issues of compliance across the Council's Housing stock completed by East Kent Internal Audit has identified other significant areas on non-compliance.
3. East Kent Housing has identified significant issues of non-compliance in respect of pumping and treatment works in this district.

**RECOMMENDATIONS:**

1. **To receive and note report C/19/15.**
2. **That this report is adopted as the response of the Council to the Monitoring Officer in accordance with the requirements of S5A (8) and (9) of the Local and Housing Act 1989, and that a copy of it be provided to all Councillors and the Monitoring Officer.**
3. **That a further report is prepared on the wider issues of housing management for this Council and to commence consultation with the Council's tenants as soon as practicable on withdrawal from East Kent Housing including the option of bringing the housing management function back within the Council's control.**

## **1. INTRODUCTION**

- 1.1 In late May it emerged there were serious issues of non-compliance with regards to EKH's management of gas safety across East Kent's council housing stock. Subsequently it has emerged that there are further cases of potential noncompliance with regards to other areas of safety work.
- 1.2 This report provides Councillors with the context to the establishment of EKH and sets out the performance issues experienced more generally in recent years resulting in the Improvement Plan for 2019/20 approved by Cabinet, which has been implemented and monitored from 1 April 2019.
- 1.3 The report then details the specific issues of non-compliance as they relate to gas safety and sets out how these particular issues are being addressed by the four Councils, EKH and their contractors. The report also provides further information on wider compliance failures across the Council's housing stock
- 1.4 Finally, within the context of the issues raised and more general concerns regarding the performance of EKH, the report sets out the work now planned to review future options for the delivery of the management of the four councils' housing stock.

## **2. CONTEXT**

### **2.1 Background to East Kent Housing**

In 2005 the four Councils of Canterbury, Dover, Folkestone & Hythe and Thanet carried out appraisals for the long term viability of their council housing. Although each Council could achieve and sustain the then 'Decent Homes' standard, and had viable business plans to do so, they shared concerns that their relatively small stock holding might limit their ambitions to improve services. In 2008 opportunities for joint working between the four housing services were explored and in 2010 a detailed business case for a shared housing management service was approved by the local Councils. EKH was launched on 1 April 2011. The set up arrangements for EKH are complex. As an 'arms length management organisation' (ALMO) it delivers services to council tenants through a management agreement in each of the four Local Authority areas. The organisation is managed by a Board, on which each Council has one (councillor) representative. The staff of EKH are employed by, and report to, the Board.

The relationship with each Council is managed through a team of Client Officers and the Chief Executives of the Councils, together with other senior officers, who meet with the Chief Executive of EKH and her staff on a regular basis.

There is an additional agreement in the form of the Owners Agreement that manages the relationship that the four Councils have, not only with the ALMO, but also with each other on council housing matters.

At the time of its inception there were a number of drivers for a shared service:

- The popularity, nationally as well as locally, of shared service arrangements in other service areas
- Early ambition for and exploration of an East Kent Unitary Authority
- Housing Revenue Account (HRA) pressures (prior to HRA reform)
- Potential savings through joint procurement arising from economies of scale
- Opportunities for pooled skill sets among staff, in particular those operating in housing property services.

In the Folkestone & Hythe district there are currently 3,393 properties being managed by EKH. In 2018/19 the council paid EKH £1.984m from the Housing Revenue Account to manage the district's housing and tenant services.

## **2.2 The Improvement Plan**

In response to these issues EKH and the four councils agreed an Improvement Plan.

This plan was intended to give EKH an 18 month window, between 1 April 2019 and 30 September 2020, in which to progress and improve areas of concern to the four Councils. It was made clear by each Council that this 18 month period was the last opportunity for EKH to improve to an acceptable level of performance. The Quarter 1 report detailing progress against the improvement plan was presented to the Council earlier this month and will now be fully reviewed as part of the normal quarterly monitoring process.

To support the plan the four Councils agreed to increase the level of funding for the ALMO. The total package was worth circa £800,000 per annum, of which Folkestone & Hythe's contribution was £182,250.

The improvement plan details a number of key performance and service delivery areas where EKH have been instructed they must make improvements. Key outputs/outcomes from the plan include:

- 95% delivery of the capital programmes
- Procurement of all contracts required to deliver both the capital programme and day to day services
- A cap on the escalation of rent arrears
- Increased rates of collection from other sources i.e. garage lettings, recovery of rechargeable work
- Improved rates of tenant satisfaction
- Improved rates of employee satisfaction
- Reduced staff turnover
- Less reliance on agency and temporary staff
- No further audit reports with limited or no assurance ratings

## **2.3 Recent Issues**

In May some serious and urgent issues surfaced in connection with the management, demobilisation and re-procurement of the heating contract, and more recently these concerns have included landlord gas safety records (LGSR).

*a. Failure to provide current LGSRs for all tenanted properties.*

- Gas safety certification has until recently been carried out for EKH by a specialist company called P&R.
- EKH (and, therefore, the Councils) are in dispute with P&R about low levels of performance.
- The EKH quarterly performance reports for all areas have shown low levels of outstanding (overdue) gas safety certification in the financial year 2018/19, and throughout the year assurances have been given to the Councils by EKH that any outstanding cases were being actively managed.
- This low level of outstanding certificates was maintained up to the end of March 2019.
- However, by late May the number of outstanding LGSR's had risen to approximately 400 across the four councils.
- As a result of the contract dispute, part of which was a claim by P&R for additional payments which were refused, the company issued a notice to break their contract.
- Following the notice to break their contract, there appeared to be a rapid decline in the completion of LGSRs, with 120 in the Folkestone & Hythe district) outstanding by 22 May 2019.
- Following urgent discussions with the Councils, and remedial action taken by EKH, the numbers of outstanding LGSR's have substantially reduced, and as of 28 June there were a total of 60 outstanding LGSR's across East Kent with appointments booked or those with non-access in the legal process regarding gaining entry. In Folkestone & Hythe, the backlog of 120 has been actioned and completed.
- However, 300 – 350 new LGSRs become due each week (approximately 60-80 in the Folkestone & Hythe district), and so any pause in the service will lead to a rapid increase in outstanding LGSRs, and requires on-going management to maintain compliance levels.
- A detailed investigation is ongoing in respect of potential overcharging within the contract. This process is expected to take some time to complete and an early resolution is unlikely. The outcome of the process will be reported to members as soon as it is known.

*b. Contract management*

A number of audits of EKH property services have highlighted and recommended action to be taken to improve contract management at EKH. These included a report detailing issues connected with the management of the heating contract and P&R, the contractor appointed for this work.

To further support these measures Gas Contract Services (GCS) were commissioned to carry out a 20% check of all installations and invoices during the first year of the contract. Monitoring by GCS was subsequently increased when concerns began to be raised and there has been an additional cost associated with this. Although these measures have been in place there have been significant issues with the management of the P&R contract:

*c. Support with re-procurement of an interim contract and a new contract for heating.*

The decision by P&R to end their contract early has prompted a new procurement exercise and the need to introduce interim arrangements to put servicing, repairs and gas safety certification service arrangements in place.

## **2.5 Interim Arrangements**

The Councils have agreed the use of a number of interim contractors to take on work that P&R confirmed they were unable to complete. Further contractors have been added to this list to help with the volume of work.

- To date, for Folkestone & Hythe, the cost of these works total £27,000. These costs were incurred once the contractual relationship with P&R was ended. It is likely that the Council will need to cover this cost.
- Swale Heating Ltd have been contracted to manage this service starting on 3 July and running through to 31 October with an extension option up to 31 March 2020.
- The procurement process for P&R's replacement will be reported to Cabinet on 31 July 2019 so that the long-term contract award can be made as soon as possible.

## **2.6 Council response to these issues**

As soon as they became aware of the scale of the issues raised, Client Officers authorised the direct award of work to try to achieve 100% compliance with the legal requirement to have a valid gas safety certificate as quickly as possible. This included:

- Directly ordering works to contractors
- Agreement that, as a consequence, any losses incurred would probably not be recoverable from the outgoing contractor - but it was regarded that the need to bring in additional resources and mobilise action on LGSRs was to be the top priority.
- Requested daily updates on LGSR progress and the certificates outstanding.

On 17 May 2019 the Social Housing regulator wrote to all Local Authorities reminding them of their duty to report breaches of the regulatory standards, in particular the health and safety responsibilities set out in the Homes standards. As a consequence, a self-referral to the regulator has been made by each of the four councils and this is now going through the regulator's "Serious Detriment" procedures. The Council is responding to all further requests for information made by regulator. Monitoring officers are also required to report this issue to their Councils and the Monitoring Officer for Folkestone & Hythe has prepared a 'Section 5' report on the position with LGSRs being presented as an Appendix to this report (see Appendix 1).

## **2.7 Ongoing monitoring of EKH**

In July the first quarter performance report showing progress against improvement plan objectives will be issued. Although it is recognised that performance may be slow in the first few months of the 18 month plan it is expected that there will be some improvement and that there will be no deterioration in current service standards. Client Officers will be considering whether the improvement plan and steps taken to introduce this are



sufficiently robust to allow for remediation of the contract or indeed be considered as notice of remediation.

If the improvement plan is considered insufficiently robust to be effectively a formal 'notice of remediation' under the Agreement that governs our relationship with EKH, a more formal improvement notice will be required in accordance with the governance arrangements for EKH with key milestones and measurable outcomes. Monitoring of the plan will need to take place more frequently than the current quarterly arrangement and be more rigorous.

It should also be noted that the work required within each of the client councils has become significantly more resource intensive following the developments outlined in this report. However, the Council's top priority is tenant safety, and this extra work will, of course, be managed.

As stated above, East Kent's four district Chief Executives are meeting EKH's Chief Executive on a weekly basis to monitor progress with regard to issues of non-compliance.

## **2.8 Future Options**

Since 2011, the Councils have delegated responsibility for both management and maintenance services to EKH through a Management Agreement. Under the terms of the Management Agreement the Councils should agree with EKH the strategic direction and priorities for the service, and the required budgets. EKH are operationally responsible for the delivery of these services.

The Management Agreement calls for EKH and the Councils to annually agree a delivery plan, which sets out priorities for service improvement and delivery and corresponding targets. In recent years the delivery plan has been replaced with a less prescriptive EKH business plan.

EKH is a separate legal entity as a company and is governed by a Board of directors comprising residents, Councillors and independent persons with an independent chair. Its Management team are responsible to the Board. The degree of control that the Councils have to direct any changes and improvements required and the ability to direct the housing service's contribution to the delivery of the Council's priorities more generally are limited to agreeing and monitoring those set out in the delivery plan.

There are a number of options for the future delivery of housing services. These include:

- Continue with EKH on a reformed basis
- Continue with EKH as a shared service, but not an ALMO
- Return the service in house (as a consequence of either an independent decision to leave the ALMO or collective agreement to dissolution of the ALMO)
- Return the service in house and enter into partnership with another organisation to provide the service or some services

### **A. To continue with EKH on a reformed basis**

This would call for:

- Improved governance arrangements for EKH
- Skills strengthening of EKH Board members
- A strengthened client-side function within the Council
- Reintroduction of a prescriptive delivery plan, setting out Council objectives and targets
- Recruitment to the EKH Leadership Team
- Potentially significant additional investment in terms of resources and income for the ALMO
- Acceptance that strategic control will be limited to actions agreed in the delivery plan
- The benefits of this approach are that:
  - There should be a strong focus on the housing service.
  - This is the least complex of the options
  - There will not be a requirement to consult with tenants

**B. *Continue with EKH as a shared service, but not an ALMO***

The majority of the changes are as for the reform of EKH, except that we would need to take the steps for dissolution of the ALMO and the company but would make savings from the costs of operating the formal ALMO structure and the company reporting etc.

***To bring the service in-house (either as a consequence of a single member Council withdrawing from the ALMO or a mutually agreed dissolution of the ALMO)***

It should be noted here that if this Council were to withdraw and the other Councils retained their relationships with EKH, the financial consequences to this Council would be greater than if mutually agreed.

This would call for:

- Assessment of the effect of this upon pension funds
- The liability under TUPE of either an individual Council or all four.
- Assessment of the effect of this upon Council accounts (possible post balance sheet event)
- Comprehensive consultation with tenants under S105 Housing Act 1985.
- The benefits of this approach are that:
  - There would be full integration of the housing service with the Council and its other services
  - Governance and accountability would flow through the Council's corporate management and be the responsibility of the Community Committee
  - There will be direct strategic and operational control
  - There will be a strong focus on the housing service and the contribution it can make to the Council's wider strategic agenda
  - The process is not excessively complex
  - There is no need for Secretary of State permission to return the service in house
  - There is no need for a tenant ballot

**D. To return the service in house and enter into partnership with another organisation to provide the service or some services**

This option calls for the dissolution of the ALMO and for a number of key functions to be delivered by another provider. This could include support services such as customer contact services or income recovery. Other service delivery areas would remain integrated with the Council. Governance would be through a joint board and it is unlikely this would provide for resident representation. Control would be shared through the terms of the agreement.

This would call for:

- Assessment of the effect of this upon pension funds
- The liability under TUPE of either an individual Council or all four.
- Assessment of the effect of this upon Council accounts
- Comprehensive consultation with tenants under S105 Housing Act 1985.
- Negotiation with other providers on service delivery arrangements
- Acceptance that there will not be direct strategic and operational control of some elements of service
- Governance and accountability will be split between the Council and service provider
- Potentially complex set up arrangements
- Novation of contract
- Cost and resources to affect the change
- Development of a clear timeline for the process and a phased approach to the outsourcing of some service functions.
- The benefits of this approach are that:
  - There will be some integration of the housing service with the Council and other services
  - Control is shared through the terms of the agreement

In deciding between the options available, Councillors will need to consider:

- a. The optimal solution for tenants
- b. The costs and benefits of each. This includes additional costs for the clients and additional support for EKH. It should be noted that the recent package of additional support to EKH brought their overall resources back to roughly the level at inception, as adjusted for inflation.
- c. Legal and governance implications in changing the service or winding up the ALMO
- d. The implementation process
- e. The impact on service delivery of any transition both for EKH and Council resources
- f. The impact on staff morale within EKH and the possible issue of staff retention
- g. Timescales

Councillors will also need to consider the extent to which the decisions of all four councils are aligned. Operating within a consensus is likely to make the practical measures simpler and easier to implement.

The Chief Executives of the Councils are agreed that it would be wise to commission a piece of work that would examine these options in more detail. As set out above, moving away from the EKH 'ALMO' model will require consultation with tenants, and the options work could be carried out in parallel to that.

## **2.9 Options available with reasons for suitability**

Councillors are asked to note the report and the action taken. It is Recommended that a further report is prepared on the wider issues of housing management for this Council and to commence consultation with the Council's tenants as soon as practicable on withdrawal from EKH.

## **3. CONCLUSION**

- 3.1 The safety of our tenants is of paramount concern. The recent issues regarding gas safety are of grave concern to this council and the other three East Kent districts. Immediate actions have been put in place to rectify the gas certifications issue and progress has been made. The district's four Chief Executives are meeting with EKH's Chief Executive on a weekly basis to ensure actions are implemented. More generally, it is clearly time for this Council to review future options for the management of this Council's housing and tenant services. This work will allow councillors to consider the most effective way to deliver these services in future.

## **4. WIDER COMPLIANCE ISSUES**

- 4.1 Issues identified with gas safety have inevitably resulted in the Councils becoming concerned about the scrutiny of other compliance areas, and the Councils jointly commissioned an investigation by East Kent Internal Audit into these issues. That report is not yet in its final state, but it appears provisionally that in addition to gas safety, no assurance is yet being given in the following areas - Fire Safety, Electrical Safety, Lifts and Legionella. EKH's response to these interim findings is that the outstanding risks are being managed and progress is being made on outstanding matters. The four Councils are pursuing compliance on these outstanding matters and EKH is preparing a detailed action plan for approval by the Councils and East Kent Internal Audit to address any areas of non-compliance as a priority. Progress is being monitored in weekly meetings between the four Council Chief Executives and EKH's Chief Executive. EKH have advised the Councils that there are no outstanding Category 1 Hazards across the stock that it manages in East Kent.
- 4.2 A further reviewed into Pumping and Water Treatment works in this district commissioned by EKH has identified significant area of non- compliance. EKH is urgently preparing a detailed action plan to ensure that all of the identified areas of non-compliance are addressed as a priority.
- 4.3 The four East Kent Council Chief Executives have agreed to commission a detailed independent urgent investigation into all aspects of non-compliance across the housing stock managed by EKH. The outcome of this will be shared with members and the Social Housing Regulator as soon as it available. This is entirely separate to the HQN report commissioned by the EKH Board to investigate issues of non-compliance in respect of gas safety.

## **5. RISK MANAGEMENT ISSUES**

- 5.1 With the issues being experienced with EKH it is evident a review of future housing management options is required to inform future decisions. Any future option progressed will require careful managing and significant staff resourcing.
- 5.2 Detailed action plans are being progressed by are being progressed by EKH to ensure that all areas of non-compliance are addressed as a priority.

## **6. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS**

- 6.1 **Legal (AK)** – These are set out in the report and the Monitoring Officer's Section 5 report to Cabinet on 31 July 2019 (see Appendix 1).
- 6.2 **Finance (CS)** – The financial implications of the interim gas contract and the support for the remedial plan are being contained within the agreed budget framework and being met from the HRA. The financial implications of the wider compliancy issues are unknown at this stage. Once fully known, if they sit outside of the agreed budget strategy framework they will require a Member decision. The financial implications of changing the structure & delivery vehicle of housing management have not been considered as part of this report and are not yet known. These could be significant and will need to be fully evaluated and considered within the upcoming paper proposed before any formal decisions are taken regarding future delivery.
- 6.3 **Equalities (SR)** – There are no equality or diversity implications arising from this report.
- 6.4 **Communications (AW)** – Tenant consultation and communication will take place to inform future options.
- 6.5 **Transformation (SR)** – There are no direct implications arising from this report on the delivery of the transformation project.

## **7. CONTACT OFFICERS AND BACKGROUND DOCUMENTS**

Councillors with any questions arising out of this report should contact the following officer prior to the meeting

**Adrian Hammond**  
**Housing Strategy Manager**  
adrian.hammond@folkestone-hythe.gov.uk

The following background documents have been relied upon in the preparation of this report:

***(Note: only documents that have not been published are to be listed here)***

### **Appendices:**

Appendix 1 - Monitoring Officer's Section 5 report to Cabinet on 31 July 2019

**APPENDIX 1**

Report Number **C/19/15**

**To:** Cabinet  
**Date:** 31 July 2019  
**Status:** Key Decision  
**Responsible officer:** Amandeep Khroud – Monitoring Officer

**Subject:** **FAILURE TO HAVE IN PLACE VALID GAS SAFETY RECORDS IN ACCORDANCE WITH REGULATION 36 OF THE GAS SAFETY (INSTALLATION AND USE) REGULATIONS 1998**

**SUMMARY:** The report below is to record and discharge the duty placed upon the Monitoring Officer by Section 5 Local Government and Housing Act 1989

**RECOMMENDATIONS:**

To note the contents of this report.

As soon as practicable after the executive has concluded its consideration of this report to prepare a report which specifies:

- (a) what action (if any) the executive has taken in response to this report;
- (b) what action (if any) the executive proposes to take in response to this report and when it proposes to take that action; and
- (c) the reasons for taking the action specified in the executive's report or, as the case may be, for taking no action.

As soon as practicable after the executive has prepared its report to arrange for a copy of it to be sent to each member of the Council and the Council's monitoring officer.

Where it appears to the Council's Monitoring Officer that any omission, in the course of the discharge of functions of the relevant authority, by or on behalf of the relevant authority's executive, constitutes, has given rise to or is likely to or would give rise to a contravention, by the relevant authority's executive or any person on behalf of the executive, of any enactment or rule of law with respect to that omission, he is required by law to prepare a report to the executive. The relevant statutory provisions are to be found in section 5A Local Government and Housing Act 1989.

Where the Monitoring Officer has prepared a report in the discharge of his duties under section 5A, the executive is required to consider it at a formal meeting.

Regulation 36 of the Gas Safety (Installation and Use) Regulations 1998 places a duty upon a landlord to have a gas safety check undertaken on an annual basis on appliances and flues to which the regulations apply. Further a record of that inspection must be kept and retained in accordance with the requirements of the regulations. This is commonly referred to as a gas safety certificate.

Since May 2019 the Council has a number of dwellings forming part of its housing stock let in respect of which gas safety checks have not been carried out in contravention of the requirements of regulation 36.

The Council's housing management function is a function of the executive of the Council, hence this report is prepared for consideration by the executive in accordance with section 5A Local Government and Housing Act 1989. A copy of this report is being sent to all members of the Council in accordance with the requirements of that section of the Act.

This report has been prepared by the Council's Monitoring Officer in the discharge of his duty under section 5A Local Government and Housing Act 1989 in view of the fact that gas safety checks have not been carried out in respect of a number of council let properties in accordance with the requirements of Regulation 36 of the Gas Safety (Installation and Use) Regulations 1998.

## **Gas Safety Records**

Regulation 36 of the Gas Safety (Installation and Use) Regulations 1998 requires the Council as the landlord of premises occupied for residential purposes to have annual gas safety inspections of those premises undertaken and to hold records of those inspections. These records are what are commonly referred to as gas safety certificates.

The Council discharges the requirement to have up to date gas safety certificates in place by having a contract with an external contractor. That contract is managed on the Council's behalf by East Kent Housing. East Kent Housing manages similar contracts on behalf of Canterbury City Council, Dover District Council and Thanet District Council in respect of their housing stock. This report is however solely concerned with the situation in relation to properties let by Folkestone and Hythe District Council.

The East Kent Housing quarterly performance reports show low levels of outstanding gas safety certificates for Council owned properties in the Folkestone and Hythe District in the financial year 2018/2019. Assurances were received by the Council from East Kent Housing that outstanding gas safety certificates were being actively addressed.

It is acknowledged that in the case of a landlord having a large number of properties it is virtually inevitable that there will be occasions when a small number of properties do not have a valid gas safety certificate. This arises for a variety of reasons, one of the most common being the lack of co-operation of some tenant occupiers to arrange for access by contractors to their homes. Such a situation would not engage the duty of the Monitoring Officer to prepare a report.

The situation deteriorated from April 2019 such that as at 24 May 2019, there were approximately 120 Folkestone and Hythe District Council properties in occupation without the benefit of gas safety certificates. Although undeniably a large number, this should be viewed within the context of the Council's total housing stock which is a total of 3393 units.

Gas safety certificates fall due for renewal on different dates. About 55 dwellings fall due for inspection each week. There is therefore a need to inspect properties as their certificates become due for renewal as well as clear the backlog of overdue certificates.

It is emphasised that the lack of a gas safety certificate in respect of a property does not imply that the gas appliances within that property are faulty or unsafe in any way. It does mean that they have not been checked for gas safety as required by law.

It is beyond the scope of this report to consider how this situation has arisen. However, it should be noted that the timing of what has been a rapid decline in the number of gas safety inspections completed has coincided by the Council's contractor giving contractual notice to exit its contract with the Council.



## Regulatory and Legal Implications

A contravention of the requirement to have in place a required gas safety certificate in respect of any particular property is potentially a criminal offence under the Health & Safety at Work etc. Act 1974. However, a statutory defence is potentially available under Regulation 39 of the Gas Safety (Installation and Use) Regulations 1998 where a person can show that he took all reasonable steps to prevent the contravention.

It is not necessary or appropriate for this report to consider whether criminal offences have been committed in this instance, particularly in circumstances where the Health & Safety Executive (who are aware of the situation) have not indicated whether they intend to undertake a full investigation.

## CONSULTATION PLANNED OR UNDERTAKEN

The Council's Head of Paid Service (the Chief Executive) and Chief Finance Officer (s.151 Officer) have been consulted in the preparation of this report as required by section 5A(5)(a) Local Government and Housing Act 1989.

The Head of Paid Service and the Chief Finance Officer note the contents of the report from the Monitoring Officer and will give full consideration to the responses of the Strategic Housing Manager.

## RISK MANAGEMENT ISSUES

4. The following risk management areas are highlighted:

Risk	Seriousness	Likelihood	Preventative Action
Lack of valid Gas Safety certificates	High	High	Immediately arrange for gas safety inspections to be carried out

## 5. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

**Finance comments** - The financial impact of any actions will be borne within the Housing Revenue Account (HRA). It is unknown at this stage as to the extent of these. However, given the nature of the issues any spending will need to be prioritised to address the issues as raised in the report.

**Legal comments** – all of the legal implications are set out in the main body of this report.

## 6. DIVERSITIES AND EQUALITIES IMPLICATIONS

There are no diversity or equalities issues arising from this report.

## **7. CONTACT OFFICERS AND BACKGROUND DOCUMENTS**

Councilors with any questions arising out of this report should contact the following officers prior to the meeting:

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This Report will be made public on 23 July 2019



Report Number **C/19/16**

**To:** Cabinet  
**Date:** 31 July 2019  
**Status:** Key Decision  
**Responsible Officer:** Sarah Robson - Assistant Director Strategy, Performance & Communications  
**Cabinet Member** Cllr David Godfrey

**SUBJECT:** GAS SERVICING AND HEATING INSTALLATIONS CONTRACT

## **SUMMARY:**

The former contractor for gas servicing and heating installations, P&R Installation Company Ltd (P&R), triggered a no fault break clause under the terms of the contract with a termination date 3/7/19. The four councils, with DDC acting as the lead, started the procurement for a new contract. This report details the outcome of this procurement process and makes a recommendation for reward. The report also outlines risk controls to be implemented by East Kent Housing to improve the management of the next contract.

## **REASONS FOR RECOMMENDATIONS:**

Cabinet is asked to agree the recommendations outlined below: -

- a) The council needs to have in place heating servicing and maintenance services for its tenanted properties.
- b) A procurement exercise has been completed with a recommendation to award.
- c) Weaknesses in East Kent Housing's management of the heating contract have been identified. These need to be addressed for the next contract.

## **RECOMMENDATIONS:**

1. To receive and note report C/19/16.
2. To award the contract to Company A subject to the risk mitigation measures set out in 5.5.

- 3. To agree an additional budget provision of £ 93,201 as set out in 5.6 and 5.7 to be funded from the Housing Revenue Account for contract management improvements to be implemented by EKH.**

## **1. BACKGROUND**

- 1.1 The previous gas servicing and heating installations contract was awarded to P&R Ltd in April 2017. On 2 April 2019 P&R gave formal notice of their intention to terminate the contract bringing it to an end on 3 July 2019. Leading up to termination there were already problems with the service that P&R were delivering. These problems accelerated once the notice of termination was given resulting in the council, through East Kent Housing, appointing interim contractors to meet the shortfall in service, notably in the provision of Landlord Gas Safety Records (LGSR).
- 1.2 After notice of termination was given a procurement process was started for a new contractor. This was overseen by Dover District Council on behalf of the four authorities.
- 1.3 The recommendation from this procurement process was to award to Company A. This recommendation comes with additional risk mitigation actions, which are discussed below. At the request of East Kent Housing as this is a four-way procurement process we have been requested to keep the bidders anonymised until all formal approval processes have been completed.
- 1.4 Following approval to award a mandatory 10-day standstill period will be implemented between the notification of the award decision and the signing of the contract. This can only be started when all four participating councils have confirmed the award. A contract award decision must be open to review before the contract conclusion and therefore this period provides all tenderers the opportunity to review and legally challenge the contract award decision.
- 1.5 The proposed contract is also a long term agreement to which section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 apply it will be necessary to follow the notice/consultation processes prescribed in those regulations and to have regard to any observations received prior to awarding the contract. The Section 20 process will be administered by East Kent Housing.

## **2. CONTRACT SPECIFICATION**

- 2.1 The new contract was originally scheduled to run from 3 July 2019 until 31 March 2022 with an option to extend for a further 12 Months. The start date will now be amended from the point of approval subject to the legally required standstill period.
- 2.2 All of the Council's residential properties will be covered by the new contract which will provide for:-
  - New heating system installations
  - Boiler replacements
  - Annual servicing
  - Gas safety checks
  - Heating and hot water installation maintenance
  - Water hygiene checks/legionella testing

2.3 The majority of existing heating systems use gas fired boilers but there a small number of oil, solid fuel and electric systems. The contract will cover all these fuel types.

### **3. PROCUREMENT PROCESS**

3.1 The procurement process commenced in April 2019 and followed the requirements of the Public Contract Regulations 2015 with an open advertisement being issued through the OJEU (Official Journal of the European Union).

3.2 The procurement exercise looked to appoint one contractor to undertake the services in their entirety for the Councils. Contracting arrangements will be direct with each of the individual Councils resulting in individual contracts being entered into between the successful supplier and each of the Employers for subsequent use by EKH acting on behalf of these Councils within their respective areas of operation.

3.3 In addition to the notices issues through OJEU, a tender notice was also published via the Kent Business Portal and the Government's Contract Finder web-site.

3.4 The councils received 6 compliant tender submissions in May.

### **4. EVALUATION OF TENDERS**

4.1 The tender was evaluated on a 50% price and 50% quality basis.

4.2 An initial evaluation process looked at the bidder's commercial, technical and financial competencies to meet the minimum criteria of the contract. The price of each bid was assessed and scored in comparison to the other bids received. The quality of service provision was evaluated by a panel including staff from EKH, the councils' procurement teams and two tenant representatives.

4.3 The scoring from the pricing and quality evaluation were combined and the final ranking of tenderers is as follows: -

Company	Total Score	Rank
Company A	83.00%	1
Company B	74.10%	2
Company C	70.92%	3
Company D	66.41%	4
Company E	65.33%	5
Company F	57.18%	6

4.4 The total contract price was estimated at £ 1,142,764 per annum for FHDC. This includes a fixed cost for annual servicing, a variable cost based previous volumes for additional maintenance and an installations programme estimated at £ 649,330.

## 5. DUE DILIGENCE AND RISK MITIGATION

- 5.1 The first ranked bidder was Company A who hold contracts with other social landlords and public sector bodies. Their bid scored highly both in terms of price and quality. There were however two concerns raised, firstly the company has no current operation in East Kent so it would need to establish its service here from the ground up. The second concern was that the total price of the contract was significantly less than the next best ranked bidder and the overall average bids received. For comparison the bid price was also less than the previous contractor, who had given lack of profitability as one of the reasons for termination.
- 5.2 In response to these concerns further three rounds of clarifications were sent to Company A covering: -
- Clarification that the pricing offered will achieve the full requirements of the specification.
  - Information related to other contracts within the South East region.
  - Clarification that the contract duration, first year fixed price and mechanism thereafter for annual adjustment contained within the contract have been fully understood and taken into account.
  - Additional analysis of boiler pricing, cost comparison of schedule of rates with the current service provider and understanding of the need to provide full certification under the terms of the specification.
  - Additional analysis of tender rates for domestic servicing and maintenance and how these rates will be achieved for the entire duration of the contract
  - Reference and credit checks completed and found to be acceptable.
  - Clarification of contract mobilisation, staffing, local site accommodation and customer call handling arrangements.
  - Analysis of the impact that 40-50% growth of existing business operation will have.
  - Company accreditation.
  - TUPE arrangements.
- 5.3 Company A gave a comprehensive response to all additional clarifications. The council separately obtained legal advice on whether there was sufficient grounds under the Public Contract Regulations 2015 to exclude Company A on grounds of an abnormally low tender. The advice received concluded there was not sufficient legal grounds to consider the bid abnormally low and to exclude on that basis. An award to another bidder could result in a legal challenge.
- 5.4 Regardless of the outcome of this tender there would need to be improvements by EKH in the contract monitoring and overall management of the next heating contract. The concerns around the bid price only reinforces the need for improved contract management and risk controls.
- 5.5 The council has already identified to EKH the following measures that it will need to adopt: -

- The contract to include a Parent Company Guarantee.
- The bidder to be firmly advised at contract award stage that service failure will result in contract termination.
- EKH to provide details of staff structure and responsibilities for general contract management and specifically for managing the heating contract.
- EKH to either directly manage or at a minimum have direct access to property database with LGSR records.
- 10% customer call back check of servicing works by EKH to be used in customer satisfaction survey. 20% EKH surveyor check of installation works.
- EKH directly manage the heating contract with a separate professional external auditing function.
- EKH to review process of invoice sign offs to ensure that rates used are as per contract. Regular internal audit 'dip test' of invoices.
- Monthly contract management meetings with the heating contractor. Client officers to continue to be represented at core group and minutes circulated to all client officers.
- As per JCT requirements any instructions done as formal notices agreed by the senior responsible EKH manager.
- No variations to contract or schedule of rates without council agreement as per CSOs.
- EKH to work on service mobilisation plan with contractor. Interim servicing arrangements to continue as back up until the new service is fully operational.
- EKH to report 4 months before end of 1 year period with recommendation to terminate and re-procure or to continue the contract.
- EKH to report on LGSRs and other heating systems on a weekly basis. EKH to confirm that figures have been audited and represent an accurate position.
- EKH to identify additional resources to support the above.

5.6 EKH have indicated that they will require the following resources to provide the level of contract management assurance required by the four East Kent Authorities.

- 1 Gas Contract Manager (post already in structure).
- 1 Quantity Surveyor to manage the financial aspect of the contract and to provide assurance to Councils financial monitoring and auditing is being undertaken (new to structure).
- 1 Clerk of Works to undertake 20% post inspections (new to structure).
- 5 Technical Administrators, one being senior (new to structure).
- Software to auto read and check LGSRs. Estimated cost £29,302 per year. EKH advises that this can also auto read electrical ECIRs and so would have an additional benefit.



5.7 The additional budget required for the staffing and services listed above is £372,804. This would be paid as an uplift to the management fee and would be split equally costing £93,201 per authority.

## 6. OPTIONS

6.1 Option 1 is to award the contract to the highest ranked bidder Company A. This is the recommended option subject to confirmation and action by EKH to adopt the risk mitigation measures identified above.

6.2 Awarding to another bidder is not an option for the reasons previously given due to the risk of legal challenge.

6.3 If Company A decline the award the recommendation would be to appoint the next placed bidder, Company B.

6.4 Option 2 is not to award and to start a new procurement. This would mean extending the interim contract arrangements. This is not recommended as there is a need to get the heating servicing arrangements onto a stable long-term basis.

## 7. RISK MANAGEMENT ISSUES

7.1 The risk management are discussed in part 5.

Perceived risk	Seriousness	Likelihood	Preventative action
Contractor Performance	High	Medium	<p>Actions listed in 5.5 notably: -</p> <ul style="list-style-type: none"> <li>The bidder to be firmly advised at contract award stage that service failure will result in contract termination.</li> <li>EKH to provide details of staff structure and responsibilities for general contract management and specifically for managing the heating contract.</li> <li>EKH to either directly manage or at a minimum have direct access to property database with LGSR records.</li> </ul>

			<ul style="list-style-type: none"> <li>• 10% customer call back check of servicing works by EKH to be used in customer satisfaction survey. 20% EKH surveyor check of installation works.</li> <li>• EKH directly manage the heating contract with a separate professional external auditing function.</li> <li>• EKH to work on service mobilisation plan with contractor. Interim servicing arrangements to continue as back up until the new service is fully operational. EKH to report 4 months before end of 1 year period with recommendation to terminate and re-procure or to continue the contract.</li> <li>• EKH to report on LGSRs and other heating systems on a weekly basis. EKH to confirm that figures have been audited and represent an accurate position.</li> </ul>
Contractor Financial Model	Medium	High	<p>Actions listed in 5.5 notably: -</p> <ul style="list-style-type: none"> <li>• The contract to include a Parent Company Guarantee.</li> </ul>

			<ul style="list-style-type: none"> <li>• EKH to review process of invoice sign offs to ensure that rates used are as per contract. Regular internal audit 'dip test' of invoices.</li> <li>• Monthly contract management meetings with the heating contractor. Client officers to continue to be represented at core group and minutes circulated to all client officers.</li> <li>• As per JCT requirements any instructions done as formal notices agreed by the senior responsible EKH manager.</li> <li>• No variations to contract or schedule of rates without council agreement as per CSOs.</li> </ul>
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## 7. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

### 7.1 Legal Officer's Comments (NE)

The nature and value of these services are such that they are subject to the tendering requirements of the Public Contract Regulations 2015 (PCR15). This report confirms that, as required by law, tenders were sought from contractors following an EU procurement exercise and that the most economically advantageous tender is recommended for acceptance. There were concerns regarding the abnormally low tender submitted by Company A however, external legal advice was obtained at it was found that there were insufficient grounds to exclude the contractor on the basis that the bid was abnormally low.

As the report notes as part of the contract process, there will need to be a standstill period of a minimum of 10 calendar days between notification of the successful contractors that they have won the contract and the award of the contract to the contractor so as to allow unsuccessful contractors the opportunity to challenge (if they decide to) the award of the contract.

Legal will be involved in the negotiation and completion of the JCT agreement

## **7.2 Finance Officer's Comments (CI)**

The current budget for 2019/20 for gas servicing and heating installations is £906,580. This is lower than the proposed annual contract amount of £1,142,764, although this does include some variable elements. Any additional budget requirements in 2019/20 will be factored into budget monitoring projections and the additional budget for future years will be addressed in the budget setting process for 2020/21.

The additional £93,201, requested from EKH will also need to be addressed through budget monitoring and budget setting processes.

## **7.3 Diversities and Equalities Implications**

There are no equalities implications.

## **8. CONTACT OFFICERS AND BACKGROUND DOCUMENTS**

Councillors with any questions arising out of this report should contact the following officer prior to the meeting

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The following background documents have been relied upon in the preparation of this report – N/A