

This Report will be made public on 12 December 2019

Report Number **C/19/54**

**To:** CABINET  
**Date:** 20 December 2019  
**Status:** Non-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

**SUMMARY:** Members will be aware that concerns have been raised about the performance of East Kent Housing. This has culminated in a censure from the Regulator of Social Housing which is an arm's length body sponsored by the Ministry of Housing, Communities and Local Government.

An independent report has been commissioned by the Councils who "own" East Kent Housing through an Owners' Agreement. The Councils are: Canterbury City Council and the District Councils of Dover; Folkestone and Hythe; and Thanet. This report known as the Pennington Report identifies a number of serious concerns. It is recommended that all matters identified form the basis of a Voluntary Undertaking required by the Regulator of Social Housing.

## **REASONS FOR RECOMMENDATIONS**

Following serious compliance failures identified across the housing stock managed by East Kent Housing in East Kent, Pennington Choices were commissioned to investigate the circumstances leading to the failures, the main underlying causes, the effectiveness of the recovery action plans put in place and to make recommendations to ensure that the identified compliance failures do not happen again. The report makes clear recommendations which the Council (and the other East Kent Council partners) must action in order to put an effective recovery plan in place to ensure that all of the Council's homes are compliant and safe.

## **RECOMMENDATIONS:**

1. Cabinet is requested to receive and note report C/19/54.
2. Cabinet notes the contents of the Pennington Report and endorses the production of an Action Plan to implement all the recommendations in the report.
3. Cabinet notes the content of the Notice from the Regulator for Social Housing dated September 2019.

- 4. The Action Plan derived from the Pennington Report be used as the template to bring about improvements in the operation and performance of East Kent Housing such that the Regulator for Social Housing is in a position to remove the Notices served on the 4 East Kent Councils.**
- 5. That the completion of the Action Plan and the response to the Regulator be delegated to the Head of Paid Service in consultation with the Leader of the Council.**
- 6. Cabinet notes that the Board Membership of East Kent Housing has been changed such that the 4 East Kent Chief Officers now exclusively form the Board membership namely: Colin Carmichael, Chief Executive, Canterbury City Council; Nadeem Aziz, Chief Executive, Dover District Council; Dr Susan Priest, Head of Paid Service, Folkestone and Hythe District Council; and Madeline Homer, Chief Executive, Thanet District Council.**

## **1. Introduction**

- 1.1 In September 2019 the Regulator of Social Housing served individual Notices on the 4 East Kent authorities. A copy of the Notice is attached to the report at Appendix 1. The Regulator is an arm's length sponsored body of the Ministry of Housing, Communities and Local Government.
- 1.2 The Notice concluded that the Council had breached the Government's Homes Standard and as a consequence there was the potential for serious detriment to tenants. The Regulator stated that they would work with the Council as it seeks to remedy this breach and will continue to consider what further action should be taken, including whether to exercise any of its powers.
- 1.3 The Regulator notes that the Council and the other 3 East Kent Councils self-referred to the Regulator along with information from third parties which demonstrated that all 4 Councils had failed to meet statutory health and safety requirements across a range of areas namely: gas safety; fire safety; electrical safety; water safety; and lift safety.
- 1.4 An earlier Internal Audit report by East Kent Audit Partnership issued to EKH management on the 19<sup>th</sup> July 2019 had concluded they could provide "No Assurance" for fire safety, electrical safety, lift safety and legionella testing and "limited assurance" for gas safety. Since then further work has been undertaken by East Kent Housing and more resources given by the 4 Councils to employ 8 Compliance Officers. As a result the latest Audit opinion has risen from "Limited Assurance" to "Substantial Assurance" for gas and "No Assurance" to "Reasonable Assurance" for Legionella (reported to Audit and Governance Committee – 4 December 2019).
- 1.5 Pennington Choices were commissioned to investigate the circumstances leading to the failures, the main underlying causes, the effectiveness of the recovery action plans put in place and to make recommendations to ensure that the identified compliance failures do not happen again.

## **2. Meeting with The Regulator of Social Housing**

- 2.1 The 4 East Kent Chief Executives / Head of Paid Service met with the Regulator on 8 November 2019 in London. Since then the Regulator has been in communication offering a Voluntary Undertaking to all 4 Councils. This will set out a short narrative explaining what issues we are intending to resolve. It then sets out at a high level the outcomes the Undertaking is seeking to achieve and the key milestones for doing so as well as detailing how we will obtain assurance of compliance at the end of the process (for example through an internal audit or external review of compliance).
- 2.2 There can be a more detailed action plan listing the series of actions the local authority or EKH intend to complete. The Regulator has offered to look at any drafts but ultimately it needs to be signed off by the relevant Committee or Leader of each Council. The Regulator accept that all 4 Councils work together to agree a narrative. They appreciate timescales may vary between each Council. They expect the narrative to include details and timings of any internal meetings including task groups and reporting.
- 2.3 It is intended that each Council employs Penningtons to advise on the production of the Voluntary Undertaking as they have experience of doing this elsewhere.
- 2.4 In order to agree an Action Plan and obtain agreement with the Regulator at pace and given we have Christmas and New Year upon us, it is recommended that Cabinet

authorise the Head of Paid Service to agree such a plan in consultation with the Leader of the Council.

### 3. Pennington Report 6 December 2019

- 3.1 Penningtons have been commissioned by the 4 East Kent authorities to examine the events that have led up to the 4 East Kent councils being censored by the Regulator. They are a property surveying and consultancy service providing advice to around 150 public and private sector organisations across social housing, the NHS, education and railways. They specialise in issues around: asbestos; stock condition; fire safety and compliance; energy; gas and electrical work as well as housing and finance consultancy, professional training and qualifications. The Pennington Report is set out in full in Appendix 2 of this report.
- 3.2 The issues looked at by Pennington came to light following service failures in relation to gas safety and the contractual withdrawal of the appointed gas maintenance contractor. The investigation is intended to consider the circumstances leading up to the identified service failures, the main underlying causes, the effectiveness of recovery action plans put in place and recommendations to ensure that similar situations do not recur in the future.
- 3.3 The 4 East Kent Councils have ultimate responsibility for ensuring compliance with both statutory health and safety requirements and the Government's "Home Standards" requirements. At a practical level EKH are responsible for putting in place the management arrangements needed to effect compliance and are accountable for the level of property health and safety compliance achieved. In some circumstances they may also have a statutory legal obligation as managing agent acting on behalf of the Councils.

### 4. The Findings of Penningtons

- 4.1 The summary of the Pennington Report is as follows:
- 4.2 Older **Asbestos** surveys were of a poor standard. More recent surveys completed contained a number of weaknesses and the recommendation is that at least some, if not all, should be quality assured by appropriate qualified persons to ensure surveys effectively identify and manage all asbestos risks.
- 4.3 There is no legal requirement to have an asbestos management survey for every residential property however, to keep tenants safe, the Council should consider a programme of works for completing the surveys for domestic properties to prevent exposure to asbestos.
- 4.4 On **Water hygiene** there are no blocks in this district which have been tested and which are non-compliant. However there are 152 blocks with an unknown compliance position. It is important to check these and either remove them from the programme or Commission a Legionella Risk Assessment.
- 4.5 On **Fire Safety** the report has identified that Fire Risk Assessments have been completed for all blocks that require them.
- 4.6 On **Gas safety** there are 3 assets which require a Landlord Gas Safety Record.
- 4.7 On **electrical safety** in the 251 communal blocks in the district, 9 blocks have been identified as being non-compliant.
- 4.8 On **domestic property**, Penningtons identify 3619 properties with 3404 on an **electrical**

**programme**, 1771 non-compliant and 455 not on a programme at all. Penningtons were not provided with full assurance that the 231 communal blocks and 1432 domestic properties across East Kent not on the electrical programme had a documented evidence base to explain why they had been removed.

4.9 It is recommended that immediate action is taken to confirm that properties not on the electrical safety programme do, or do not, have an electrical supply.

4.10 Penningtons also note that only 30% of properties have had a **stock condition survey** in the last 10 years. At that rate of work it would be around 33 years until the last property is surveyed since EKH started work (which is 23 years from now).

## 5. Taking Action

5.1 On **fire safety** Penningtons note that there are 4767 outstanding actions across East Kent. It recommends that a quality assurance audit is undertaken on either all, or at least a sample, of fire risk assessments to ensure that the documents are fit for purpose and meet the required standards. It notes many of the actions are considerably in excess of their target inspection dates.

5.2 It notes the approach in terms of prioritising sheltered and high rise properties first but notes they would recommend the Board and leadership teams should be made aware of the significant risk to tenant safety that has arisen as a result of some actions not being completed at the recommended timescales due to the current prioritisation approach.

5.3 On **water hygiene** the report highlights: 269 high risk outstanding remedial works; 313 medium risks and 65 low risks in this district. It notes some of the high risks have been outstanding for up to 3 years. It recommends that the 4 Councils must recognise that the associated risks have not previously been recognised and they should be prioritised as a matter of urgency.

5.4 On **asbestos** work the report is critical of having the same contractor to identify works and then carry out the remedial works and review their removal work as there is a risk that asbestos risks could be overlooked.

5.5 On **gas safety** the report identified 1578 outstanding actions across East Kent with 10 of these outstanding for 2 years. The 10 have now been remedied but each Council needs oversight of the repair programme to prevent essential repairs from being completed outside the recommended time period.

5.6 On **fire** the report notes that the 4 Councils should be aware that they are in breach of the legislative requirements to implement all necessary general fire precautions and need an appropriate system in place to deal with these actions.

5.7 On **water safety** the report notes that each Council needs to make necessary changes arising from Legionella Risk Assessments and should be prioritised as a matter of urgency.

5.8 On **asbestos** the report recommends that the Asbestos Management Plan requires improvement as it should set out the exact detailed procedures which will take place as part of the inspection programme of works in the required organisational and regulatory timeframes.

5.9 On **electrical safety** the Council should adopt periodic electrical inspection and testing programmes for all of their properties as those which do not have a valid Electrical Inspection Conditions Report are in breach of legislation and are subsequently at risk of a range of sanctions.

5.10 On **gas safety** there must be an annual safety inspection of Council owned gas appliances including flues. At the time of inspection (October 2019) 9 properties in East Kent did not have valid inspection certificated leaving the Councils in breach of legislation and subsequently at risk of a range of sanctions.

## 6. Compliance Policy

6.1 The report recommends that all compliance documents are standardised to ensure consistency.

6.2 On **Asbestos safety** it notes they would expect an asbestos management plan to have details of the end to end process for each stage of asbestos delivery, and to include a statement around the legal obligations to establish an Asbestos Management Plan. The current document does not include this. The report notes the asbestos policy should have statements around internal and external quality auditing regimes for the management of asbestos.

6.3 On **water safety** the current policy creates a risk that some high risk actions could Remain outstanding for long periods of time.

6.4 On **fire safety** the policies do not include references to the relevant legislation on fire safety. It does not cover the level of detail expected such as what is the process for non-compliance and escalation in particular how issues will be formally reported and who to. It should also acknowledge serious issues of non-compliance that might need to be disclosed to the Regulator.

6.5 On **gas safety** the policy needs to state a clear process for the completion of follow up works that cannot be completed during the time of inspection with set timescales for completion. It also needs to advocate achieving the best practice level of external review of 5% of gas compliance tests.

6.6 On **electrical safety** the policy document does not have the level of detail expected, some is out of date and does not provide full assurance that EKH is clear of its obligations or that their review process is robust to ensure legislative changes are regularly updated. The policy does not cover escalation processes which would take place in cases of non-compliance and does not cover the frequency of compliance reporting or the key performance indicators which will be included in the report.

6.7 As a **landlord** the Council is responsible for ensuring that tenants are safe in their homes. Contracting out delivery to EKH does not contract out responsibility to meet the requirements of legislation or standards and so the Council need robust systems to give the Board assurance of compliance. The Council needs to be involved in the review of all the policies above.

6.8 The policy documents need to ensure it is clear who holds responsibility for review and approval including the Board, strategic lead, responsible person and at each of the Councils.

6.9 The report recommends the routine auditing of completed gas checks, electrical tests, fire risk assessments, asbestos surveys and analytical testing and water hygiene risk assessments.

6.10 The absence of a **recovery plan** that is both detailed and time lined and that represents one version of the truth is a significant omission. The absence of a plan that is appropriately detailed is hindering the collective ability to tackle the backlog of compliance issues quickly and provide assurance to the Council.

- 6.11 The report notes that at no time did anyone articulate a clear goal for **recovering compliance**.
- 6.12 The current **performance reporting** regime is positively unhelpful. It does not provide anyone with information which is informative and likely to facilitate good decision making or action. The report is also critical of low staffing numbers being brought in to tackle the issues identified.
- 6.13 The report recommends one clear **action plan** and to this end a joint meeting facilitated by Penningtons with EKH and client staff from the 4 Councils has already met to draw up an Action Plan.
- 6.14 The report identifies the need for more staffing. EKH have been requested to come forward with a business case for additional resources.
- 6.15 **Other health and safety issues** need to be addressed such as radon, playgrounds, and lightening conductors.
- 6.16 The report is not satisfied that the approach towards **compartmentalisation and fire doors** is adequate. Fire safety remains the most significant immediate risk to the residents and consequentially in terms of corporate risk to the councils. More needs to be done to ensure that a clear strategic plan is in place for identifying and actioning physical works to buildings and that this plan is transparently understood and is capable of being tested with progress being evidenced to provide assurance to stakeholders.

## **7. The Board of East Kent Housing and Leadership**

- 7.1 The report suggests that the Board in its current format has “little meaningful role”. Some Board members feel they would not have had the competencies required to fulfil their role in any case. The role of the Board has not been clear. The Board is effectively redundant and there is unnecessary duplication and some level of distraction and confusion caused by EKH having multiple accountability channels. In discussions with Penningtons their clear recommendation is to **change the membership of the Board**.
- 7.2 The Officer Panel constituted as part of the Owners Agreement met on 9 December and agreed that:
- Every Board member of East Kent Housing be removed thereby leaving 12 vacancies on the Board;
  - That the 4 Chief Officers for East Kent Councils be appointed to sit on the East Kent Housing Board namely:  
  
Colin Carmichael, Chief Executive Canterbury City Council  
Nadeem Aziz, Chief Executive Dover District Council  
Dr Susan Priest, Head of Paid Service Folkestone and Hythe District Council  
Madeline Homer, Chief Executive Thanet District Council
- A formal Notice notifying East Kent Housing of these changes was served on 12 December 2019. It therefore took effect from midday on 13 December and Board Members have been informed of this.
- 7.3 With a Board of the Chief Officers it will be able to focus on the Boards purpose to:
- Determine strategy and direction of East Kent Housing as agreed by the Councils;

- Set out the values, vision and mission for the organisation;
- Monitor performance;
- Approve the annual budget, the business plan and annual accounts;
- Oversee systems of internal controls and delegations;
- Establish a framework for the management of risk;
- Satisfy itself that East Kent Housing operates lawfully;
- Review the code of governance and agree a statement of compliance/ non-compliance in the annual accounts;
- Ensure the organisation meets standards set by Regulatory bodies;
- Ensure EKH fosters good relations with the 4 Councils and fulfils its obligations;
- Ensure there is effective communication with and feedback from tenants and leaseholders and other stakeholders;
- Adopt and monitor strategies to meet the needs of diverse communities and champion the cause of equalities;
- Promote openness, transparency and accountability to all stakeholders;
- Agree reserved items which must be agreed by the Board and are not delegated; and
- Foster a good working relationship with the Chief Executive and senior staff.

## **8. Conclusions of the Report**

- 8.1 The report concludes that “it is hard to conclude anything other than that the current EKH model is fundamentally broken. To retain the present arrangements would require a very substantial renewal of the model, a renewed purpose for EKH including the relationship between EKH and the Councils and ultimately the governance and leadership of EKH”.
- 8.2 “Taking urgent action has been ineffective.... It is a leadership role to ensure time and mission critical things happen...residents could quite reasonably see this failure in leadership as unforgivable considering the seriousness of the safety issues in question and the wider context of the Grenfell tragedy”. “It is our conclusion that notwithstanding causes that we have articulated (in the report) ineffective leadership is a significant issue. It is not part of our brief to evaluate the performance of any particular leader and it could be argued that no leader however effective could have overcome the challenges that the housing service faced. Collectively however leadership has failed to keep residents safe and the 4 Councils compliant”.
- 8.3 The 4 Councils and EKH should be working as one, albeit large team to deliver the required service outcomes for residents and further the Councils wider strategic missions.

- 8.4 The data held by EKH is not in a state of health that would reflect a robust mature organisation that has a solid grasp on what is needed to deliver services.
- 8.5 In terms of funding although the current budget is now once again on a par with EKH when it was set up (with CPI inflation allowances) there have been years (the majority) when it was below that initial management fee. It is noted that the fee is low in comparison to peers.
- 8.6 On procurement the collective failure to get successful contracts suppliers in place in a timely manner is an indisputable fact and has directly led to some of the compliance issues which the Councils have been censured by the Regulator for.
- 8.7 In conclusion the report states that the fundamental reasons for the failure in the property health and safety compliance service managed by EKH is:
- The nature of EKH as a shared ALMO working for 4 Councils with their own differences and priorities;
  - The lack of a clear inspirational and relevant purpose for EKH that in turn directed the efforts and decision making of the organisation and its interaction with the 4 Councils;
  - Ineffective governance;
  - Ineffective leadership; and
  - A dysfunctional relationship between EKH and the Councils.
- 8.8 The action proposed within the Pennington Report, including the development of the required Voluntary Undertaking and Recovery Action Plan (which will be agreed with the Social Housing Regulator) will enable the Council (and the other East Kent Council Partners) to ensure that full compliance is achieved across all the housing stock as quickly as possible.

## 9. RISK MANAGEMENT ISSUES

- 9.1 A summary of the perceived risks to the Council is shown below:

Perceived risk	Seriousness	Likelihood	Preventative action
Insufficient resources within the Council HRA to deliver the necessary investment to ensure full compliance	High	Low	HRA Business plan is subject to ongoing review to ensure that it remains fully fit for purpose and is developed in line with Government best practice.
Failure to develop an effective recovery plan	High	Low	The Council is working with EKH and the other East Kent Council Partners to develop an effective recovery Action Plan which will be agreed with the

			Social Housing Regulator.
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## **10. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS**

**10.1 Legal (AK)** – The Legal issues are identified in the main body of this report. Legal advice must be sought by Officers at all times during this whole process.

**10.2 Finance (TM)** – 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.

**10.3 Equalities (AH)** – There are no equality or diversity implications arising from this report.

**10.4 Communications (KA)** - Tenants, leaseholders and EKH Staff have been informed about the outcomes from this report, including the changes that have been made to the EKH Board.

**10.5 Transformation (AH)** – There are no direct implications arising from this report on the delivery of the transformation project.

## **11. 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:

### **Appendices:**

Appendix 1 – Social Housing Regulator Notice (September 2019)  
Appendix 2 - Pennington Choices – EKH Compliance Investigation (December 2019).