
Subject: FAILURE TO HAVE IN PLACE VALID GAS SAFETY RECORDS IN RESPECT OF COUNCIL DWELLINGS AS REQUIRED BY REGULATION 36 OF THE GAS SAFETY (INSTALLATION AND USE) REGULATIONS 1998

Meeting and Date: Cabinet – 1 July 2019

Report of: Harvey Rudd, Monitoring Officer (pursuant to Section 5A of the Local Government and Housing Act 1989)

Portfolio Holder: Leader and all Portfolio Holders

Decision Type: Executive Statutory - Report Only

Classification: Unrestricted

Purpose of the report: To discharge the duty placed upon the Monitoring Officer by Section 5A of the Local Government and Housing Act 1989 to report a contravention of law to the executive.

Recommendations: Cabinet is required by law to consider this report at a meeting held not more than twenty-one days after copies of the report are first sent to members of the executive in accordance with the requirements of section 5A(6)(a) of the Local Government and Housing Act 1989 and to take the steps set out in paragraphs 4.2 to 4.4 of this report.

1 Summary

- 1.1 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 of the Local Government and Housing Act 1989.
- 1.2 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 and to respond to it in accordance with the requirements set out in paragraph 4 of this report.
- 1.3 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.
- 1.4 Since March 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.
- 1.5 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 of the 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.

- 1.6 This report has been prepared by the Council's Monitoring Officer in the discharge of his duty under section 5A of the 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.

2 Gas Safety Records

- 2.1 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.
- 2.2 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, Folkestone & Hythe 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 Dover District Council.
- 2.3 The East Kent Housing quarterly performance reports show low levels of outstanding gas safety certificates for Council-owned properties in the Dover 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.
- 2.4 The low level of outstanding certificates was maintained up to the end of March 2019.
- 2.5 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.
- 2.6 The situation deteriorated from April 2019 such that as at 24 May 2019 there were approximately 175 Dover 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 in excess of 4,000 units.
- 2.7 Gas safety certificates fall due for renewal on different dates. About 80 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.
- 2.8 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.
- 2.9 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 with the Council's contractor giving contractual notice to exit its contract with the Council.

3 Regulatory and Legal Implications

- 3.1 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.

4 Recommendation

- 4.1 Cabinet is required by law to take the steps set out in paragraphs 4.2 to 4.4 below.
- 4.2 To consider this report at a meeting held not more than twenty-one days after copies of the report are first sent to members of the executive in accordance with the requirements of section 5A(6)(a) of the Local Government and Housing Act 1989.
- 4.3 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.
- 4.4 As soon as practicable after the executive has prepared its report in accordance with paragraph 4.3, to arrange for a copy of it to be sent to each member of the Council and the Council's Monitoring Officer.

5 Consultation Statement

- 5.1 The Council's Head of Paid Service (the Chief Executive) and Chief Finance Officer (the Director of Corporate Resources) have been consulted in the preparation of this report as required by section 5A(5)(a) of the Local Government and Housing Act 1989. They have confirmed that they have no further comments to make/or their comments are set out in paragraph 5.2.
- 5.2 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.

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