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**Subject:** **TENANT ENGAGEMENT ON WITHDRAWAL FROM EAST KENT HOUSING ARM'S-LENGTH MANAGEMENT ORGANISATION**

**Meeting and Date:** **Cabinet – 2 September 2019**  
**Overview and Scrutiny Committee – 9 September 2019**

**Report of:** **Mike Davis, Strategic Director (Corporate Resources)**

**Portfolio Holder:** **Councillor Susan Chandler, Portfolio Holder for Housing and Health**

**Decision Type:** **Non-Key Decision**

**Classification:** **Unrestricted**

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**Purpose of the report:** To commence tenant engagement on withdrawal from East Kent Housing.

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**Recommendation:** It is recommended that:

1. Cabinet approves the commencement of engagement with tenants (and leaseholders as required) on withdrawal from East Kent Housing; and
2. That Cabinet delegates to the Strategic Director (Corporate Resources), in consultation with the Portfolio Holder for Housing and Health, the details and basis of the engagement and also of any subsequent formal consultation.

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## 1. **Summary**

1.1 There have been increasing concerns for a significant period of time at the performance of East Kent Housing in relation to asset management, procurement and delivery of the capital programme. These concerns have been heightened by a failure to comply with the requirement to have gas safety certificates for all properties with gas. Subsequent investigations have highlighted that the compliance issues are not limited to gas safety.

1.2 The Council therefore wishes to consider its options for the future safe management of its housing stock and one of the options would be to return management to the direct control of the Council. In order to consider this in detail it is essential to seek the views of all stakeholders, but in particular the tenants. This report seeks approval to do so.

1.3 It should also be noted that this report was correct at the time of writing, but the situation remains fluid and so events after it was drafted may have overtaken some of the points made.

## 2. **Introduction and Background**

2.1 Council approved the creation of East Kent Housing on 24 February 2010 and the organisation came into existence in April 2011.

2.2 There have been concerns in a number of areas including asset management, procurement and contract management. These have been compounded by restructures within EKH that have reduced the staffing levels for asset management and maintenance. There have also been concerns over Member reporting and the

“single system” implementation which is over 2 years late and 60–70% over budget. However, none of these concerns related in any way to tenant safety.

- 2.3 As part of the 2019/20 budget, Council, at its meeting in March 2019, approved an extra £200k contribution to EKH’s management fee (so £800k in total across all 4 councils) to fund an EKH improvement plan.
- 2.4 However, in May 2019 it became apparent that there was also a significant and growing issue with the failure by EKH to ensure that gas safety checks were taking place in accordance with the statutory timetable and the failure to ensure that gas safety certificates were all in place.
- 2.5 At the peak, there were some 450+ properties across the 4 East Kent councils without current gas safety certificates, of which 170+ related to Dover properties. Subsequent work by interim contractors has reduced this number and at the time of writing EKH advise that there are no outstanding certificates for Dover properties.
- 2.6 DDC’s Monitoring Officer (MO) therefore produced a formal “section 5” report on the matter and this was received by Cabinet on 1 July 2019. The matter was also self-referred to the Social Housing Regulator who is monitoring the situation and the Council’s response. The Health and Safety Executive is also aware of this matter.
- 2.7 The Strategic Housing Manager (SHM) wrote a response to the MO’s report and this was presented to the same meeting. Cabinet approved the SHM’s recommendations that a further report be prepared to consider any wider issues of housing management and whether consultation with the Council’s tenants on withdrawal from the East Kent Housing (EKH) Arm’s Length Management Organisation (ALMO) is now required.
- 2.8 This report discharges Cabinet’s decisions.

### 3. **Wider Issues of Housing Management**

3.1 The areas of concern to be considered are:

- (a) Compliance
- (b) Procurement
- (c) Contract management
- (d) Data quality and Member reporting
- (e) Delivery of the capital programme
- (f) Implementation of the “single system”
- (g) Income collection and arrears
- (h) Voids
- (i) Internal audit reports
- (j) The operating and governance model
- (k) Resourcing levels
- (l) Current reviews and activities
- (m) Conclusion

#### a) Compliance

3.2 The primary issue with compliance appears to be the maintenance of proper compliance records rather than failures in the compliance and safety checks themselves.

3.3 EKH has operated for 8 years and was, initially, undertaking an adequate compliance function. However, re-organisations and the loss of experienced staff have combined to break up the procurement team and processes and to lose the corporate memory.

3.4 EKH are now seeking additional resources to re-establish what has been lost.

3.5 Subsequent investigations have highlighted that the compliance issues are not limited to gas safety.

b) Procurement

3.6 EKH have received additional funding from the Councils, by way of an increase in the management fee, to improve its procurement performance. However, at the time of writing, and despite having more procurement resource than DDC, EKH remain heavily reliant on the Councils for procurement support and guidance.

3.7 Particular problems include:

- (a) Inadequate forward planning and late initiation of the procurement process;
- (b) Frequent use of contract extensions that should not have been necessary;
- (c) Poor quality specifications.

c) Contract Management

3.8 Problems have been encountered with a number of contracts including those for external decorations and gas maintenance and installations. These problems have included a failure to detect and challenge poor performance by contractors, a failure to challenge overcharging by contractors, and a failure to detect and challenge a pattern of charging that appears to be a systemic fraud.

d) Data Quality, Member Reporting and Transparency

3.9 In order to maintain Member and officer confidence it is imperative that data is accurate and fairly represented (to Council Members, client officers and to the EKH Board) and that Member approval is sought where required.

3.10 There are concerns that performance data (calculation of rent arrears arising from Universal Credit, delivery of the capital programme etc.) is not being calculated accurately.

3.11 There are also concerns that basic data is not being maintained accurately, so there are often errors in the lists of properties the councils own, planned service charge works, etc.

3.12 Finally, there are also concerns that oral evidence to Scrutiny Committee has not been provided as openly as it should and that major capital projects have proceeded without the required Member approval.

e) Delivery of the Capital Programme

3.13 The capital programme has been under-delivered for a number of years:

Year	Original Budget £000	Outturn £000	Underspend against Original Budget £000
2011/12	4,205	3,537	668
2012/13	4,095	3,524	571
2013/14	4,471	4,180	291

Year	Original Budget £000	Outturn £000	Underspend against Original Budget £000
2014/15	4,308	4,875	(567) <sup>1</sup>
2015/16	4,010	4,105	(95) <sup>2</sup>
2016/17	4,813	3,472	1,341
2017/18	4,503	3,168	1,335
2018/19	4,917	2,262	2,655

f) Implementation of the Single System

3.14 The “single system” is an ICT project initiated by EKH to unify the four council housing systems. The initial budget was £1.195m with a go-live date for DDC of December 2016. To date the cost is £1.891m with an outturn cost currently expected to be £2.286m. It is not clear when, or if, the implementation will be completed.

3.15 Failure by EKH to complete the implementation will leave DDC with a partially implemented system and having to run two parallel ICT systems, or having to take over the rest of the implementation and meet the significant additional costs.

g) Income Collection and Arrears

3.16 After an initial improvement in collection rates arrears are now increasing and stand at £1.142m, representing 6.17% of the rent roll. The roll-out of universal credit has had a significant effect of arrears with the 6–8 week waiting period and the almost continual re-assessment of UC awards to claimants being significant contributing factors.

3.17 However, UC arrears are being mis-represented in performance data as shown below:

	Description	EKH Data	Correct Data
1	Total value of rent roll	£18,373,882	£18,519,643
2	Value of arrears	£869,298 <sup>3</sup>	£870,314
3	Arrears as a %	4.73%	4.70%
4	Total value of Universal Credit Rent Roll	£3,868,305	£3,868,305
5	Value of UC arrears	£493,287	£493,287

<sup>1</sup> ‘Dorlonco’ project, to install external insulation, was an unauthorised project costing £892k in 2014/15 and £630k in 2015/16.

<sup>2</sup> Replacement heating systems budget also overspent by £128k in 2015/16

<sup>3</sup> Current tenant arrears only.

6	UC Arrears as a %	2.68%	12.75%
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h) Voids

3.18 The speed of re-letting voids has decreased and for quarter 1, homes remain empty for an average of 25.15 days between the end of a tenancy and the start of a new one. The target for void turn-around time is currently set at 22.75 days. Of greater concern is that turn-around time for empty homes requiring only minimal work is taking an average of 22.91 days against a target of 16.5 days. These figures do not take into account the additional time available for this process generated by the early return of keys from the departing tenant which is not included in the measurement of performance.

i) Internal Audit Reports

3.19 The East Kent Audit Partnership (EKAP) has produced a number of reports which give cause for concern.

j) The Operating and Governance Model

3.20 When government first introduced ALMOs, there were financial incentives for stock retaining councils to set them up. These incentives have not been in place for some years and councils no longer receive encouragement to create or maintain ALMOs.

3.21 Post Grenfell, it is clear that the public still hold councils accountable for housing services provided by them, even if it is through an arms-length or other management arrangement. So providing housing services through a separate sovereign body, over which the Council has little direct control, no longer aligns with public expectations.

3.22 The current governance model also has a number of weaknesses which have not helped EKH or the councils.

(i) The ALMO model creates an “Arms Length” and separate sovereign body over which the Councils have very little direct control. However, the councils are ultimately responsible for the housing stock and the services provided to tenants.

(ii) EKH has to satisfy a number of separate stakeholders at the same time including, potentially:

- The tenants and leaseholders
- The EKH Board
- The 4 district Councils
- 4 client officers
- Portfolio holders
- The Owners Committee.
- The Chief Executives

It is often difficult to get a consensus within one of these groups, let alone a number of them.

(iii) The Board has exercised limited control over EKH.

(iv) The Owners Committee was designed to resolve disputes between the clients. In practice it has hardly ever met.

- (v) The Client Officers meet regularly, but given the list above the governance is complex, convoluted, lengthy, burdensome and unwieldy at best.
- k) Resourcing Levels
- 3.23 During 2018/19 EKH requested additional resources to assist in managing/improving rent collection, procurement and the capital programme. As a result, EKH were given an extra £200k by each Council (£800k in total) for the 2019/20 management fee.
  - 3.24 In order to properly manage compliance, contract management and the capital programme EKH are now requesting a further £1.3m per annum, giving a total of £2.1m per annum in additional resources, taking the total DDC management fee to £2.684m.
  - 3.25 Taking the original resourcing level at the creation of EKH, reducing it by 10% in accordance with the business case, and then indexing it by inflation brings the total to approximately the management fee level for 2019/20, inclusive of the extra £800k for the improvement plan.
  - 3.26 The additional £1.3m per annum now requested therefore represents a real terms increase in resources for EKH and would resource them above the levels in the original business case.
- l) Current Reviews and Activities
- 3.27 In response to recent events a number of activities have been initiated, the most significant of which are set out below.
    - (i) Compliance Review – EKH have commissioned HQN4 to undertake a review of the compliance failures and their causes.
    - (ii) Social Housing Regulator (SHR) – the four councils have self-referred to the SHR. They are now in regular contact (led by the CCC Chief Executive) and will monitor the Councils’ recovery plans and delivery.
    - (iii) P&R Adjudication – P&R have successfully sought adjudication against the Council for outstanding invoices the Council is refusing to pay. The Council is seeking counter adjudication against P&R for the over-charging.
    - (iv) Alleged Fraud – The Council is compiling a bundle of evidence for its legal advisor to assess whether there is evidence of fraud against the Council as part of the over-charging.
    - (v) Review of the Housing Management activity – All four councils will participate in a review, led by Folkestone and Hythe, into the future options for housing management.
    - (vi) Review of the arrangements for tenant and leaseholder health and safety and statutory compliance for the councils’ tenants and leaseholders in East Kent – the four councils are currently in the process of procuring consultancy support to review H&S and compliance.
    - (vii) Tenant (and leaseholder as required) consultation – see the section below.
    - (viii) Continuity of orderly day-to-day business – it is critical that the provision of day-to-day services and the management of the capital programme does not deteriorate further under the pressure of the issues identified above, and that there is no major loss of staff, so that if a new arrangement is to be set up for the delivery of housing management services, there can be an orderly transition.

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<sup>4</sup> HQN were involved in the set-up of EKH and have maintained a close working relationship with them.

3.28 It should be noted that any proposal to consult on changes to housing management arrangements, or to make any other changes to EKH, carries a significant risk that it will destabilise the organisation and also risks the loss of key staff.

3.29 Should the proposal to consult be approved, work will be progressed on the arrangements required, should Members subsequently decide to transfer the service back to the Council.

#### 4. **Consultation**

4.1 It is apparent that there has been a significant deterioration in the services provided by EKH, that in some areas there has been a complete failure of the services and that the data produced by EKH to monitor service performance is not always robust.

4.2 For these reasons it is recommended that consultation with tenants is initiated with a view to recommending withdrawal from EKH or, if the other three councils are of the same opinion, the consultation may be on the closure of EKH.

4.3 Under Section 105 of the Housing Act 1985, the Council is required to consult with, and have regard to, the views of tenants before making decisions on matters of housing management. Potentially changing who delivers the housing management service therefore falls within this requirement.

4.4 In 2011, the Department for Communities and Local Government (CLG) issued a guidance note for councils considering the future of their ALMOs. Unlike when originally setting up an ALMO, councils do not require the Secretary of State's consent to bring housing management back in-house. However, the guidance states that any change in housing management arrangements "should be the subject of a test of opinion no less rigorous than the test undertaken on transferring housing management functions to the ALMO".

4.5 It should be noted that this is guidance. It does not carry the full force of legislation and is therefore not mandatory. It is possible that failure to follow the guidance would leave the Council more vulnerable to challenge, and to that challenge being more successful.

4.6 During 2010, when the four councils were originally exploring the creation of EKH, an extensive consultation was carried out. This comprised of:

- (i) A consultation booklet and questionnaire, "Our plans for improving your housing services", sent to every council tenant and leaseholder.
- (ii) A postal survey to all tenants and leaseholders testing opinion on the proposal to create EKH (which was also available on the website).
- (iii) Two telephone surveys, undertaken by an independent company, each contacting 7% of tenants and leaseholders.
- (iv) Road shows - events were held in different locations across the district.
- (v) Individual visits to a significant number of tenants in the district encouraging them to complete the survey.

4.7 If the Council decides to explore alternative options for future housing management services, it must decide whether to adopt a similar approach to that used when originally consulting on the proposal to create EKH.

4.8 The first step could be early engagement with residents to give them an opportunity to shape the options which would then be consulted on in more detail. This is in line with CLG guidance and could be done by using existing resident involvement methods such as the Tenant Consultative Group/Area Boards. It would also be beneficial to involve other partners who could be affected by changes in housing

management, including the Citizens' Advice Bureau and EKH board, management and staff.

- 4.9 In terms of the full consultation exercise, if that is the preferred route then the following elements are recommended:
- (i) A consultation document and questionnaire to be sent to all tenants and leaseholders, which would also be made available online.
  - (ii) Road shows in various locations across the district, particularly focusing on areas with a high concentration of tenants and leaseholders.
  - (iii) Individual visits to tenants and leaseholders reminding them of the importance of taking part in the consultation - this could be done by EKH when Housing Officers and Maintenance Inspectors are making routine visits.
- 4.10 However, Members may consider this approach to be excessive given the issues identified above with regard to EKH. If this is the case Members may wish to simply request that a short consultation document be sent to all tenants and other stakeholders, and be made available on line, providing a summary of the issues and asking whether tenants are satisfied with the service and whether they wish it to remain with EKH, be taken over by the Council or pursue some other route such as a shared service with one or more of the other partners. If this approach is adopted additional specialist advice may be required.
- 4.11 It is proposed to delegate to the Strategic Director (Corporate Resources), in consultation with the Portfolio Holder for Housing and Health, the exact basis and format of the consultation.
- 4.12 If possible, this consultation will be aligned, as closely as possible, with any consultations being undertaken by the other three councils, should they also be consulting.

## 5. **Identification of Options**

- 5.1 There are two options for decision.
- 5.2 Option 1- Maintain housing management with EKH and do not consult.
- 5.3 Option 2 - Withdrawal from EKH.
- 5.4 If option 2 is preferred, there are two further options (or a combination of both).
- 5.5 Option 3 – Form a new shared housing service with one or more of the other councils. This would not be an ALMO.
- 5.6 Option 4 – Bring the service back in-house under DDC direct management.

## 6. **Evaluation of Options**

- 6.1 Option 1 - The provision and management of housing management by EKH has deteriorated to such an extent that simply leaving the service with EKH and not consulting on change would not be a responsible course of action and would not give tenants a voice. For these reasons this is not the recommended option.
- 6.2 Option 2 – Because of the deterioration in housing services it is reasonable to offer tenants a voice on the future of their service. For this reason this is the preferred option.
- 6.3 For those tenants that prefer Option 2, they would then be asked to express a preference for Option 3 or 4.
- 6.4 So to summarise, it is recommended that the tenants are consulted on withdrawal/closure of EKH, and that their views are sought as to whether the Council



should seek to create a new shared service with one or more partner councils, or simply take the service back in-house.

## 7. Resource Implications

7.1 With regard to consultation, there are no significant resource implications other than staff time, which will be charged to the Housing Revenue Account (HRA) and which will be contained within current budgets.

7.2 With regard to changes in housing management, there will be significant resource implications from any change, but these cannot be quantified at this time.

## 8. Risk Assessment

8.1 There are many specific risks, but these would make the risk analysis too detailed. It has therefore been limited to the high level/strategic/significant risks which are likely to be relevant when considering the action to take.

	Risk	Comments	Likelihood	Impact
	<u>Maintain Housing Management With EKH</u>			
1	Remain with EKH	The areas of concern are not resolved within an acceptable timescale and cost.	H	H
	<u>Withdrawal from EKH</u>			
2	Destabilises the organisation	Key staff may choose to leave EKH unless the councils can offer sufficient reassurance.	M	M
3	Reduction in performance	Even if staff are retained, performance is likely to show a dip during the change period.	H	M
4	Single System implementation	The implementation may be delayed or cost more, or the council may have to take over the final stages.	M	M

## 9. Corporate Implications

9.1 Comment from the Section 151 Officer: Accountancy has been consulted during the writing of this report and have no further comments to make. (BW)

9.2 Comment from the Solicitor to the Council: The Solicitor to the Council has been consulted in the preparation of this report and has no further comments to make.

9.3 Comment from the Equalities Officer: This report does not specifically highlight any equality implications however in discharging their duties members are required to comply with the public sector equality duty as set out in Section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15>.

9.4 Other Officers (as appropriate):

10 **Appendices**

None.

11 **Background Papers**

The Council report to create EKH.

The Council report to purchase the single system.

Various performance reports.

Contact Officer: Mike Davis, Strategic Director (Corporate Resources)