
Subject:	SOCIAL HOUSING REGULATOR VOLUNTARY UNDERTAKING
Meeting and Date:	Cabinet – 5 October 2020
Report of:	Mike Davis, Strategic Director (Corporate Resources)
Portfolio Holder:	Councillor Derek Murphy, Portfolio Holder for Housing and Health
Decision Type:	Key
Classification:	Unrestricted

Purpose of the report: To set out the reasons why the Council is subject to a regulatory notice from the Regulator for Social Housing (RSH) for breach of a consumer standard, the Council's intended response to this and to request the Leader of the Council and Head of Paid Service to enter into, on behalf of the Council, a Voluntary Undertaking for the RSH detailing how full standard compliance and discharge of the notice will be achieved.

Recommendation: It is recommended that Cabinet:

1. Receives and notes the report.
2. Agrees the Council's planned response to the regulatory notice served upon it by the RSH and
3. Requests the Leader of the Council and Head of Paid Service to enter into, on behalf of the Council, a Voluntary Undertaking.

1. Summary

- 1.1 Until 1 October 2020 East Kent Housing (EKH) managed the housing stock of DDC under the terms of a management agreement dated 1 April 2011. On 20 February 2020 Cabinet confirmed their intention to withdraw from the contract with EKH and the housing management service returned to the Council on the 1 October 2020.
- 1.2 In early 2019 concerns about the performance of EKH in relation to compliance, procurement and contract management were further exacerbated by serious health and safety compliance issues in relation to a number of areas including fire safety, electrical safety, lift safety, legionella testing and gas safety.
- 1.3 The four councils agreed to self-refer to the Regulator for Social Housing (RSH), confirming that the councils, through EKH, had failed to meet statutory health and safety requirements across a range of areas. In September 2019, the RSH's investigation concluded that the four councils (under their statutory landlord responsibilities) were non-compliant, resulting in a Regulatory Notice being issued. The notice remains 'live' for 12 months or until full compliance is achieved.
- 1.4 The Regulator has a range of statutory powers that can be used to ensure registered housing providers comply with the standards set out in the Regulatory Framework. DDC have accepted responsibility for breach of a consumer standard and have asked the regulator to accept a voluntary undertaking that all work necessary to ensure compliance with the home standard is complete.

2. Introduction and Background

- 2.1 In January 2011, the four councils of Canterbury City Council, Dover District Council, Folkestone and Hythe District Council and Thanet District Council established EKH and with effect from 1 April 2011 under section 27 of the Housing Act 1985, delegated the management of their housing stock to EKH.
- 2.2 In early 2019, the four client councils raised concerns about a number of key areas of the services provided by EKH in relation to asset management, procurement and delivery of the capital programme, which were further exacerbated by serious health and safety compliance issues by EKH in relation to a number of areas including fire safety, electrical safety, lift safety, legionella testing and gas safety.
- 2.3 The four councils agreed to self-refer to the Regulator for Social Housing, confirming that the councils, through EKH, had failed to meet statutory health and safety requirements across a range of areas. In September 2019, the RSH's investigation concluded that the four councils (under their statutory landlord responsibilities) were non-compliant, resulting in a Regulatory Notice being issued. The notice remains 'live' for 12 months or until full compliance is achieved.
- 2.4 Pennington Choices housing consultancy service was appointed by the four councils to investigate the circumstances leading to the compliance failures and the final report was published on the Dover District Council website on 13 December 2019. Each council endorsed the production of an 'action plan' to implement the recommendations outlined in Pennington's report.
- 2.5 The action plan compiled by Pennington Choices set out the scope and timeline for improvements required to satisfy the RSH that the Councils are meeting the regulatory standard and that the Regulatory Notices served can be removed.
- 2.6 DDC have procured additional contractor resources to deliver compliance work and from 1 October 2020 will be monitoring contractor performance directly.
- 2.7 The Covid 19 pandemic has meant that a number of dates in the action plan have needed to be extended. The RSH has been sympathetic to this but will continue to monitor progress against revised delivery dates.
- 2.8 The objectives of the RSH are set out in the Housing and Regeneration Act 2008 (as amended). The RSH is responsible for the economic regulation of registered housing providers and for setting and monitoring consumer standards. Local Authority housing providers are subject to the consumer standards and the RSH will intervene if these are breached and there is a significant risk of serious detriment to tenants or potential tenants.
- 2.9 The RSH has a statutory duty to perform its functions in a way that minimises interference and is proportionate, consistent, transparent and accountable.
- 2.10 The regulator expects registered providers to identify problems and take effective action to resolve them. Where appropriate the regulator expects providers to self refer.
- 2.11 In cases where the housing provider takes responsibility for self-improvement and the regulator concludes that they have the capacity and capability to respond to the problems the regulator will work with the organisation to achieve the necessary corrective actions
- 2.12 S 125 of the Housing and Regeneration Act 2008 allows a social housing provider to present to the Regulator a voluntary undertaking and the four Council owners of EKH have approached the regulator with such an offer.
- 2.13 The regulator will be presented with a summary of the detailed compliance recovery action plan and an undertaking by DDC to meet all obligations in the plan. The RSH will consider the content of this and will:

- take into account whether a sufficient voluntary undertaking has been offered and honoured and:
- assess whether or not the terms of a voluntary undertaking are satisfactory, giving reasons for the decision

2.14 If the RSH agrees the voluntary undertaking this will be entered into by the Leader of the Council and Head of Paid Service. Authority for this is sought from Cabinet.

3. Identification of Options

3.1 Option 1 – Provide for the RSH a voluntary undertaking setting out clearly how the Council intends to undertake all necessary work to reach full compliance against the home standard of the regulatory framework and the timeframe for this.

3.2 Option 2 – Continue to carry out work against an action plan for compliance recovery without offering a voluntary undertaking.

4. Evaluation of Options

4.1 Option 1 - Although the Covid 19 pandemic has created delay the RSH has indicated a willingness to accept revised delivery dates and a voluntary undertaking from DDC. The three other EKH Councils have each agreed this. Option 1 is the preferred option.

4.2 Option 2 – The RSH has a range of enforcement tools that may be used to ensure compliance against each of the regulatory standards. The preferred approach of the RSH is to work with providers to resolve issues rather than take enforcement action. If providers cannot demonstrate their willingness to work in partnership with the RSH or their response is considered inadequate the RSH may take enforcement action. For this reason option 2 is not the preferred option.

5. Resource Implications

5.1 The compliance recovery programme has significant resource implications for the Council but these costs will be incurred whether or not a voluntary undertaking is provided to the RSH.

5.2 Collaborative work with the RSH is recommended and there are no significant cost implications for this.

6. Climate Change and Environmental Implications

6.1 There should be no environmental or climate change implications as a consequence of this decision being taken.

7. Corporate Implications

7.1 Comment from the Director of Finance (linked to the MTFP): Accountancy have been consulted and have no further comments to make. (BW)

7.2 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.

7.3 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 <https://www.legislation.gov.uk/ukpga/2010/15/section/149>.

8. Appendices

Appendix 1 – Pennington Choices report

Appendix 2 – Compliance Recovery Action Plan

9. Background Papers

Cabinet 1st July 2019 – Gas Safety Records

Cabinet 2nd September 2019 – Tenant Engagement on Withdrawal from East Kent Housing Arm's-Length Management Organisation

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