

Contains Confidential or Exempt Information	YES Appendix A and B
Title	Regulator of Social Housing Voluntary Referral and Notice
Responsible Officer(s)	Lucy Taylor, Executive Director of Place
Author(s)	Darren Henaghan, Interim Director of Housing
Portfolio(s)	Genuinely Affordable Homes
For Consideration By	Cabinet
Date to be Considered	18 May 2022
Implementation Date if Not Called In	1 June 2022
Affected Wards	All
Keywords/Index	Social Housing,

Purpose of Report:

On 25th February 2022, the Council wrote to the Regulator of Social Housing (RSH), the body that provides independent oversight of all registered social housing providers including local authorities and Housing Associations and made a voluntary self-referral for a potential breach of the Home Standard.

The RSH assessed the evidence provided as part of the self-referral and confirmed that the Council has indeed breached the Home Standard. As a result, the RSH published a Regulatory Notice on 11th May 2022.

This report describes the reasons why the Council is subject to this Notice from the RSH, the Council's intended response and a request that the Council's Chief Executive enter into a Voluntary Undertaking for the RSH detailing how full compliance and the discharge of the Notice will be achieved.

The report fulfils the requirements of the duty of the Monitoring Officer to report to Cabinet on a formal basis to report to Cabinet where there has been a failure to comply with the Council's statutory obligations.

**1. Recommendations:
That CABINET:**

1.1. Notes the receipt and contents of the Regulatory Notice dated 11 May 2022

- 1.2. Authorises the Chief Executive, following consultation with the Director of Legal and Democratic Services (monitoring officer), to enter into a Voluntary Undertaking with the Regulator of Social Housing.**
- 1.3. Notes that a further report will be brought to Cabinet by November 2022 informing it of the outcome of the response to the Regulatory Notice.**
- 1.4. Notes that the report fulfils the requirements of the duty of the Monitoring Officer to report failings by the Council of statutory obligations.**

2. Reason for Decision and Options Considered

Background

- 2.1 On 25th February 2022, the Council wrote to the Regulator of Social Housing (RSH), the body that provides independent oversight of all registered social housing providers including local authorities and Housing Associations, and made a voluntary self-referral for a potential breach of the Home Standard.
- 2.2. The Home Standard sets expectations for registered providers of social housing to provide tenants with quality, safe accommodation and a cost-effective repairs and maintenance service. The RSH's role is to set these consumer standards and to intervene where failure to meet the standards has caused, or could have caused, serious harm to tenants.
- 2.3 As part of the 2021-22 Council internal audit programme, two audits, Confidential Appendices A and B, were completed to assess the adequacy of the Council's controls in place in relation to housing health and safety and fire safety compliance. The two audits concluded no assurance for fire safety, and limited assurance across other areas of health and safety statutory compliance.
- 2.4 In respect of fire safety, the Council has a statutory duty to regularly assess the risk of fire and to take precautions to prevent harm. Similarly, alongside specific statutory duties in relation to gas, electrical, asbestos and water safety, the Council has a duty under the Health and Safety at Work etc Act 1974 to not expose our tenants, and others, to risks to their health and safety.
- 2.5 The fire safety audit found that the Council did not have effective controls in place in relation to its responsibilities for fire safety. At the time of the audit, a significant number of Council properties were recorded as not having an in-date Fire Risk Assessment (FRA) and there was no process to record and track FRA remedial actions. While the Council has recently improved, and we are able to provide assurance that all properties requiring an FRA have one in place, we are unable to state that all remedial works have been completed and monitored.
- 2.6 Similarly, the internal audit identified failings across gas, electrical, asbestos and water safety, including that there was no evidence of monitoring of remedial works.

- 2.7 The RSH assessed the evidence provided as part of the self-referral and confirmed that the Council has indeed breached the Home Standard. As a result, the RSH published a Regulatory Notice on 11th May 2022 (Appendix C). The Notice remains 'live' for 12 months or until full compliance is achieved.

Next Steps

Recovery

- 2.8 Since identifying the issues the Council has embarked on a rapid recovery programme overseen by a weekly Housing Safety Executive Board chaired by the Interim Chief Executive. The Board's focus is to aid the recovery to compliance through work to verify data and strengthen systems and processes.
- 2.9 To assist the recovery process the Chief Executive also commissioned an external review of our position on housing health and safety. This work included a review of the information available on our current and projected situation on Health and Safety Compliance and through interviews with key staff, to identify weaknesses and understand any legacy issues that may be hindering performance. This work, completed by ARK consultancy, has now been completed and is attached as Appendix D.
- 2.10 This external review has now been used to strengthen the recovery plan where appropriate and ARK themselves have been retained to provide assistance and oversight to the recovery programme.
- 2.11 The Council's approach is to be entirely transparent with tenants and leaseholds about the need to improve standards. In March a special edition of Housing News was sent to all tenants and leaseholders telling them that the Council had voluntarily referred to the RSH, and is being completely transparent about the need to improve safety standards. The Spring edition of housing news provides a further building safety update to all tenants and leaseholders and alongside a statement placed on the Council's website, provides information to the public about the regulator's findings.

Understanding the fundamental causes that led to the current situation.

- 2.12 A further report currently being completed by Altair housing consultancy is underway and will forensically investigate the circumstances leading to the current poor performance and make recommendations on the competence and capability at an individual level that may have contributed to this situation. It will also examine the extent to which escalation of performance weaknesses took place to the Senior Leadership Team and beyond that to elected Members.

Working with the Regulator of Social Housing

- 2.13 The recovery plan sets out the scope and timeline for improvements required to satisfy the RSH that the Council is meeting the regulatory standard and that the Regulatory Notice served can ultimately be removed. To aid recovery the

Council has procured additional contractor resources to refresh the leadership of the Housing Service and deliver compliance work.

- 2.14 The role of the RSH is set out in the Housing and Regeneration Act 2008 (as amended). In broad terms the RSH is responsible for the economic regulation of registered housing providers and for setting and monitoring consumer standards such as how tenants' homes are maintained and kept safe, how issues such as anti-social behaviour are tackled and how tenants are empowered to get involved in the decisions that affect them and their homes.
- 2.15 All Council 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. The RSH is duty bound to perform its functions in a way that minimises interference and is proportionate, consistent, transparent, and accountable.
- 2.16 The RSH expects the Council to have systems such as audit, risk management and performance monitoring in place that allow the early identification of problems and take effective action to resolve them.
- 2.17 Where appropriate the Regulator expects providers to self-refer. The Council's approach has been to acknowledge failure and take responsibility for self-improvement. In this instance it is very likely that the RSH will seek to work with the Council to achieve the necessary corrective actions.
- 2.18 Section 125 of the Housing and Regeneration Act 2008 allows a social housing provider to present to the Regulator a Voluntary Undertaking. This report seeks authority from Cabinet to enter into such an agreement. If Cabinet agrees, the Council will approach the Regulator with a summary of the detailed compliance recovery action plan and make a binding undertaking that the Council will meet all obligations in the plan. The RSH will consider the content of this and will decide if the Voluntary Undertaking is sufficient to address the breach identified and if the terms of the Undertaking are satisfactory. If the RSH agrees the Voluntary Undertaking will be entered into by the Chief Executive.

3. Financial

3.1 Financial impact on the budget

- 3.1 The recovery programme described in this report was identified in the Housing Revenue Account Business Plan 2022-23 agreed by Cabinet in February and any financial implications will be contained within the relevant revenue and capital allocations over the period of the Plan.
- 3.2 A blend of permanent recruitment and temporary resilience will be used to achieve the outcomes in the plan. Working closely with the RSH has no adverse cost implications and will be contained within the agreed budgets as noted above.

4. Legal

- 4.1 The description of working with the RSH above in paras 2.14 to 2.18 is correct. Initial legal advice informed the Council's decision to make a self-referral to the RSH in February 2022.
- 4.2 In respect of fire safety, the Council has a statutory duty under the Regulatory Reform (Fire Safety) Order 2005 to regularly assess the risk of fire and to take precautions to prevent the risk of fire. In this regard the regulator has learned that a number fire risk assessments (FRAs) were overdue. The Council self-reported they were unable to provide information on outstanding FRA remedial actions.
- 4.3 Where the RSH finds that a breach of the Home Standard has led to, or could lead to, serious detriment to residents, it will likely lead to the RSH issuing a Regulatory Notice. This is in effect a public notice of their findings. This is what has happened, and the Regulatory Notice was formally published on 11 May 2022.
- 4.3 On publishing a Regulatory Notice, the RSH does not automatically have to use its enforcement powers. Instead, the Council may give the RSH a voluntary undertaking in respect of any matter concerning social housing. The RSH may prescribe a procedure to be followed in giving a voluntary undertaking. The RSH approach to voluntary undertakings is set out in its Statutory Guidance. When exercising a regulatory or enforcement power the RSH must have regard to any voluntary undertaking offered or given. The regulator may make a decision about whether to exercise a regulatory or enforcement power wholly or partly on the extent to which an undertaking has been honored.
- 4.4 The RSH will seek assurance that the Council can meet its voluntary undertakings and will be able to reach full compliance within the agreed milestones.
- 4.5 In the event the RSH were to find that the Council has failed to honor an undertaking it may issue an enforcement notice stipulating:
- (i) the grounds on which it is given;
 - (ii) the action the RSH wants the Council to take in response to the notice, including how to publish the notice;
 - (iii) when the action is to be taken (which may be immediately on receipt of the notice);
 - (iv) the provisions as to appeal against the notice, withdrawal of the notice and sanctions.
- 4.6 If the RSH were to make an enforcement notice against the Council it must send a copy to the Homes and Communities Agency ('the HCA'), the Greater London Authority and the Secretary of State.
- 4.7 Failure to comply with an enforcement notice may ultimately lead to issuing a penalty notice against the Council or take steps to have the Council prosecuted for the offence by reference to which the enforcement notice was given.

4.8 In reviewing progress against any voluntary undertaking, the Council should continually review how its providers are performing. If the Council delegates services to sub-contractors (as it does and is explained above in this report), the RSH will regulate the Council based upon the services provided by the sub-contractors.

4.9 The Monitoring Officer has a duty, under s.5A of the Local Government and Housing Act 1989, to report to Cabinet where there has been a failure to comply with the Council's statutory obligations. As the report sets out, the RSH has identified the Council has failed in its statutory duties as a provider of social housing. Given the notice issued by the RSH, which highlighted the serious risk of detriment to residents, the duty as Monitoring Officer is triggered. The Monitoring Officer has not considered it necessary to report to a specially convened meeting of Cabinet given that firstly, the Leader, Portfolio Holder, Executive Director Leadership team all confirmed their intention to hold this meeting; and secondly, triggering this duty may delay the Council taking further action to resolve the identified problems until the Monitoring Officer's report was considered, which would not be in the public interest.

4.10 The report itself fulfils the requirements of the duty of the Monitoring Officer to have reported on a formal basis. It is the duty of Cabinet to determine whether they are satisfied with the procedures being put in place to secure future compliance with the Council's statutory obligations, taking into account the information and advice within this report.

5. Value for Money

5.1 All external resilience and competency resource is procured in line with the Council frameworks for supply.

6. Sustainability Impact Appraisal

6.1 The HRA funds building safety, planned repairs and reactive maintenance work to improve the sustainability of our housing stock, including improvements in thermal efficiency to reduce carbon emissions. The activities outlined in this report form part of a broader Council ambition to scale up retrofitting and upskill the local workforce, which will underpin the growth of the green economy.

7. Risk Management

7.1 There are two options for the Council in working with the Regulator:

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 and the timeframe for this.

Option 2 – Continue to carry out work against a recovery plan without offering a Voluntary Undertaking.

7.2 The Council's approach to this situation has been to be transparent and seek to work with the Regulator to rebuild. Cabinet should be assured that health and safety compliance will return to acceptable standards even without a Voluntary Undertaking, and it should be noted that it is the preferred approach of the RSH is to work with providers to resolve issues rather than take enforcement action.

7.3 Nevertheless, the RSH does have a range of enforcement tools that may be used to ensure compliance against each of the regulatory standards, and if the Council cannot demonstrate a willingness to work in partnership with the RSH or their response is considered inadequate, the RSH may take enforcement action. Therefore, offering a Voluntary Undertaking to the regulator is the recommended option.

8. Community Safety

None.

9. Links to the 3 Key Priorities for the Borough

The Council's administration has three key priorities for Ealing.

- **Creating good jobs** - rebuilding our economy, returning good well-paid jobs to our Borough, and delivering the next generation of genuinely affordable homes.
- **Tackling the climate crisis** - greening our Borough, cleaning our air, and ensuring the Borough we build is sustainable.
- **Fighting inequality** - relentlessly tackling poverty and inequality that blights too many lives and disproportionately holds back all too many people from achieving their dreams and aspirations.

The recovery actions will allow Council tenants to continue to live in homes which are safe, well maintained, and suitable for their needs.

10. Equalities, Human Rights and Community Cohesion

An Equalities Impact Assessment is not needed to support the decision to work closely with the RSH and implement the proposed recovery plan.

11. Staffing/Workforce and Accommodation implications

None

12. Property and Assets

This report concerns a recovery plan for building safety and fire safety compliance performance related to Council housing assets.

13. Any other implications

None

14. Consultation

None

15. Timetable for Implementation

- Initial referral to Regulator of Social Housing 22 February 2022
- Regulatory Notice Published 11th May 2022
- Submission of Voluntary Undertaking for consideration by the RSH – June 2022

16. Appendices

- Confidential Appendix A – Housing Health and Safety Compliance 2021-22
- Confidential Appendix B – Fire Safety 2021-22
- Appendix C - London Borough of Ealing Regulatory Notice Regulator of Social Housing May 2022
- Appendix D - ARK Consultancy Limited (ARK) Review of Ealing Council's Position on Housing Health and Safety April 2022

17. Background Information

Regulator of Social Housing - Statutory guidance Approach to intervention and enforcement - Updated 16 December 2019

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/885100/Guidance_on_the_regulator_s_approach_to_intervention_enforcement_and_use_of_powers_FINAL.pdf

Consultation

Name of consultee	Post held	Date sent to consultee	Date response received	Comments appear in paragraph:
Internal				
Lucy Taylor	Executive Director of Place	5.05.2022		
Helen Harris	Director, Legal and Democratic Services	5.05.2022		
Ross Brown	Chief Finance Officer	5.05.2022		
Mike Pinder	Assistant Director – Audit and Investigation	5.05.2022		
Cllr Peter Mason	Leader / Cabinet Member for:	9.05.2022		
Cllr Lauren Wall	Cabinet Member for Genuinely Affordable Homes	9.05.202		
Cllr Stephen Donnelly	Cabinet Member for Inclusive Economy	9.05.2022		
External				

Report History

Decision type:	Urgency item?
Key decision	Yes Special urgent key decision required following the publication of the RSH Notice received on 11 May 2022. The Decision cannot be deferred due to the urgency to agree action with the RSH and make arrangements to continue the necessary corrective actions.
Report no.:	Darren Henaghan –Director of Housing henaghand@ealing.gov.uk