

**HOMES POLICY DEVELOPMENT GROUP  
1 OCTOBER 2019**

**HOUSING UPDATE REPORT**

**Cabinet Member(s):** Councillor Simon Clist  
**Responsible Officer:** Mrs Claire Fry, Group Manager for Housing Services

**Reason for Report:** To provide a written briefing on latest developments relating to social housing

**RECOMMENDATION: Members to note the report**

**Financial Implications:** None arising from this report

**Legal Implications:** None arising from this report

**Risk Assessment:** None arising from this report

**Equality Impact Assessment:** None arising from this report

**Relationship to Corporate Plan:** Homes are a priority for the Council and this includes increasing supply in the District and also ensuring that those homes in our ownership are managed efficiently and effectively

**Impact on Climate Change:** The housing service has actively invested in energy efficiency; extensive use of solar PV and air source heat pumps already exists. The ongoing circa £170M 30 year maintenance programme has a significant focus on ensuring energy efficiency. Where sustainable options are available they are utilised; however, it is acknowledged that where there is a significant cost differential that plays heavily in the choices made.

We recognise that the provision of sustainable communities is important. As part of our commitment to meeting the provisions of the Tenant Involvement and Empowerment Standard within the Regulatory Framework for Social Housing, the Council offers a menu of involvement which provides opportunities for tenants to get involved in service delivery. Tenants scrutinise the work of the Service and are also involved in the development of our newsletter which is published periodically. We use this and social media to promote sustainability and therefore publish information relating to a variety of topics including fuel efficiency, recycling and healthy living.

Officers sometimes have to respond to emergencies such as those associated with the prevention and management of homelessness and also those arising from serious incidents of anti-social behaviour. In such cases, safeguarding concerns will take priority in order to minimise risk and it is accepted that the ability to manage such issues effectively may have an environmental impact which would not occur if work can be planned in advance and managed in a more co-ordinated way.

## **1. Introduction/Background**

1.1 Members previously agreed that it would be helpful to receive a regular briefing on matters relating to housing.

1.2 Matters relating to fire safety and cladding continued to feature quite prominently in the press in recent weeks. However, the Council does not have any high rise blocks in our stock and therefore discussions relating to this type of housing stock and associated issues are not relevant to the situation in Mid Devon. For this reason, this report will not contain any other references to these matters.

## **2. Ministerial Changes**

2.1 Boris Johnson implemented a re-shuffle when he became Prime Minister. Robert Jenrick replaces James Brokenshire as Housing Secretary and Esther McVey is the new Minister of State at the Ministry of Housing, Communities and Local Government. (Barratt, 2019)

2.2 In his first statement to the Houses of Parliament after taking on his new role, the Prime Minister said: "We will announce investment in vital infrastructure, full fibre roll out, transport and housing that can improve the quality of people's lives, fuel economic growth and provide opportunity". He did not expand on what kind of housing he would focus on but on a visit to Gosport, Ms McVey said that the new Government would give millions of young people the chance to own their own home "so we can make the dream of homeownership a reality". (Apps, 2019)

2.3 Luke Hall, MP for Thornbury and Yate, has joined the Ministry of Housing, Communities and Local Government as the Parliamentary Under-Secretary of State. (Heath, 2019)

## **3. Social Housing Green Paper**

3.1 The Social Housing Green Paper entitled "A New Deal for Social Housing" was published in August 2018. This sought views on the Government's stated vision for social housing which related to the provision of safe, secure homes which help people to "get on with their lives". The consultation relating to the Green Paper ran from 14 August 2018 to 6 November 2018. An action plan or timetable relating to the policy proposals associated with the future of social housing which were outlined in the Green Paper was expected in September. However, in light of recent events at Westminster, there is a possibility that this work will be delayed.

## **4. Review of Consumer Standards**

4.1 The Regulator of Social Housing (RSH), (RSH, 19 July 2019) published its annual review of the consumer standards, the seventh since 2012.

4.2 There are four consumer standards:

4.2.1 Home

4.2.2 Neighbourhood and Community

4.2.3 Tenancy

4.2.4 Tenant Involvement and Empowerment

- 4.3 All Registered Providers of Social Housing (RPs) must comply with these standards and this includes local authorities. The aim is to ensure that housing is well managed and of an appropriate quality, that tenants are given choices and an opportunity to be involved in management, that tenants can hold their landlords to account, and that providers are encouraged to address the wellbeing of their neighbourhoods.
- 4.4 The Localism Act 2011 prevents the RSH from being proactive in monitoring the consumer standards. Regulatory investigations therefore arise from self-referrals by providers, individuals, MPs, councillors and other interested parties, or as a result of regulatory engagement in other areas. The RSH must exercise its role in a way which minimises interference and is proportionate, consistent, transparent and accountable. It will use its powers where it judges that a consumer standard has been breached and that “there are reasonable grounds to suspect” that tenants have suffered, or could suffer, serious detriment.
- 4.5 Serious detriment is identified following a serious detriment test which involves investigations by the RSH. The RSH needs to decide if there has been a system-wide failure within the provider and if this “caused or has the potential to cause serious harm”. Harm, or potential harm, can relate to health and safety, loss of home, unlawful discrimination, loss of legal rights and/ or financial loss.
- 4.6 Regulatory investigations into the consumer standards follow a 3 stage process. If there has been a breach of the consumer standards, or a risk of a breach, the case is referred to the Consumer Regulation Panel. This Panel decides if there is evidence of a breach of the standards and, if there is, whether or not there has been harm, or potential harm, to tenants. If the Consumer Regulation Panel considers that the evidence could indicate a breach of the standards, or a suggestion that tenants are at risk of serious harm, a detailed investigation begins. Information is sought from the individual who referred the case and the RP, as well as third parties, if necessary.
- 4.7 The RSH expects tenants to raise any concerns with their landlord and then the Housing Ombudsman Service (HOS), which can assist them to resolve disputes locally. If a complaint is not resolved through the complaints procedure of the RP, the tenant is expected to contact a designated person such as an MP, or a local Councillor to help them to resolve the complaint. If a tenant in Mid Devon asked the Council to convene a designated Tenants’ Panel, the Council would ask representatives from our Tenants Together Scrutiny Group (TT) to consider the complaint and all relevant information.
- 4.8 In 2018/19, the RSH received 502 referrals about consumer standards, compared to 543 in 2017/18. The number of cases reaching a stage 3 investigation (where the Consumer Regulation Panel decides whether or not there has been a breach of the standards and, if so, whether or not there has been harm, or potential harm, to tenants) increased from 77 cases (14% of those referred) in 2017/18 to 124 (25%) in 2018/19.
- 4.9 The source of the referrals can be split as follows, bearing in mind that there were 543 in 2017/18 and 502 in 2018/19:

	2017/18	2018/19
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Self-referrals from RPs	48%	31%
Individual tenants or representatives	39%	47%
Identified through regulatory engagement (Housing associations only)	5%	11%
Media coverage	4%	3%
Employees and contractors	4%	3%
Statutory bodies	0%	5%
	100	100

4.10 There were six cases where serious detriment was found:

4.10.1 Knowsley Housing Trust: failure to act on fire safety notices issued by Merseyside Fire and Rescue Service

4.10.2 Kinsman Housing Ltd: failure to deal with structural safety of homes along with concerns about the safety of gas, fire and electrical installations. Governance concerns were also identified.

4.10.3 Arun District Council: Failure to carry out fire and legionella risk assessments across its entire stock

4.10.4 Beyond Housing: failure to put in place up to date fire risk assessments

4.10.5 Lincolnshire Housing Partnership: electrical testing inadequate

4.10.6 Green Square Housing Group: gas certification not up to date. Fire and lift safety inadequate.

4.11 All six of the providers breached the Home Standard and five of the six cases involved fire safety concerns.

4.12 It should be noted that there were some key messages arising from the 2018/19 review which can be summarised as follows:

4.12.1 RPs need to have clear and detailed policies to ensure that tenants are not exposed to risks

4.12.2 Councillors in local authorities are responsible for compliance with the consumer standards

4.12.3 All RPs must ensure that their homes are safe. The full range of statutory health and safety obligations must be met and in local authorities councillors are responsible for this.

4.12.4 RPs must have robust data collection and reporting arrangements in place. In local authorities, councillors must have effective oversight of compliance.

- 4.12.5 The Home Standard is most often the cause of serious detriment findings. Providers must focus on all the standards, but compliance with the Home Standard is essential.
- 4.12.6 Providers must be able to demonstrate compliance across every aspect of the consumer standards.
- 4.12.7 Analysis of complaints data and trends may underpin a provider's understanding of how tenants feel about particular issues. Where failings are systemic, a judgement of serious detriment could result.
- 4.12.8 When things go wrong, RPs need to be open and to take measures to address failings and remedy all instances of non-compliance. Failure to disclose failings to the RSH may be seen in a very negative light

## **5. Regulation**

- 5.1 The RSH wrote to all registered providers seeking comments before 14 August 2019 about a proposed 15% increase in their fees next year (RSH, 17 July 2019). In line with the proposals, RPs with more than 1,000 homes will have to pay £5.47 per unit from April 2020, up from £4.72 which was payable this year. The Chief Executive of the RSH said that a review of the regulator's resources had identified a need for an increase in capacity to ensure that it could continue to effectively regulate the changing risk profile of the sector. The RSH has proposed that fees for small providers with less than 1,000 homes will stay at £300 per year.

## **6. Housing Related Complaints**

- 6.1 If a tenant makes a complaint to an RP regarding service delivery or another matter connected with their tenancy, and they remain dissatisfied after their landlord's formal complaint procedure has been exhausted, they may escalate the complaint to a Designated Person which may include a local Councillor, an MP or a Tenant's Panel. The aim of this is to ensure that there has been every opportunity to resolve any matters of concern locally.
- 6.2 Subject to certain exceptions, a tenant cannot complain directly to the Housing Ombudsman Service (HOS). Rather, their complaint must be made through a Designated Person to the HOS. A tenant can complain directly to the HOS where 8 weeks has elapsed since the conclusion of the landlord's own investigation.
- 6.3 The HOS recently published its annual report for 2018-19 (HOS, 2019). This states that in 2018/19, 7,623 complaints were received, up 12% from 6,806 in 2017/18. 2,214 decisions were made in 2018/19. In 37% of these, no maladministration was found. Maladministration is defined as a failure by the landlord to act appropriately, doing something which it should not or, in the opinion of the Ombudsman, delaying unreasonably in relation to service delivery or any other matter.
- 6.4 29% of cases, where there was a decision, were found to involve maladministration. 81% involved partial maladministration. 39% of the complaints related to repairs; the next largest category related to tenant behaviour (15%) and the third largest category related to the handling of complaints (10%).

## **7. Social Housing Fraud**

- 7.1 A Council tenant was recently fined £100,000 and evicted for illegally subletting his flat. This was owned by Westminster City Council in Central London. The tenant used the Airbnb site to advertise it. The Council's investigation found that there were 300 reviews about the flat on the website which had been written since 2013. (BBC, 2019)

## **8. Health & Safety Issues**

- 8.1 Four were injured and one man in his 80s subsequently died following a recent gas explosion at a block of Council flats on an estate in Wandsworth. A Council spokesperson said that the man who had died was a Council tenant but that he had been in his daughter's flat, located underneath his own, whilst she was away. Residents were able to move back into their homes the following day. The Council said that all the gas safety checks were up to date with the programme relating to the servicing of boilers also in order. The building where the explosion occurred was made from a concrete frame with brick infill. (Barratt, August 2019)
- 8.2 Members may recall that at the last meeting, the housing update report contained reference to significant failings relating to gas safety issues in homes managed by East Kent Housing (EKH), which manages approximately 17,000 homes on behalf of Canterbury, Dover, Thanet and Folkestone & Hythe Councils. The P & R Installations Company had been contracted to undertake works associated with gas safety. Significant weaknesses in management arrangements had been identified. A report recently published by Thanet District Council has stated that EKH failed to identify overcharging by P & R for work completed; and that there were instances where work had been completed although the relevant paperwork had not been provided to evidence this. The Councils are in the process of seeking legal advice as to whether or not this constitutes fraud. Therefore, there could be legal action or, alternatively, the matter may be referred for independent arbitration. (Barker, July 2019)
- 8.3 Members can be reassured that the Council is delivering excellent performance in relation to gas safety and that this is being monitored closely by senior managers as a matter of routine. Information relating to performance is published monthly and available to view on the housing pages of the Council's website. We have an eleven month cyclical programme of regular gas safety inspections and are currently in the process of moving to the new MOT system in accordance with regulation 36a of the General Safety User and Installer Regulations (as amended) 1998.
- 8.4 A housing association, Connexus, failed to repair an unsafe solid fuel appliance before a fire and fatality; the Regulator for Social Housing said in a regulatory judgement that there had been a failure to meet the Home Standard leading to serious detriment. Connexus had failed to meet their statutory health and safety requirements because they had been aware that the appliance was deemed unsafe for use but had failed to arrange the necessary repair. (Barker, 28 August 2019)

## **9 Anti-social behaviour**

- 9.1 A housing association recently won a case at the Court of Appeal. Aldwyck Housing Group, which is now part of Catalyst, had taken legal action to enable them to evict a tenant from a flat in Watford on the grounds of anti-social behaviour. The Police had described the activity as typical of “cuckooing”, that is, where those involved in drug dealing move into the properties of vulnerable tenants.
- 9.2 The tenant in this case has physical disabilities and had also advised that he suffers from depression, anxiety and a personality disorder.
- 9.3 Following work with the tenant, when he was told that he could be evicted if the nuisance continued, there were further incidents. Following a Police raid, a closure order was obtained on the basis that he had breached his tenancy agreement. In March 2018, the Judge at Watford County Court made an order for possession on the grounds that the tenancy agreement had been breached. (Barker, 9 August 2019a) During the case, the housing association admitted that it had failed to undertake an assessment with regard to the public sector equality duty (PSED) which is required in line with the provisions of section 149 of the Equality Act 2010.
- 9.4 The Judge hearing the case decided that the housing association had not discriminated against the tenant. He also felt that the tenant had not been cuckooed.
- 9.5 At the High Court, this decision was upheld on the basis that even if there had been a proper equality impact assessment, the housing association would have decided to evict the tenant.
- 9.6 There was a further appeal, which was heard at the Court of Appeal, where the tenants appeal was dismissed on the grounds that there should be no rigid rule that a breach of the PSED should always result in quashing the relevant decision. It was found that the District Judge had been right to conclude that there “was no viable option for the landlord other than to seek possession.”
- 9.7 The tenant was ordered to pay the housing association’s costs related to the appeal.

## **10 Universal Credit**

- 10.1 Inside Housing reported that a number of housing associations had raised concern regarding the administration relating to rent changes for tenants claiming Universal Credit (UC). The registered providers had referred to the additional resources required to ensure that those claiming housing costs as part of their UC claims are receiving the right amounts. The Department for Work and Pensions (DWP) had told housing associations earlier this year that they would record rent charges in bulk on behalf of tenants claiming UC, with effect from April. However, the necessary upgrade was never completed.
- 10.2 Individual claimants are responsible for making the DWP aware of any changes in their rent and service charges and the DWP then uses these

figures to calculate entitlement. There are concerns that tenants may not appreciate the need to notify the DWP. If this happens, the payments received will be incorrect. Given that rents were decreased by 1% in April, this could result in there being overpayments to tenants, which must be paid back.

10.3 Landlords monitor payments but if there is no alternative payment arrangement (APA) in place, they can only liaise with the tenant to ensure that the information provided to the DWP is correct. Given that the numbers of claimants receiving UC is steadily rising, it may not be possible to do this by next April. Housing associations are claiming that it is important for the DWP to automate the task to avoid providers of social housing being faced with a lot of additional work. The DWP has stated that the bulk upload service is being tested and that plans will be announced in due course. However, they also said that tenants are required to notify them of changes in rent levels and that the “bulk upload” process would not change this. (Barker, 9 August 2019b)

10.4 As at the end of August 2019 (week 22), 361 current tenants of the MDDC Housing Service were in receipt of UC. Any failure by the DWP to implement an ability for the Council to submit data relating to the new rents to be charged from April 2020 by bulk upload could result in individuals claiming the wrong amount of housing costs. Given that the number of tenants switching to this benefit is increasing steadily, this has the potential to impact our revenue stream in a negative way, as well.

## **11 Recommendation**

11.1 That Members note the report.

**Contact for more Information:** Mrs Claire Fry, Group Manager for Housing Services, tel: 01884 234920, email: cfry@middevon.gov.uk

**Circulation of the Report:** Cabinet Member for Housing, Leadership Team

### **List of Background Papers:**

Apps (2019), McVey focuses on home ownership after being confirmed as housing minister, Peter Apps, Inside Housing, 26 July 2019

Barker (July 2019), Councils “could seek criminal action” against contractor following gas safety issues, Nathaniel Barker, Inside Housing, 30 July 2019

Barker (9 August 2019a), Aldwyck wins “cuckooing case”, Nathaniel Barker, Inside Housing, 9 August 2019

Barker (9 August 2019b), Landlords: stop huge UC administrative burden, Nathaniel Barker, Inside Housing, 9 August 2019

Barker (28 August, 2019), Housing association failed to fix unsafe appliance before deadly fire, Nathaniel Barker, Inside Housing, 28 August 2019

Barratt (July 2019), Boris Johnson promises investment in housing, Luke Barratt, Inside Housing, 26 July 2019

Barratt (August 2019), Council tenant dies after explosion in flat, Luke Barratt, Inside Housing, 9 August 2019

BBC (2019), Airbnb host fined £100,000 for letting Council flat, BBC news website, technology, 29 July 2019

<https://www.bbc.co.uk/news/technology-49149983>

Heath (2019),

HOS (2019), Annual Report 2018-19 Published, Housing Ombudsman Service, 23 July 2019

<https://www.housing-ombudsman.org.uk/2019/07/23/annual-report-2018-19-published/>

RSH (17 July 2019), Letter: Regulation Fees 2020/21, Regulator of Social Housing, 17 July 2019

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/817822/RSH\\_letter\\_-\\_Fees\\_proposals\\_2020-21.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817822/RSH_letter_-_Fees_proposals_2020-21.pdf)

RSH (19 July 2019), Consumer Regulation Review 2018 to 2019, Regulator for Social Housing, 19 July 2019

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