

- 1.2 In order to provide some additional context; a number of years ago the Government introduced a national ‘formula’ for the calculation of social housing rents. This required housing providers such as the Council to apply a number of factors to calculate housing rents in its area for different sized properties. Within this formula were valuations for our properties where the Council incorrectly averaged some of our data, resulting in the wrong base rent being set at the time and the historic over or under charge situation has emerged as a legacy of that miscalculated valuation. Since this initial error, the Council has correctly applied further annual increases or decreases in its rent as set by the Government each year, but our rent base still needs to be recalculated and adjusted so all rents are correct in future.
- 1.3 As soon as this isolated error was identified and evaluated we have; self-referred ourselves to the Regulator for Social Housing (RSH) and are having ongoing discussions with; the RSH, the Department for Work & Pensions (DWP), Bishop Fleming (BF), the Devon Audit Partnership (DAP) the Valuation Office (VOA) and have secured an external legal opinion from a KC. In addition to these regular meetings with external partners we have also set up a weekly officer group in order to manage the recovery process and consider all aspects of how the corrections can be delivered in the most timely and effective manner, whilst considering any additional support our tenants may require during this process.

2.0 Proposed correction

- 2.1 Due to both the aggregate financial exposure of this error and our legal responsibility to correct it and identify the position on over and under charged rent, we have needed to obtain external legal advice so as to deal with certain decisions and the associated corrections in an appropriate manner.
- 2.2 Contained in the table overleaf are the recommended actions emanating from our recovery strategy. Some tasks have already been actioned and others will follow in order to correct this position in consideration of advice secured and also considering the impact on both our current/former tenants and with regard to the financial viability of the Housing Revenue Account in both the short and longer term. These decisions have been made after securing technical and legal advice from a number of 3rd parties.

Table 1 - Actions taken, completed or ongoing

Actions	Date/Decisions
<i>Immediate</i>	
1 - Self-referral to RSH	17/9/24
2 - Set up weekly key officer recovery group (1)	19/9/24

3 - Contact DWP + other bodies (2)	14/10/24
4 - Confirm beacon values with VOA (3)	1/11/24
5 - Secure legal advice (4)	14/10/24
6 – Plan Communication strategy (5)	Ongoing
<i>Current and Next Steps</i>	
7 - Model over/under charges at summary level (6)	Completed
8 - Model aggregate potential impact on HRA (7)	Completed
9 - Detailed modelling of individual tenants positions	Ongoing
10 - Issue initial letters to tenants – split between over/unders	Completed
11 - Consider staff resourcing requirements	w/c 18/11/24
12 - Any new tenancies charged at the corrected rates	Nov 2024
13 - Correct current overcharged tenancies	Feb 2025
14 - Issue refunds – where applicable (8)	ASAP
15 - Consider extra support for vulnerable tenants	Ongoing
16 - Design/agree new control process of updating rents	Completed
17 - External review of modelling and new controls (9)	Dec 2024
<i>Decisions</i>	
18 - Agree on quantum/period of correction (4)	Cab 10/12/24
19 - Leave undercharged tenancies unchanged (10)	Cab 10/12/24

Notes:

- 1 – group made up of officers from; housing, finance, legal, benefits, customer first, communications and regular updates provided to relevant Cabinet members
- 2 – as referred to in para. 1.3 and other Councils and Housing Associations
- 3 – reaffirm all of our “beacon” housing values back to source data with the VOA
- 4 – to follow legal advice from KC to apply the statutory limitation of going back 6 years based on the aggregate financial quantum estimated.
- 5 – to include press releases, FAQs on the website and all other communications with our tenants and organisations that assist them (e.g. Churches House Action Trust (CHAT), CAB, Involve, Moneywise, etc).
- 6 – initial modelling at a gross exposure level (i.e. excluding Universal Credit, Housing Benefit, Council Tax Reduction, previous write offs, arrears, changes in tenancies, etc. Total value required for planning next steps
- 7 – assessment required to establish total financial quantum and how it could be financed and what impact it may have on future viability of the HRA.
- 8 – refunds are likely to be processed in tranches, focusing on current tenants. This will be fully communicated to our tenants.
- 9 – procuring external support from the Housing Quality Network (HQN) to review our correction strategy and any new processes/controls once finalised
- 10 – this position will only change upon a change in tenancy

3.0 Further considerations

- 3.1 This is still very much a “live” situation on the basis we are still in the process of securing external advice from 3rd parties, therefore there are still further items that will then need to be considered. In order to provide current reassurance some of these items are identified below and indicate a direction of travel of what

officers are either; planning to do, need to consider further, or may need to procure further advice on.

- Have already diarised regular ongoing meetings with the; RSH, DWP and BF and have spoken to other Local Authorities and Housing Associations who have had to make similar corrections.
- Focus activity on current tenants first – then move on to former.
- The refunds may need to be dispatched in tranches – i.e. non benefit cases will probably go out first – dependent on when we receive further advice from the DWP.
- Identify vulnerable tenants and bespoke ongoing communications accordingly
- Get HQN assistance to check, verify and agree all initial calculations, corrections and then new processes/controls.
- Procure further external specialist legal advice if required
- Continue to discuss live solutions with other Councils and Housing Associations who have encountered similar issues
- Continue to confirm policy compliance with the regulator to ensure actions taken are appropriate.

3.2 In addition to the above considerations, we will need to continually ensure that decisions recommended at an aggregate financial quantum are compared against HRA cash balances and available reserves to demonstrate long term financial viability has been considered. This will also need to reflect on how the totality of refunds may impact on operational delivery and statutory requirements (e.g. H&S, current and new legislative requirements, decarbonisation works, 30 year modernisation plans, etc.). This financial modelling, at the outset and when it can be further refined, based on decisions from 3rd parties, will need to be kept to evidence/demonstrate our thinking and hence decision making. We may well need to share this information with other parties, for instance the RSH.

3.3 This detailed financial modelling will need to include the impact on HB, UC and CTR and will also need to consider tenancy arrears, write offs, any outstanding recharges, etc. There may also be instances where tenants have moved in our stock and have potentially been over/under charged, so this will need to be netted off. This work, by its very nature, will be time consuming and will clearly impact the timeliness of the refund process.

3.4 Initial and very top level financial modelling indicates that the overall HRA refund exposure, based on a number of criteria and variables set the aggregate quantum of this correction at around £1.8m. This is just within the boundary of the current HRA reserve balance, but we would clearly need to agree a strategic recovery programme, within future budgets, in order to replenish this reserve over the coming years in order to provide assurance on meeting developmental ambitions alongside existing liabilities.

- 3.5 Prior to and during the refund process we will need to proactively communicate with our tenants to establish how they wish to be repaid and work with them and the DWP to ensure this process doesn't have any associated impacts/consequences with current or future benefit calculations/entitlements.
- 3.6 In addition, we will need to consider the issue of overpayments with regard to historic evictions where rent arrears were a factor. A high level review has already been undertaken and a firm level of assurance can be provided at this stage with further review work planned in order to be confident rent overpayments were not a material consideration in any such evictions.

4.0 Conclusion

- 4.1 Due to the complex and hence time consuming nature of this corrective work it is currently envisaged that further updates will be provided to the Council at regular intervals.
- 4.2 During this corrective work stream we will of course keep our tenants regularly updated and the support groups that they regularly reach out to for support. In addition we will continue to have structured progress meetings with the RSH, DWP and our external auditor, BF.

Financial Implications

Significant financial modelling has been undertaken in order to reach some of the key decisions being put forward in this report. We have also reflected on current balances and reserves held by the HRA and other legislative requirements that have to be delivered when evaluating how to correct this historic rent setting error.

While the current analysis shows that the majority of those affected have been historically undercharged, there is no intention or ability to recover lost funds. Therefore, the totality of the impact is experienced as a cost to the HRA rather than a rebalancing.

Legal Implications

External KC advice has been secured which has been used to underpin the recommendations made within this report.

Risk Assessment

The precise quantum of this exposure can only be estimated at this current time. Allowing the HRA balance to drop below its minimum agreed balance for a period of time clearly reduces its ability to withstand any unknown economic/legislative/climatic shocks. Securing and following external legal advice should reduce some of the HRA's risk exposure.

Impact on Climate Change

Depending on the final quantum of this aggregate refund some decarbonisation works may have to be reprioritised. If this was to be the case further reports and decisions would be required.

Equalities Impact Assessment

There are no specific Equality and Diversity implications. However, due to the vulnerability of some of our tenants we will provide additional support to ensure effective engagement with residents and their families.

Relationship to Corporate Plan

Depending on how this issue is rectified it may jeopardise the Council's plans to ensure it delivers new affordable and social homes annually, improving and maintaining the existing stock to the highest standards.

Section 3 – Statutory Officer sign-off/mandatory checks

Statutory Officer: Andrew Jarrett

Agreed by or on behalf of the Section 151 Officer

Date: 17/12/24

Statutory Officer: Maria De Leburne

Agreed on behalf of the Monitoring Officer

Date: 17/12/24

Chief Officer: Stephen Walford

Agreed by or on behalf of the Chief Executive/Corporate Director

Date: 17/12/24

Cabinet member(s) notified: Yes.

Section 4 - Contact Details and Background Papers

Contact: Andrew Jarrett

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Telephone: 01884 255255

Background papers: