

Report for: CABINET

Date of Meeting: 1st April 2025

Subject: **MID DEVON HOUSING RENT ERROR UPDATE**

Cabinet Member: Councillor Simon Clist, Cabinet Member for Housing and Property and Councillor James Buczkowski, Cabinet Member for Governance, Finance and Risk

Responsible Officer: Andrew Jarrett, Deputy Chief Executive (S151) and Simon Newcombe, Head of Housing and Health

Exempt: None

Wards Affected: All wards

Enclosures: None

Section 1 – Summary and Recommendation(s)

This report provides an update on the corrective measures completed and next steps in order to rectify an identified historic rent setting error.

Recommendation(s):

- 1. That Cabinet note tasks that have been further progressed in order to correct this situation**
- 2. That Cabinet approve the overarching approach to the review of historic MDH possession proceedings (evictions) where rent overpayments were made as set out in section 2 of this report as recommended by the Homes Policy Development Group.**

Section 2 – Report

1 Introduction

- 1.1 Members will have noted the Housing Rents 2024 report provided to Cabinet on 10 December 2024 setting out the background to the historic tenant's rent error.
- 1.2 The Cabinet report set out that during the first year's audit with our new incumbent auditor, Bishop Fleming, it was identified that one integral part of a historic formula used to calculate tenant's rents had been incorrectly applied. This has resulted in all tenant's rents being incorrectly set for a number of years.
- 1.3 Several 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 required recalculation so all rents are correct in future.
- 1.4 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.
- 1.5 In addition to these regular meetings with external partners, we have also set up a dedicated officer group 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 Corrective actions

- 2.1 The December Cabinet report set out a series of actions and decisions, which have been updated below to reflect progress since.

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 KC 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	Completed
12 - Any new tenancies charged at corrected rates	Completed
13 - Correct current overcharged tenancies	Completed
14 - Issue refunds where applicable (8)	Completed
15 - Consider extra support to vulnerable tenants	Ongoing
16 - Design/agree new control process of updated rents	Completed
17 - External review of modelling and new controls (9)	Completed
18 - Provide RSH with additional information as requested	Ongoing
19 - Stand up dedicated officer technical working group (1)	Completed
20 - Agree and commence recruitment of additional resources into 18 (1)	w/c 24/02/25
21 - Review potential overcharged tenants compensation in-line with adopted HRA Tenant Compensation Policy	Completed
22 – Detailed engagement with other LAs currently working on similar rent error issues (e.g. Cambridge)	Ongoing
<i>Decisions</i>	
18 - Agree on quantum/period of correction (4)	Cabinet 10/12/24
19 - Leave undercharged tenancies unchanged (10)	Cabinet 10/12/24
20 - Approach to the review and mitigation of any former tenant evictions where accounts have been historically overcharged	Cabinet 1/4/25

Notes:

1 – group made up of officers from; housing, finance, legal, benefits, customer first, communications and regular updates provided to relevant Cabinet members. This initial group has now morphed into a dedicated, technical officer working group with a project tracker. Oversight is provided by LT and CMT (Andrew Jarrett, Dean Emery and Simon Newcombe). Additional resources have been agreed to support the ongoing work and this approach has been discussed with the RSH who in turn support this approach

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

External assurance on corrected rents

- 2.2 In January 2025 we commissioned Housing Quality Network (HQN) to undertake an independent, external Formula Rent review.
- 2.3 HQN have provided a written report that provides relevant external assurance that the formula rents which were applied to the January 2025 recalculation and correction are fully compliant with regulatory standards. The Council are therefore fully compliant going forward and rents have been corrected in the right way.
- 2.4 There are two assumptions in the report; firstly that we have applied the correct historic property valuations and as discussed at the meeting, as set out above, we can confirm that the Valuation Office Agency (VOA) has checked and assured these separately. Secondly; that correct bedroom weightings have been applied. On this latter point we further can confirm that bedroom data has been exported directly from our housing management system and cross-matched with council tax and other stock data. Where queries arose relating to a very limited number of properties due to bedroom conversion works, the bedroom weightings have been verified by direct inspection before the formula rents were updated. None of our bedroom data was ultimately found to be incorrect.

Historic rent error and rent arrears

- 2.5 As the PDG will be aware, a decision was made in Q3 to put on hold any pending possession/eviction proceedings for current tenants whilst the historic rent error issue is resolved (see Cabinet report of 10 December 2024). This decision only applies to those tenants who have been overcharged historically and normal casework will resume as soon as refunds have been issued and the arrears adjusted accordingly. It does not impact tenants who have historically benefitted from a rent undercharge and these rent levels and rent collection arrangements will be unchanged for any current tenants in this group.
- 2.6 As noted within the MDH Service Delivery report provided at the previous PDG, as a consequence of the historic rent error, a review of historic rent arrears evictions has been undertaken and MDH are satisfied that the rent overpaid amounts have not been a material factor in any evictions. MDH place a high priority on tenancy sustainment where evictions are a last resort. As such, rent arrears evictions are rare with an average of just over 5 each year prior to and since the Covid pandemic, which is less than 0.5% of the number of overcharged tenancies. During the pandemic, evictions were placed on hold for long periods of time through national legislation.

- 2.6 Where rent arrears were a factor in evictions, in many cases there were also other tenancy issues. For example; anti-social behaviour; crime; property damage; unauthorised use of the property (e.g. sub-letting, running of a business or selling of sexual services); or other factors such as tenancy fraud. In some cases, evictions have been taken forward with several such breaches where rent arrears were therefore only part of a wider issue. Alternatively, there are some cases where wider issues were sufficiently evidenced but the level of rent arrears were such that it was cost-effective and expedient for MDH to have pursued eviction on rent grounds only.
- 2.7 Where rent arrears were the sole or primary factor in any historic evictions then we have identified further mitigations as set out previously:
- Rent levels were set in good faith at the time and agreed with the tenant
 - The tenant signed a legally binding tenancy agreement to pay the rent
 - Overcharged amounts on a weekly/ monthly basis are relatively low and overall rent levels were still set at typical social-rent levels well below affordable or market rents
 - All overcharged rents were still within Local Housing Allowances, therefore up to 100% rent support was available through benefits for low income, eligible tenants
 - The eviction process is a multi-staged one with many points of contact with tenants and efforts to engage in early prevention of arrears, payment plans and signposting/facilitation of access to benefits plus other support
 - The level of rent arrears are typically of a magnitude much higher than any historic overpayment amount and many cases have involved zero payment of rent for many months
 - In a number of cases, tenants refused to engage with our income officers and did not access benefits or other support despite facilitation
- 2.8 We have identified that we hold records for approximately 70 eviction cases where rent arrears were a sole or contributory factor where there has been an historic over payment. These are historic cases that will be reviewed once the current cases and repayments have been resolved. As such, each case will be reviewed against the overarching mitigation factors set out above. In the unlikely event any fall outside of these factors then they will subject to a specific legal review and any next steps agreed on a case by case basis.
- 2.9 As part of officers rolling dialogue with the RSH over the rent error, the regulator has appreciated the clarity provided around these mitigations and process. As such has highlighted that a clear Council decision on the approach to historic evictions would be valuable. Consequently, a relevant recommendation has been made for the PDG to consider with regard to a Cabinet decision as set out above.

DWP information

- 2.10 Under the DWP's own rules they are presently unable to share information on current and historic tenancies where Universal Credit claims have been made. As such, the Council have no certainty who had been a potential claimant at any point in their tenancy - thus we cannot apportion what is tenant refund and potentially DWP monies. There will need to be a legal change made by DWP to allow relevant information to be shared.
- 2.11 Furthermore, the DWP are not yet able to confirm how they will calculate any overpayment and agree a process for any Universal Credit repayments.
- 2.12 If this remains the case once we have completed our work to confirm refund amounts, we will still be unable to provide a reliable timeline for refunds to tenants until the DWP have been able to advise on this.
- 2.13 This is a national issue and the DWP have confirmed that matters around information sharing and incorrect rents are being raised at 'treasury' level due to the complexity of the problem and circa 20 Councils are flagging similar rent issues with them. Local DWP officers have been very supportive and are currently helping the Council to set up a meeting with senior DWP officers at a national level so we can identify a way forward.

3 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 third 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.
- Continue to have diarised regular ongoing meetings with: RSH; DWP; and BF
 - 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 (see paragraphs 2.10-13)
 - Identify vulnerable tenants and tailor ongoing communications accordingly
 - 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, as reported previously, 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 including the new consumer standards regulatory regime, decarbonisation works, 30 year maintenance and modernisation plans, etc.). This financial modelling, at the outset and when it can be further refined, based on decisions from third parties, will need to be kept to evidence/demonstrate our thinking and hence decision making. We need to share this information with other parties, for instance the RSH, who have already made a number of additional information requests in confidence to support their understanding and decision-making within this evolving situation. Ultimately this will also inform the final regulatory judgement by the RSH on the matter.

- 3.3 This detailed financial modelling will need to include the impact on housing benefit, universal credit and council tax reduction and will also need to consider tenancy arrears, write offs, any outstanding recharges etc. There may also be instances where tenants have moved into 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, even when the DWP position and guidance has been received.
- 3.4 Initial and further, 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 remains 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 As set out above, with the ongoing delay in receiving further guidance from DWP nationally, then we may have to shortly write to all overcharged tenants advising them of the unavoidable delay in being able to process payments. We had scheduled further communication with all impacted tenants in April, so this can be aligned and may have movement from the DWP in the meantime that changes what information we can provide. Our website FAQs will also be updated in a timely way as a priority to reflect the current position.

4 Conclusion

- 4.1 Due to the complex and therefore time consuming nature of this corrective work it is currently envisaged that further updates will be provided to members at regular intervals.
- 4.2 During this corrective work stream we will of course continue to 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 all third party organisations involved.

Financial Implications

The activity of MDH is funded through the Housing Revenue Account (HRA). The HRA is ring fenced and subject to specific financial controls.

Significant financial modelling has been undertaken in order to reach some of the key decisions being put forward in the Cabinet report in December 2024. 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. This modelling continues to be refined and further work is largely now dependant on further guidance and advice from the DWP as set out within the report.

While the current analysis shows that the majority of those affected have been historically undercharged, the position previously agreed is unchanged and there is no intention or ability to recover lost funds.

Therefore, it continues to be the case that 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 in the December Cabinet report and continues to be applicable.

Risk Assessment

As set out above, 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

Agree by or on behalf of the Section 151

Date: 18.03.25

Statutory Officer: Maria De Leiburne

Agreed on behalf of the Monitoring Officer

Date: 18.03.25

Chief Officer: Stephen Walford

Agreed by or on behalf of the Chief Executive

Date: 18.03.25

Performance and risk: Stephen Carr

Agreed on behalf of the Corporate Performance & Improvement Manager

Date: 03 March 2025

Cabinet member notified: Yes

Section 4 - Contact Details and Background Papers

Contact: Andrew Jarrett, Deputy Chief Executive (S151) / Simon Newcombe, Head of Housing and Health

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Background papers: