



## FULL COUNCIL

Wednesday, 25 January 2023

<b>Subject</b>	Housing Regulation
<b>Report by</b>	Councillor Richard Kerry, Cabinet Member for Housing
<b>Supporting Officer</b>	Heather Tucker Head of Housing <a href="mailto:heather.tucker@eastsoffolk.gov.uk">heather.tucker@eastsoffolk.gov.uk</a>

Is the report Open or Exempt?	<b>OPEN</b>
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Category of Exempt Information and reason why it is <b>NOT</b> in the public interest to disclose the exempt information.	This report is to be considered during the <b>OPEN</b> part of the agenda.
<b>Wards Affected:</b>	<b>All Wards</b> [Add additional wards or delete as required]

## Purpose and high-level overview

### **Purpose of Report:**

To set out the responsibilities of East Suffolk Council (ESC) as a Registered Provider (RP) of Social Housing, to ensure it is compliant with the Regulator of Social Housing's (RSH's) Regulatory Standards.

To provide information to Members on Housing Regulation Matters, which led to a Regulatory Notice being issued to ESC by the RSH for a breach of the Home and Rent Standards.

To provide an update on progress in relation to Rent Setting, and the Health, Safety and Compliance management in Housing Revenue Account (HRA) properties.

To present to Members key policy decisions, agreement of which will enable ESC to rectify incorrect rent accounts enabling the refund process to commence and ESC to be fully compliant with the RSH Rent Standard.

*Due to the length and complexity of the report, a glossary has been provided at the end, which covers all acronyms used.*

### **Options:**

Option 1 – Members approve all rents previously converted from Social Rent to Affordable Rent, to be reset back to a Social (Formula) Rent, utilising Rent Flexibility, which is 5% for General Needs tenants and 10% for Retired Living Scheme Tenants

Option 2 – Members approve all rents previously converted from Social Rent to Affordable Rent, to be reset back to a Social (Formula) Rent, without utilising Rent Flexibility

Option 3 – Members approve any remaining Affordable Rents, from the original 260, which were permitted to be converted, to continue being charged an Affordable Rent.

The full reasons for recommending Option 1 are set out within the main body of this report.

### **Recommendation/s:**

#### **Full Council is asked that:**

1. Members note the information contained within this report and endorse the actions set out to ensure the Council is compliant with the Regulator of Social Housing Consumer 'Home Standard'.
2. Members note the information contained within this report and endorse the actions set out to ensure the Council is compliant with the Regulator of Social Housing Economic 'Rent Standard'.
3. Members note that all heating service charges, also referred to as de-pooled rental charges, are (after further and more detailed legal advice) now acknowledged to be a breach of Section 11 of the Landlord and Tenant Act 1985 and that therefore, all such money received from this charge must be refunded in full, for the years 2010 – 2023.

4. Members agree to 'Option 1', listed above, that all tenancies formerly converted to an 'Affordable Rent' are reset back to a 'Social Rent' plus flexibility (5% for general needs and 10% for retired living schemes).
5. Members, whilst taking into consideration their fiduciary duties (as discussed at paragraphs 4.4 to 4.13 of this report) agree as a matter of policy that any money incorrectly charged for rent charges as a result of the mistaken conversion of social rents to affordable rents, or the setting of incorrect social rent levels, be refunded in full.
6. Members note that quarterly updates will be presented to Cabinet, detailing the progress against the Compliance and Rent Improvement Plans.

## Corporate Impact Assessment

### **Governance:**

Following a review of the circumstances and matters that led the Council to self-report to the RSH, in April 2022, a new Housing, Health and Safety Board (HHASB) was created. Further information on the HHASB is located in 1.68.

A monthly 'compliance dashboard' has been produced, which is now being used to both monitor and demonstrate ESC's levels of HRA stock compliance. Going forward, this dashboard will be provided to the Cabinet Member for Housing, so they also have oversight.

It is proposed that quarterly updates on regulatory matters are provided to Cabinet Members until the Regulatory Notice is no longer applicable.

Further, in Summer 2022, a Rents Development Group was created. This Group has been developing a Rent and Service Charge Policy, which will include the key decisions in this report, which Members will consider and are asked to approve.

Going forward, the Rents Development Group will oversee the refund programme, which will commence imminently. It will also review the annual rent setting process and ensure an annual sample audit is conducted by external specialists, who specialise in rent regulation.

The Council has commissioned an external, independent review of the governance of the housing service, to ensure that the right governance arrangements are in place, which will prevent any issues like this from occurring in the future.

### **ESC policies and strategies that directly apply to the proposal:**

The [Housing Strategy 2017-2023](#) sets out the Council's commitment to investing and improving its housing stock.

The [HRA Business Plan](#) sets out the proposed investment in the Housing Stock over a 30-year period.

### **Environmental:**

There are no environmental factors affected by this issue.

### **Equalities and Diversity:**

An Equality Impact Assessment (EQIA) has been completed (Ref EQIA477820335). The outcome of the EQIA is the overall impact on our tenants from this report and the recommendations made is positive. No amendments have been made following the completion of the assessment.

**Financial:**

The Council can charge two types of rent: Social Rent and Affordable Rent.

A Social Rent (SR) should not be higher than 'formula rent', which is calculated based on the relative value of the property, relative low-income levels, and the size of the property. An aim of this formula-based approach is to ensure that similar rents are charged for similar socially rented homes, throughout the country taking account of regional factors.

For an Affordable Rent (AR), the initial rent should not be set higher than 80% of market rent<sup>1</sup> (inclusive of service charges), as well as at any future relet.

There are 145 properties within the East Suffolk HRA stock that are legitimately being charged an affordable rent and indeed are required to be charged such a rent as the properties were either a new build or an acquisition with the use of Right to Buy (RTB) receipts to fund the purchase. These properties are therefore outside of the rent repayment matters being considered in this report.

It is proposed that properties previously converted from Social to Affordable Rent have their rent re-set back to Formula Rent plus flexibility.

ESC has been charging additional charges in relation to heating servicing. ESC has received specialist legal advice that these charges should not have been levied and therefore, a full refund must be administered to all affected current and former tenants.

At the time of producing this report, the forensic audit was 88% complete. Therefore, these figures are the current confirmed levels and also set out the 'projected' levels.

The confirmed refund level for the heating charges totals £3,897,522, based on 88% audits completed. It is currently **projected** that when the audit is complete that this figure will increase to £4,454,311. This is calculated based on the charges mistakenly levied between 2010/11 and 2021/22.

The refunds owed in relation to the incorrect charging of rent is £2,405,383 based on 88% of the audits completed. It is **projected** that this will increase to £2,749,009 once the audit to completed.

This means that overall, for the period 2010/11 to 2021/22 the current confirmed level of refunds is £6,302,905 and is **projected** to increase to £7,203,320 once the audit is completed.

In addition to the refunds up to and including the financial year 2021/22, corrections will be made to rent accounts for the current financial year 2022/23. It is estimated a further £385,672 refunds will be owed for the incorrect charging for heating services and £451,431.71 in relation to incorrect charging of rents.

In addition to the initial refunds, there will also be an effect on the HRA Business Plan, due to a reduction in income. Income has been reduced in each future financial year by approximately £835,000. However, due to the proposed increase in rents for 2023/24 being at 6% (1% less than the Government Cap of 7%), this has significantly helped

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<sup>1</sup> Market Rent - The amount of rent that can be expected for the use of a property, in comparison with similar properties located nearby

towards regaining income levels to a sufficient level to maintain the needs and aspirations of the HRA.

To date, of the 88% of tenancies (current and former), that the audit has completed, 72% of them have a record of claiming Housing Benefit at some point during the tenancy. Therefore, a significant amount of the refunds owed actually constitutes overclaimed housing benefit subsidy, and will need to be repaid to the DWP..

**Human Resources:**

Since the issues were first identified, significant officer time has been spent working intensively to resolve them. In addition to this, interim support has been employed to support the work programme. This includes external specialists to deliver the forensic audit, and compliance experts to support the work related to stock compliance.

To enable the refund process to happen at pace, we will shortly be recruiting some additional staff on a fixed term basis to support the day-to-day work related to rent collection, so our experienced rents officers can focus on the complex refund process.

**ICT:**

As part of this programme of work, ESC has identified that significant work is required to improve the quality of data held electronically in relation to the effective management of the housing stock. Therefore, system updates are being planned and implemented as required.

**Legal:**

The Housing and Regeneration Act 2008 sets out that Local authorities with social housing stock are "registered providers of social housing". Registered Providers are governed by the [Regulator of Social Housing](#).

There are a multitude of legislative and regulatory responsibilities that Registered Providers of Social Housing must ensure they adhere to including the Regulator of Social Housing Standards as well as Policy Statements issued by the Department for Levelling Up Housing and Communities.

The regulation of Social Housing is increasing significantly and there are many changes, which it is essential that ESC complies with.

The [Smoke and Carbon Monoxide Alarm \(Amendment\) Regulations 2022](#), which effectively amend the Smoke and Carbon Monoxide Regulations 2015 to remove the exemption of social landlords, so that from 1 October 2022 housing associations and local authorities were subject to the 2015 Regs. This means that from this date ESC must ensure:

- At least one smoke alarm is equipped on each storey of their homes where there is a room used as living accommodation: and
- A carbon monoxide alarm is equipped in any room used as living accommodation which contains a fixed combustion appliance (excluding gas cookers)

In addition to this, there is new legislation either planned or recently approved, which will shortly be enacted. These include:

The [Social Housing Regulation Bill](#), which is currently going through Parliament and introduces a stronger regulatory regime for Registered Providers and delivers the measures set out in the [Social Housing White Paper](#).

There are two key pieces of Legislation, which have received Royal Assent, following the review of the Grenfell Tragedy in 2017.

The new duties set out in the Building Safety Act 2022 and Fire Safety Order (England) 2022, will require the Council to carry out new programmes of work, to ensure they meet the duties.

#### [Building Safety Act 2022](#)

The Building Safety Act makes significant reforms to give residents and homeowners more rights, powers, and protections, which will ensure that homes across the country are safer.

It delivers protections for qualifying leaseholders from the costs associated with remediating historical building safety defects and includes an ambitious toolkit of measures that will allow those responsible for building safety defects to be held to account.

It overhauls existing regulations, creating lasting change and makes clear how residential buildings should be constructed, maintained and made safe.

The Act creates three new bodies to provide effective oversight of the new regime: the Building Safety Regulator, the National Regulator of Construction Products and the New Homes Ombudsman.

Together these changes mean owners will manage their buildings better, and the home-building industry has the clear, proportionate framework it needs to deliver more, and better, high-quality homes.

Many of the detailed provisions in the Act will be implemented over the next two years through a programme of secondary legislation.

#### [The Fire Safety \(England\) Regulations 2022](#)

The requirements set out in the Fire Safety Regulations 2022 come into force 23<sup>rd</sup> January 2023.

These regulations will make it a requirement in law for responsible persons of high-rise blocks of flats to provide information to Fire and Rescue Services to assist them to plan and, if needed, provide an effective operational response.

Also, the regulations will require responsible persons in multi-occupied residential buildings which are high-rise buildings, as well as those above 11 metres in height, to provide additional safety measures.

In all multi-occupied residential buildings, the regulations require responsible persons to provide residents with fire safety instructions and information on the importance of fire doors. The regulations apply to existing buildings, and requirements for new buildings may be different.

In high-rise residential buildings, responsible persons will be required to:

**Building Plans:** provide their local Fire and Rescue Service with up-to-date electronic building floor plans and to place a hard copy of these plans, alongside a single page

building plan which identifies key firefighting equipment, in a secure information box on site.

**External Wall Systems:** provide to their local Fire and Rescue Service information about the design and materials of a high-rise building's external wall system and to inform the Fire and Rescue Service of any material changes to these walls. Also, they will be required to provide information in relation to the level of risk that the design and materials of the external wall structure gives rise to and any mitigating steps taken.

**Lifts and other Key Fire-Fighting Equipment:** undertake monthly checks on the operation of lifts intended for use by firefighters, and evacuation lifts in their building and check the functionality of other key pieces of firefighting equipment. They will also be required to report any defective lifts or equipment to their local Fire and Rescue Service as soon as possible after detection if the fault cannot be fixed within 24 hours, and to record the outcome of checks and make them available to residents.

**Information Boxes:** install and maintain a secure information box in their building. This box must contain the name and contact details of the Responsible Person and hard copies of the building floor plans.

**Wayfinding Signage:** to install signage visible in low light or smoky conditions that identifies flat and floor numbers in the stairwells of relevant buildings.

In residential buildings with storeys over 11 metres in height, responsible persons will be required to:

**Fire Doors:** undertake annual checks of flat entrance doors and quarterly checks of all fire doors in the common parts.

In all multi-occupied residential buildings with two or more sets of domestic premises, responsible persons will be required to:

**Fire Safety Instructions:** provide relevant fire safety instructions to their residents, which will include instructions on how to report a fire and any other instruction which sets out what a resident must do once a fire has occurred, based on the evacuation strategy for the building.

**Fire Door Information:** provide residents with information relating to the importance of fire doors in fire safety.

As part of the review into these regulatory matters, ESC has sought specialist external opinion from Trower's and Hamlin Law Firm. They have advised on a number of aspects specifically in relation to the Rent Standard and historical decisions made, which were at odds with guidance and / or legislation.

**Risk:**

This area of work has been added to the Corporate Risk Register.

**Risk Description:**

ESC has been found to not be compliant with the Rent Standard and 'Home' Consumer Standard following self-referral to Regulator for Social Housing. Rental charges dating back to ESC's predecessor authority Waveney District Council (WDC) did not meet requirements set out in 'Rent Standard'. Tenants who moved in after 2014 were potentially charged higher rents. Review also included aspects of health and safety of properties, inc. fire risk assessments, asbestos management, water safety, gas and electrical safety, etc.

**Current Controls:**

- Council self-referred to Regulator of Social Housing (RSH) in February 2022.
- In-depth review of the Housing Service conducted in line with the Regulatory (Rent) and Consumer Standards.
- Independent consultants appointed to review historic approach to rent conversions and to assess whether there are/were any other areas of non-compliance against the rent standard.
- Legal opinion sought on other service charges.
- Thorough audit of all aspects of compliance and development of action plan.
- ESC commissioned an independent inquiry into the governance/decision making issues raised in respect of the Rent Standard issues. The inquiry report will be available in early 2023.
- ESC has recruited a new Strategic Director position, focussed on governance, bringing leadership, direction and organisational resilience.

**Mitigations:**

- Forensic audit of potential overpayments of rent, being conducted looking at every rent account line by line. Definitive figure for overpayments and split between those paid by tenants and paid via housing benefit will not be available until completed. The audit is 88% complete and will be fully complete by January 2023. The data is being used to improve financial projections of potential tenant overpayments.
- Compliance consultant employed to ensure the right policies, processes and mechanisms for monitoring are in place to provide assurance that the housing stock is compliant with the Homes Standard. Following extensive work ESC is now compliant for safety inspections, servicing and surveys, with a backlog of electrical checks expected to be completed by end 2022/23. Ongoing work is delivering remedial safety works to buildings.
- Regular monthly meetings scheduled with Regulator.
- A permanent Housing Health & Safety Board has been created and provides senior level monitoring, control and direction.
- A substantial Improvement Programme is being developed for the Landlord's Service, supported by external Consultants.

**Current Risk Score:**

C2 (Amber)

<b>External Consultees:</b>	N/A
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## Strategic Plan Priorities

Select the priorities of the <a href="#">Strategic Plan</a> which are supported by this proposal: (Select only one primary and as many secondary as appropriate)		Primary priority	Secondary priorities
<b>T01</b>	<b>Growing our Economy</b>		
P01	Build the right environment for East Suffolk	<input type="checkbox"/>	<input type="checkbox"/>
P02	Attract and stimulate inward investment	<input type="checkbox"/>	<input type="checkbox"/>
P03	Maximise and grow the unique selling points of East Suffolk	<input type="checkbox"/>	<input type="checkbox"/>
P04	Business partnerships	<input type="checkbox"/>	<input type="checkbox"/>
P05	Support and deliver infrastructure	<input type="checkbox"/>	<input type="checkbox"/>
<b>T02</b>	<b>Enabling our Communities</b>		
P06	Community Partnerships	<input type="checkbox"/>	<input type="checkbox"/>
P07	Taking positive action on what matters most	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P08	Maximising health, well-being and safety in our District	<input checked="" type="checkbox"/>	<input type="checkbox"/>
P09	Community Pride	<input type="checkbox"/>	<input type="checkbox"/>
<b>T03</b>	<b>Maintaining Financial Sustainability</b>		
P10	Organisational design and streamlining services	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P11	Making best use of and investing in our assets	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P12	Being commercially astute	<input type="checkbox"/>	<input type="checkbox"/>
P13	Optimising our financial investments and grant opportunities	<input type="checkbox"/>	<input type="checkbox"/>
P14	Review service delivery with partners	<input type="checkbox"/>	<input type="checkbox"/>
<b>T04</b>	<b>Delivering Digital Transformation</b>		
P15	Digital by default	<input type="checkbox"/>	<input type="checkbox"/>
P16	Lean and efficient streamlined services	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P17	Effective use of data	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P18	Skills and training	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P19	District-wide digital infrastructure	<input type="checkbox"/>	<input type="checkbox"/>
<b>T05</b>	<b>Caring for our Environment</b>		
P20	Lead by example	<input type="checkbox"/>	<input type="checkbox"/>
P21	Minimise waste, reuse materials, increase recycling	<input type="checkbox"/>	<input type="checkbox"/>
P22	Renewable energy	<input type="checkbox"/>	<input type="checkbox"/>
P23	Protection, education and influence	<input type="checkbox"/>	<input type="checkbox"/>
<b>XXX</b>	<b>Governance</b>		
XXX	How ESC governs itself as an authority	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>How does this proposal support the priorities selected?</b>			
ESC is a social landlord who wants to be a landlord of choice and provide high-quality, affordable homes in communities where residents are proud to live.			

## Background and Justification for Recommendation

1	Background facts
1.1	East Suffolk Council (ESC) owns and is the social landlord for approximately 4,500 properties, which are managed under the Housing Revenue Account (HRA).
1.2	The stock consists of a mixture of bungalows, flats and houses and includes 13 Retired Living Schemes, one block over 18m tall and a number of properties used as Temporary Accommodation for homelessness under s188 and s193(2) of the Housing Act 1996.
1.3	There are also some commercial units and some units, which are leased to other providers.
1.4	Prior to East Suffolk Council being created, only Waveney District Council had retained its housing stock. Suffolk Coastal District Council had transferred its properties to a Registered Provider a number of years before. Therefore, the stock is predominantly located in the North of East Suffolk.
1.5	Local authorities with social housing stock became "registered providers of social housing" pursuant to the Housing and Regeneration Act 2008. However, local authority registered providers were not subject to any of the economic standards set by the RSH until they became subject to the Rent Standard with effect from 1 April 2020.
1.6	Registered Providers of social housing, which includes both Councils and Housing Associations, are governed by the Regulator of Social Housing (RSH).
1.7	The Housing and Regeneration Act 2008, sets out the role of the RSH.
1.8	The RSH has a set of standards, which Registered Provider (RP) landlords, must comply with. These include 3 economic and 4 consumer standards. The consumer standards are applicable to all RP's, including Councils. Not all the economic standards apply to Councils, because the RSH does not have the power to set them standards. The only economic standard, which Councils must comply with, is the Rent Standard (Appendix A).
1.9	The RSH has a 'co-regulatory' approach to supporting the regulation of social housing. There is an expectation that RPs are open and transparent and will make a self-referral to the RSH if there is reason to believe that there may be a breach of one or more of the Regulatory Standards.
1.10	<p>The Consumer Standards are:</p> <p><b>The Tenant Involvement and Empowerment Strategy</b> – Customer Service, Choice, Complaints, Involvement and Empowerment and ensuring there is an understanding of the diverse needs of tenants</p> <p><b>The Home Standard</b> – Quality of accommodation, repairs and maintenance. This includes compliance with the 'Big 6' areas: Fire, Gas Safety, Electrical Safety, Water Safety (Legionella), Asbestos and Lifting Equipment (Lifts and Stairlifts). (Appendix B)</p> <p><b>The Tenancy Standard</b> – Allocations, Mutual Exchanges and Tenancy Management</p> <p><b>The Neighbourhood and Community Standard</b> – Management of neighbourhoods and anti-social behaviour.</p>

1.11	<p>The key outcomes of the Home Standard are summarised below:</p> <ul style="list-style-type: none"> <li>• Ensure council homes meet the Decent Home Standard and are maintained to this standard (<i>for more information on the Decent Homes Standard, please see background reference papers section of this report, for the link</i>)</li> <li>• Provide a cost-effective repairs and maintenance service to homes and communal areas that responds to the needs of, and offers choice to tenants, and has the objective of completing repairs and improvements right first time</li> <li>• Meet all applicable statutory requirements that provide for the health and safety of occupants in their homes</li> </ul>
1.12	<p>The Rent Standard applies, (subject to certain exceptions) to 'low cost rental' accommodation, as defined by section 69 of the Housing and Regeneration Act 2008 with some limited exceptions (not relevant to this paper). This includes some types of Temporary Accommodation, which is used for those owed a duty under homelessness.</p>
1.13	<p>Registered providers must comply in full, with all the requirements and expectations set out in the Rent Standard. They must additionally comply with all the requirements and expectations of the Rent Policy Statement on the setting, increase and decrease of rents and service charges.</p>
1.14	<p>An initial high-level review of the Council's landlord service was conducted by the newly appointed Head of Housing at the end of 2021. This identified some areas, which may have constituted a breach of the Regulatory Standards.</p>
<b>The Home Consumer Standard (Asset Compliance)</b>	
1.15	<p>This section of the report sets out the issues and remedial actions taken in relation to ESC's compliance with the RSH Home Consumer Standard.</p>
1.16	<b>Initial Review</b>
1.17	<p>As part of the Head of Housing's review of the landlord service, it was identified that there was a lack of data in relation to compliance.</p>
1.18	<p>Officers involved in elements of the work believed ESC to be compliant, but due to the lack of reliable data, could not provide comprehensive documentary evidence.</p>
1.19	<p>In late 2021, a Compliance Consultant was recruited on an interim basis to conduct an in-depth review. The review would assess data processing and workflow processes and would provide officers with advice and guidance to ensure all HRA properties met the required standards.</p>
1.20	<p>The compliance audit reviewed all of the main areas of domestic property compliance:</p> <ul style="list-style-type: none"> <li>○ Asbestos,</li> <li>○ Electrical Safety,</li> <li>○ Fire Safety,</li> <li>○ Gas Safety,</li> <li>○ Lifting Equipment (Lifts and Stairlifts) and</li> <li>○ Water Safety (Legionella).</li> </ul>
1.21	<p>The Compliance Consultant quickly confirmed ESC could not formally evidence compliance with the Home Standard and that an Improvement Programme would be required to ensure ESC met the standards set out by the RSH.</p>
1.22	<p>In January 2022, the results of the initial audit were discussed with the Senior Management Team, Head of Finance (s151 Officer), Head of Legal and Democratic</p>

	Services (Monitoring Officer), the Head of Internal Audit and ESC's Leader, Deputy Leader and Cabinet Members with responsibility for Housing and Resources.
1.23	It was agreed that a self-referral to the RSH would need to be completed, which the Head of Housing would lead on.
1.24	On 9th February 2022, an initial letter was sent to the RSH setting out the reasons why ESC felt it was not compliant with the Home and Rent Standard. (Appendix C)
1.25	A letter was sent to all tenants to advise them of the self-referral to the RSH and set out the reasons why. (Appendix D)
1.26	On 10th March 2022, following advice from the RSH, a further letter was sent to tenants providing details of the potential breaches of the Home Standard and to advise them of the work ESC was undertaking to try and remedy potential breaches of both the Home and Rent Standard. (Appendix E)
1.27	At the time of the letter being sent to the RSH, the Council was able to evidence the following in relation to compliance:
1.28	<p>Asbestos (March 2022)</p> <p>Asbestos surveys had previously identified 93 communal areas within the housing stock, which had Asbestos Containing Materials (ACM). The Control of Asbestos at Work Regulations (2002) places a duty to manage ACM, however the re-inspection programme was not in place.</p> <p>Issues were also identified with the data quality between two software systems. This highlighted the need to align the data in both systems and ensure processes were put in place to maintain high quality records relating to the management of asbestos.</p>
1.29	<p>Electrical Safety (March 2022)</p> <p>It is set out in legislation that Social Housing providers must carry out an electrical inspection at least every 10 years. However, there is an anomaly with legislation for the private sector, which sets out that inspections must be carried out 5-yearly. Therefore, it will shortly be set out in legislation that social housing providers must also conduct electrical inspections every 5 years.</p> <p>Overall compliance with 10-yearly inspections was 92.68%, which was 23.99% compliance in communal electrical areas and 97.14% compliance in residential properties.</p> <p>Under section 11 of the Landlord and Tenant Act 1985, a landlord of residential tenancies granted for a term of less than seven years has implied repair duties.</p> <p>These includes the statutory duties to keep in repair and proper working order the installations in the dwelling-house for the supply of gas and space heating and heating water. This extends to cover electrical installations and electrical wiring.</p>

	<p>This equated to 206 communal areas and 160 residential dwellings, which had not had the required inspection.</p>
<p>1.30</p>	<p>Fire Safety (March 2022)</p> <p>At the time of the referral to the RSH, ESC was required to comply with the Regulatory Reform (Fire Safety) Order 2005. This meant that it was mandatory to carry out a Fire Risk Assessment, which must be completed by a competent person in Houses of Multiple Occupation, blocks of flats and maisonettes.</p> <p>The detailed assessment should identify the risks and hazards and:</p> <ul style="list-style-type: none"> <li>○ Consider who may be especially at risk, i.e., people with mobility issues and their ability to evacuate if required.</li> <li>○ Eliminate or reduce the risk of fire as far as is reasonably practical.</li> <li>○ Provide general fire precautions to deal with any risk.</li> <li>○ Take additional measures to ensure fire safety where flammable or explosive materials are used or stored.</li> <li>○ Create a plan to deal with any emergency and where necessary record any findings.</li> <li>○ Maintain general fire precautions, and facilities provided for use by firefighters.</li> <li>○ Keep any findings of the risk assessment under review.</li> </ul> <p>As part of the internal review of compliance, ESC identified that 93 properties required a Fire Risk Assessment (FRA), of which 33 had recently been completed.</p>
<p>1.31</p>	<p>Gas Safety (March 2022)</p> <p>The Gas Safety (Installation and Use) Regulations 1998 places a number of statutory duties on a landlord of domestic tenancies granted for a term of less than seven years.</p> <p>The main duties are to:</p> <ul style="list-style-type: none"> <li>○ Ensure the gas fittings and flues are maintained in a safe condition.</li> <li>○ Ensure an annual safety check is carried out on each gas appliance/flue; and</li> <li>○ Keep records of the gas safety checks.</li> </ul> <p>Under section 11 of the Landlord and Tenant 1985, a landlord of residential tenancies granted for a term of less than seven years has implied repair duties.</p> <p>These includes the statutory duties to keep in repair and proper working order the installations in the dwelling-house for the supply of gas and space heating and heating water. This extends to cover gas pipes and boilers.</p> <p>All communal systems were fully compliant and 99.89% of residential properties were fully compliant.</p>

1.32	<p>Lift Safety (March 2022)</p> <p>At the time of the referral to the RSH, ESC had responsibility for 14 lifts and 68 stairlifts, a contract was in place to complete the regular servicing, which was up to date. We previously conducted annual inspections to 'LOLER' standard, but these were ceased in March 2021.</p> <p>Therefore, it was identified that a re-inspection programme needed to be developed.</p>
1.33	<p>Water Safety (March 2022)</p> <p>At the time of the referral, ESC had water hygiene risk assessments for the 15 Retired Living Schemes, which were completed in 2019. At each site, a Retired Living Scheme Manager carried out weekly temperature tests and if any failure was identified, an order was raised for the remedial works to be completed by our in-house team.</p>
<b>The Rent Standard</b>	
1.34	This section of the report sets out the issues and remedial actions taken in relation to ESC's compliance with the RSH Rent Standard.
1.35	<b>Initial Review</b>
1.36	ESC can charge two types of rent: Social Rent and Affordable Rent.
1.37	A Social Rent (SR) should not be higher than 'formula rent' (plus uplift if adopted), which is calculated based on the relative value of the property, relative low-income levels, and the size of the property. An aim of this formula-based approach is to ensure that similar rents are charged for similar socially rented homes, throughout the country taking account of regional factors. Social rents are exclusive of service charges which can be charged in addition.
1.38	For an Affordable Rent (AR), the initial rent should not be set higher than 80% of market rent (inclusive of service charges), as well as at any future relet.
1.39	AR's must also be set based on the criteria set out, including a RICS valuation being conducted. The Council must ensure that annual rent reviews do not exceed the limits provided by the Regulator of Social Housing (RSH).
1.40	If a Registered Provider (RP), chooses to set a limit on AR levels, for example, in line with Local Housing Allowance (LHA), then this needs to be set out in a Rent Policy.
1.41	As part of the Head of Housing's review of the landlord service, it was identified that there were potential breaches of the Rent Standard in relation to historical rent conversions.
1.42	As part of the review, it was identified that in 2014 the Council started to convert tenancies being re-let from Social Rent to Affordable Rent. The rationale for this, was that any additional income could be used to support a new build development programme, which would increase the number of socially rented homes available.
1.43	At the time of conversions commencing, officers made a decision to convert based on guidance in relation to Right to Buy receipts and the Affordable Housing Programme, which was administered by the Homes and Communities Agency.

	There is no record that a formal decision to proceed with this approach was considered by Members.
1.44	The issue of conversions was initially identified and considered in 2019 and Counsel opinion sought, which was received in early 2020. In summary, the view of Counsel was that the issue was ambiguous, but that it is was likely the conversions were not permitted and as a result ESC should seek clarification due to the ambiguity of the original guidance relating to conversions.
1.45	Following Counsel's advice, a letter was sent to Rt. Hon. Robert Jenrick MP, Secretary of State for Ministry for Housing Communities and Local Government (MHCLG) on 12 <sup>th</sup> March 2020. No acknowledgement or response was ever received. Unfortunately, within days of the letter being sent, the country faced an unprecedented national lockdown and the work associated with Covid, and a change in Head of Service meant this issue was not reviewed again until late 2021.
1.46	Due to the complex nature of the issues identified as part of our internal review, we appointed external expertise who specialise in social housing regulation to independently review our historic approach to rent conversions and also to assess whether there are/were any other areas of non-compliance against the rent standard.
1.47	The external organisation is well regarded for their expert knowledge and ability to carry out audits against the regulatory standards. As an independent organisation, they would be best placed to offer the external, independent validation and advice required, to enable us to address this problem satisfactorily and provide us with the advice and guidance required to develop improved procedures which would prevent further non-compliance in the future.
1.48	As part of the review, we also identified that additional charges had been added to multiple rent accounts. These were to cover the servicing costs associated with gas, oil or electric heating. Historically, these were classified as "Service Charges" and Counsel opinion was sought in 2018, following which a decision was made to re-define these charges as "de-pooled rental charges".
1.49	These charges remain in place currently. The external organisation believed this approach was unusual and recommended a further legal opinion was sought on the matter. The Council appointed specialist legal advisors in early 2022 to provide that opinion. They determined that the charges should not have been applied, it was most likely a breach of legislation and remedial action would be required. This view was also subsequently supported by the Regulator for Social Housing.
1.50	In addition to the Affordable Rent conversions and the Heating charges listed above, the report from our external company identified a number of issues including: <ul style="list-style-type: none"> <li>○ Some formula rents not being set at the correct levels</li> <li>○ When all rents and charges were due to be reduced by 1% per annum, from 2016-2020, as part of the Welfare Reform and Work Act 2016, in some cases, this did not happen</li> <li>○ As a result of all of these separate issues, a thorough review was required to forensically check every tenancy and ensure the correct charges had been applied during each financial year.</li> </ul>



1.51	On 9th February 2022, an initial letter was sent to the RSH setting out the reasons why the Council felt it was not compliant with the Home and Rent Standard. (Appendix C)
1.52	A letter was sent to all tenants to advise them of the self-referral to the RSH and set out the reasons why. (Appendix D)
1.53	On 10th March 2022, a further letter was sent to the RSH providing further details of the potential breaches of the Home Standard and to advise them of the work ESC was undertaking to try and remedy potential breaches of both the Home and Rent Standard. (Appendix E)
<b>Regulatory Notice</b>	
1.54	On 25th May 2022, the RSH issued a Regulatory Notice (Appendix F), which stated that:
1.55	<i>“a) East Suffolk Council had breached part 1.2 of the Home Standard; and as a consequence of this breach, there was the potential for serious detriment to the council’s tenants.”</i>
1.56	<i>“b) East Suffolk Council was not compliant with the legislative requirements of the Welfare Reform and Work Act 2016 (the Act). Since 2016, it charged inaccurate rents as a result of incorrectly applying additional service/de-pooled rent charges to the majority of its stock, which should have been included in the rent. It then subsequently did not apply the 1% rent reduction to these additional rental charges, also in contravention of the Act.”</i>
1.57	<i>“c) East Suffolk converted more than 1,000 properties to Affordable Rent without the requisite permissions, in contravention of one or other of the Act and the Rent Standard (dependent upon the date of the conversion).”</i>
1.58	<i>The Notice also stated that ‘Complying with statutory health and safety requirements is a fundamental responsibility of all registered providers because of the potential for serious harm to tenants. Taking into account the seriousness and breadth of the issues, the durations for which tenants were potentially exposed to risk, and the number of tenants potentially affected, the regulator has concluded that it is proportionate to find that East Suffolk Council has breached the Home Standard and that there was a risk of serious detriment to tenants during this period. East Suffolk Council has demonstrated to the regulator that it understands the work it needs to undertake to ensure that it completes the required statutory checks and relevant safety actions, and the regulator will work with the council as it delivers this programme.’</i>
1.59	<i>Following their investigation and the issuing of the Regulatory Notice, the RSH also said in the notice: ‘East Suffolk Council is putting in place a programme to rectify these failures and the regulator will therefore not take statutory action at this stage, as it has assurance that the breach of the standards is being remedied. The regulator will work with East Suffolk Council as it continues to address the issues which have led to this situation, including ongoing monitoring of how it delivers its programme.’</i>
1.60	Following the publication of the Regulatory Notice, a further letter was sent to tenants advising them. (Appendix G)
<b>Improvement Plan</b>	
<b>Asset Compliance (Home Standard)</b>	



1.61	<p>When the Council identified it was non-compliant with the RSH Home Standard a significant programme of remedial work was commenced immediately, to ensure compliance was reached at the earliest opportunity.</p> <p>Since then, a significant amount of work has been undertaken, which is set out by each area of compliance below:</p>
1.62	<p><b>Asbestos</b></p> <p>100% of communal areas have been surveyed for asbestos containing materials and 98% of ESC domestic units have been surveyed. The status of 77 units is uncertain and management surveys are being commissioned from our Contractor to confirm whether there is confirmed or presumed asbestos containing materials present.</p> <p>Re-inspections are examining the condition of Asbestos Containing Material (ACM) recorded in communal spaces and dwellings. If deterioration is observed, the necessary remedial actions must be undertaken.</p> <p>No re-inspections of communal spaces or dwellings have so far been commissioned but moving forward this will be a major focus of effort. The Council's contractor is developing a two-year re-inspection workplan to remedy this by the end of November 2024. This will provide a comprehensive asbestos data set for all HRA assets.</p> <p>To improve asbestos data quality more generally a 'whole house' management survey will be undertaken for every property which becomes void.</p> <p>To provide tenants with better information 'tenant friendly' asbestos management reports are being designed. The reports will be provided to tenants along with information about how to prevent any damage to the ACM.</p> <p>Until 2019 asbestos data and reports were stored in the Council's Keystone Asset Management System. A change of Contractor in September 2019, and technical difficulties with IT, subsequently prevented data being loaded into Keystone. The data was freely accessible in the contractors IT system, but data was stored in 2 places creating inefficiency and potential confusion. A project was developed to resolve this, and all data was added to our asbestos Register in Keystone, in late 2022, which is now a single source of all data.</p> <p>The operational Housing Asbestos Management Policy is programmed to be reviewed by the end of 2022/23. This will be updated and will incorporate the work programmes listed above. The Policy will be approved by the Housing, Health and Safety Board. Once the Policy is agreed, update training will be</p>

	<p>provided to all Trades Operatives and contractors as part of the implementation process.</p>
1.63	<p><b>Electrical Safety</b></p> <p>A thorough audit and reconciliation project has been conducted to ensure there is a clear record of electrical inspections. This has enabled the development of a robust work programme, which will ensure all properties have had the required electrical inspection by the end of January 2023.</p> <p>The majority of properties have had electrical inspections within the last 5 years. Legislation will soon mandate a 5 yearly inspection cycle. Therefore, we have proactively programmed to complete this work and are currently on target for all properties to have a valid Electrical Inspection Condition Report (EICR) within 5 years by the end of 2022/23.</p> <p>To ensure continuity of the inspection programme, monthly monitoring has been put in place. This will provide an early warning of any under delivery allowing prompt action to be taken to ensure compliance is maintained.</p>
1.64	<p><b>Fire Safety</b></p> <p>It is confirmed that 92 properties (not 93 as originally thought) require Fire Risk Assessments (FRA's). These were all carried out between January and July this year. The only exception is the Council's only over 18-metre-tall block, St Peters Court, which had an FRA in September 2021, and was reassessed in September 2022.</p> <p>A risk-based programme of FRA Reviews has now been introduced on a 12-, 24- or 36-month basis. For example, St Peters Court is a high-risk block, and all of the Retired Living Schemes are considered 'higher risk', due to their older person tenant profile, these will all be reinspected annually. Lower risk blocks of flats, for example which are general needs and brick built will be on a 24-month reinspection cycle. Blocks which pose the lowest risk will be reinspected on a 36-month cycle.</p> <p>In May 2022, ESC Cabinet approved ESC's first Fire Safety Strategy. The purpose of this strategy is to:</p> <ul style="list-style-type: none"> <li>• Ensure the Council's primary focus is on the life, safety and welfare of our residents and staff</li> <li>• Ensure the council's assets are protected from the spread of fire and interruption of business and protect the general public</li> <li>• Ensure we meet our legislative duties as landlord and 'responsible person'</li> </ul>

- Ensure suitable resources are in place to prevent the cause and spread of fire and if/when they occur to minimise their impact within communal areas and individual properties.

The Fire Risk Assessment process identifies defects in the building which require addressing to reduce the risk of fire spread. As a result of the FRA inspections a significant programme of fire safety works has been identified. These works include compartmentation work, repair and replacement of fire doors, improvements to way finding signage and upgrades to alarm systems. Completion of these tasks will ensure all HRA buildings meet the legislative requirements, including the new measures set out in the Building Safety Act and Fire Safety (England) Regulations 2022.

To ensure appropriate resources are available to complete these works the Council has committed £2M from the Housing Revenue Account Reserves Budgets. Approval was received at Cabinet in October 2022, for Senior Officers in collaboration with the Cabinet Members for Housing and Resources to award appropriate contracts in line with procurement rules.

In collaboration with our contractors all FRA Actions are securely recorded, and given a timescale as set out in the Fire Safety Strategy. Officers review the FRA actions, allocate them to the most appropriate officer or contractor for completion and monitor completion deadlines. Actions cannot be marked as 'complete' on the system, until there is evidence and an audit trail showing completion.

This process enables officers to monitor how many actions are outstanding, how many are in progress at any one time and if any are at risk of being overdue. With this information officers can ensure the necessary resources are in place to meet the timescales set out in the Fire Safety Strategy.

To strengthen the understanding of fire risk and to suitably mitigate the risks with appropriate fire detection and safety systems, bespoke fire strategies have been commissioned for each of the higher risk buildings identified within the strategy. These technical documents will underpin the approach to enhance tenant safety.

It is anticipated that these strategies will highlight the need for a further programme of renewal for the fire detection and alarm systems along with fire doors to ensure the fire protection systems keep tenants safe are technologically sound and meet legislative change.

Further surveys have been completed of other fire safety systems including automatic opening ventilation systems, dry risers, sprinkler systems and reviewed the requirement for fire extinguishers.

	<p>Proactive engagement with Suffolk Fire and Rescue Service has resulted in information to tenants being improved and updated. Additionally tactical fire-fighting training simulations have been undertaken at St Peters Court in late 2022 over a number of evenings.</p>
1.65	<p><b>Gas Safety</b></p> <p>A quick review was able to confirm that the Council was almost fully compliant in terms of its gas servicing requirements.</p> <p>As part of the review, an opportunity to improve the way in which ESC treated cases where the tenant had refused entry for the gas servicing to be conducted was identified.</p> <p>This new process ensures a faster, more robust approach is taken to resolving these situations and enables full compliance.</p>
1.66	<p><b>Lift Safety</b></p> <p>All lifts and stair lifts have now been fully serviced and also had an inspection carried out to 'Lifting Operations and Lifting Equipment Regulations' (LOLER).</p> <p>Having undertaken lift inspections in March and September 2022 a six-monthly inspection regime of all communal lifts has been developed. This will ensure they are maintained to the LOLER Regulations.</p> <p>A remediation process for any repairs identified as part of the servicing and inspection regime has also been put in place.</p>
1.67	<p><b>Water Safety</b></p> <p>All HRA premises which require a legionella water safety inspection have been identified and inspected.</p> <p>An annual re-inspection programme has been established along with a process to ensure any remedial works are completed in a timely manner.</p> <p>Some of the remedial works can be completed by our in-house operatives, but for specialist works, quotations are requested from suitable contractors.</p>
1.68	<p><b>Monthly Compliance Monitoring</b></p> <p>Contract Meetings have now been set up with all contractors who undertake compliance activities, along with our in-house teams who conduct some compliance works.</p>

	<p>Prior to meetings, all contractors and supervisors from the Maintenance Service provide performance data from the previous month. This information sets out the work completed, work in progress and highlights any issues, which affect statutory compliance.</p> <p>Each meeting is attended by Senior Managers within the Housing Service with advice from our Compliance Consultant. Minutes of all meetings are taken, along with any decisions made or actions identified.</p> <p>After all of the performance data has been received and the meetings have taken place, a monthly dashboard is completed, which sets out ESC's level of compliance at the end of the previous calendar month. A shortened version of the dashboard, which removes any addresses or detailed contractor information, has been provided in Appendix H.</p>
1.69	<p><b>The Creation of the Housing, Health and Safety Board (HHASB)</b></p> <p>A Housing, Health and Safety Board (HHASB) was created in April 2022 and meets monthly. It is chaired by the Head of Housing and attended by officers across a number of specialisms including Strategic Management Team, Maintenance, Building Control and Corporate Health and Safety.</p> <p>The HHASB is a strategic leadership forum representing the housing service at ESC. The purpose of the HHASB is to ensure the efficient and effective planning, organisation, implementation, monitoring, audit and review of protective and preventative measures for health, safety and welfare for its Residents and Housing Staff and all those affected by the undertakings of the Council. This includes the strategic monitoring of compliance and ensuring properties meet all of the required standards set out in Legislation and / or Guidance.</p> <p>The aim of the HHASB is to continuously support, develop and monitor a culture of collaboration where concerns, ideas and solutions are freely shared and acted upon, and where the whole workforce is engaged in promoting a healthy and safe environment. This in turn helps the Council to fulfil their legal duties and continuously improve their approach to successful Health, Safety and Compliance management.</p> <p>The HHASB is a key element in supporting the Council's approach to Health and Safety (H&amp;S) Management by regularly checking that the approach to H&amp;S is in line with the corporate H&amp;S Policy and acts on the findings to continually improve performance and raise standards.</p> <p>The HHASB actively and robustly monitors the compliance across all of its c.4,500 housing stock, to ensure it meets and exceeds expected standards.</p> <p>Where final decisions or approval are required on H&amp;S matters, these are taken through the appropriate governance channels.</p>

	The terms of reference, which set out the role of the board in more detail are at Appendix I. These will be updated at the January 2023 meeting, to reflect the monitoring of Mould and Damp cases too.
1.70	<p>In December 2022, ESC received letters from the Secretary of State and the Regulator of Social Housing in relation to Damp and Mould. These letters were sent to all RP's and information was requested, which ESC has provided.</p> <p>We are now conducting a separate piece of work in relation to this issue, for which an update will be provided at a future meeting.</p>
<b>Rent Standard</b>	
1.71	<p><b>Improvement Programme (Phase 1): Forensic Audit</b></p> <p>When ESC identified it believed it was non-compliant with the RSH Rent Standard. It immediately commissioned a significant forensic audit. The forensic audit was designed to ensure a robust and in-depth review of every tenancy record held from 2010 to present day to check for any overcharging or erroneous service charges, which may have been levied.</p>
1.72	<p>This has included:</p> <p>Review of any advice and guidance relating to rent setting and service charges, which East Suffolk has acquired following the initial review and taking this into account in the forensic exercise.</p> <p>Review of any additional data sources available to East Suffolk which did not form part of the initial review.</p> <p>Assessment of the financial impact of service charges incorrectly levied for heating services on an individual tenancy basis to identify over charging.</p> <p>Affordable Rents – identifying those properties which have been incorrectly converted to Affordable Rents and resetting those rents as Social Housing Formula Rents, including a review of any tenancy changes and legal action and identifying any over or under charging and recommending any remedial rent and tenancy management activity.</p> <p>Affordable Rents – for those properties, which are subject to legitimate Affordable Rents, reviewing the level of rent charged and assessing this against the requirements of the Rent Standard. Review of any tenancy changes and legal action and identifying any over or under charging and recommending any remedial rent and tenancy management activity.</p> <p>Social Housing Formula Rents - reviewing the level of rent and service charges charged back to 2015 and assessing this against the requirements of the Rent Standard. Review of any tenancy changes and legal action and identifying any over</p>

	<p>or under charging and recommending any remedial rent and tenancy management activity.</p> <p>For each tenancy the audit will set out any refund owed to each tenant and/ or the DWP/Housing Benefit department setting out where this relates to rent and / or service charges.</p> <p>Identifying any other related issues and escalating them for attention.</p>
1.73	<p>The forensic audit commenced in May and was initially hoped to take 2-3 months.</p> <p>However, as the audit was scoped in more detail and due to the complex scenarios, which were being identified, it quickly became apparent that to ensure this was completed effectively, we would need to allow additional time.</p> <p>Therefore, it was agreed the audit would be completed by the end of January 2023.</p> <p>To date, 4382 properties have been audited, which equates to 8754 tenancies being audited.</p>
1.74	<p>The Council does not currently have a Rent and Service Charge Policy. Accordingly, part of the forensic audit and to ensure the correct calculations are made in relation to refund levels, the authority needs to make some key policy decisions. These are set out in this paper and will be reflected in the new Rent and Service Charge Policy, which will be presented to Cabinet for consideration and approval in March 2023.</p>
	<p><b>Service Charges</b></p>
1.75	<p>We have investigated how the charges were added to rent accounts and there is nothing to indicate rents were reduced to allow for the additional charge. Therefore, it is believed that these charges were added in addition to the rent charged.</p>
1.76	<p>Under section 11 of the Landlord and Tenant 1985, a landlord of residential tenancies granted for a term of less than seven years has implied repair duties. These include the statutory duties to keep in repair and proper working order the installations in the dwelling-house for the supply of gas and space heating and heating water. This extends to cover gas pipes and boilers.</p>
1.77	<p>The Council sought further specialist legal opinion, which advised that the authority should not be re-charging its tenants, outside the core rent, for costs associated with it complying with its statutory duties. Moreover, section 11(4)-(5) expressly prohibits a landlord from passing on the costs of complying with its repair duties under section 11 and provides that any covenant that seeks to pass on the costs would be void and of no effect.</p>
1.78	<p>Accordingly, and to correct this error the Council must ensure that all heating servicing charges are refunded in full to every affected current and former tenant.</p>

1.79	Failure to refund tenants for these charges would have a breach of contract and/or potentially a claim in respect of any additional charges it has paid to cover the Council's heating servicing costs.
	<b>Rent Conversions</b>
1.80	Due to the way data is held on our current rent management system, it has not been possible to clearly identify exactly how many properties were converted from Social Rent (SR) to Affordable Rent (AR).
1.81	It is believed that approximately 1,300 tenancies have been converted between 2014 and 2022.
1.82	As part of the forensic audit, it was identified that following the initial counsel opinion sought in 2019, that as properties became available for re-let, if they had previously been converted to an AR, they were in some cases being converted back to a SR.
1.83	As no clear rationale for why some properties are AR and others are SR can be identified a policy decision is required to ensure a fair and consistent approach to rent setting. Officers have carefully reviewed a number of options, which are set out in the 'options' section of this paper.
1.84	While developing options, Officers have considered the rationale for using the ability to apply "rent flexibility" when re-setting rents at Social (Formula Rent).
1.85	The <a href="#">Policy Statement on Rents for Social Housing (2022)</a> , published by DLUHC, which RP's must have regard to when setting rent provides a flexibility option for registered providers to set rents at up to 5% above formula rent (10% for supported housing). If applying this flexibility, providers should ensure that there is a clear rationale for doing so which takes into account local circumstances and affordability.
1.86	There are currently many competing demands that need to be covered in the HRA Business Plan, including the need to ensure all properties are maintained to a high standard, new requirements set out in legislation such as the Building Safety Act 2022 and Fire Safety (England) Regulations are adhered to, alongside ensuring that the Council's commitment to ensure all of the HRA stock can achieve Energy Performance Certificate (EPC) rating of Band C by 2030. In addition to this, the Council has also made a commitment to build at least 50 new homes per year and to pay back the HRA financing debt owed to the Government as soon as possible.
1.87	It is evident from the commitments above that there is significant investment required to both maintain, improve and increase our stock. The Council and its predecessor Waveney District Council have historically levied social rents below the maximum possible under the Formula Rent system. Accordingly, providing the level of investment required going forward is going to be a major challenge, which will require significant innovation and hard decisions. To summarise, achieving what is required and both maintaining and further improving the quality of the HRA stock won't be possible without applying rent flexibility.
1.88	Notwithstanding, the approach recommended by this report to resetting the relevant HRA tenancy rents from AR to SR is being proposed on the basis that for



	<p>many tenants being converted back to Social Rent plus flexibility, there will be a refund and a lower weekly rent. No resident will be paying more rent than they do already as a result of this rent resetting exercise. This statement does not include the impact of any rent increase for 2023/24 which will be covered by the usual annual budget setting process. This approach is considered to be fair and also to ensure the future viability of the HRA.</p> <p>Set out below are details of how average rents will be affected by the action proposed.</p>
1.89	If rents are reset back to Social (Formula) Rent without any uplift, the 'average social rents' for 2022/23 would be £82.46 for General Needs Tenants and £71.73 for Retired Living Scheme Tenants. This average rent is in relation to those tenants affected only.
1.90	If rents are reset back to Social (Formula) Rent plus 5% flexibility for General Needs Tenants, the 'average rent' for 2022/23 for such Tenants would be £86.22
1.91	If rents are reset back to Social (Formula) Rent plus 10% flexibility for Retired Living Scheme Tenants, the 'average rent' for 2022/23 for such Tenants would be £78.27.
1.92	Therefore, by utilising rent flexibility, the 'average rent' charged to those tenants affected would be £86.22 for General Needs Tenants and £78.27 for Retired Living Scheme Tenants.
1.93	If rent flexibility is used, the annual reduction in the HRA dwelling rent budget will be £451,431.71 rather than £701,653.42 if the allowable rent flexibility option is not applied.
1.94	In summary, it is considered that the approach to rent resetting proposed in this report is fair to tenants, providing a refund for many and a lower than current rent for the significant majority currently paying an Affordable Rent. It will also enable the Council to implement its developing programme of required improvements to homes, especially energy improvements. These will ultimately help tenants to keep affordably warm in their home and any as yet unknown works to address damp and mould issues, it is recommended that Members approve the use of rent flexibility.
1.95	A significant programme of work has been undertaken over the last few months to try and improve compliance with the Rent Standard.
1.96	The Forensic Audit will shortly be completed, which has been a significant programme of work. All tenancy records from 2010-2022 will have been analysed to assess the level of rent allowed to be charged, compared to the rent levels being charged and to identify any anomalies, to include identifying any potential refunds owed to current and former tenants.
1.97	This audit has also identified any erroneous service charges in relation to heating servicing, which should not have been charged and the level of refund owed, per tenant.

## 2 Current position

Asset Compliance															
2.1	At, 31 <sup>st</sup> December 2022, the compliance levels were: <table border="1" data-bbox="300 376 970 663"> <thead> <tr> <th>Aspect of Compliance</th> <th>Level of Compliance</th> </tr> </thead> <tbody> <tr> <td>Asbestos Safety</td> <td>100%</td> </tr> <tr> <td>Electrical Safety</td> <td>97.67%</td> </tr> <tr> <td>Fire Safety</td> <td>100%</td> </tr> <tr> <td>Gas Safety</td> <td>99.97%</td> </tr> <tr> <td>Lift Safety</td> <td>100%</td> </tr> <tr> <td>Water Safety</td> <td>100%</td> </tr> </tbody> </table>	Aspect of Compliance	Level of Compliance	Asbestos Safety	100%	Electrical Safety	97.67%	Fire Safety	100%	Gas Safety	99.97%	Lift Safety	100%	Water Safety	100%
Aspect of Compliance	Level of Compliance														
Asbestos Safety	100%														
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Gas Safety	99.97%														
Lift Safety	100%														
Water Safety	100%														
Rents															
2.2	<b>Improvement Programme (Phase 2 and 3): Corrections, Rent re-setting and Refunds</b>														
2.3	The next element of the Improvement Programme relates to corrections being made to rent accounts by the rent levels being re-set and the administrative process of issuing refunds to either the DWP or affected tenants.														
2.4	This phase of the improvement programme is separated into two distinct phases; Phase 2 – Current Tenancies and Phase 3 – Former Tenancies.														
2.5	A decision needs to be made on what level of refunds are going to be administered. There is a potential for legal challenge and reputational damage if the Council does not refund all erroneous charges from 2016, when the Welfare Reform and Work Act 2016 came into effect until 2020, the date when Local Authorities came under the Regulator for Social Housing Rent Standard. From 2020 onwards, there is a Regulatory expectation from the Regulator to apply refunds for any erroneous charges.														
2.6	There is no legal or regulatory responsibility to refund tenants for erroneous charges prior to 2016. However, the Council has now received advice, which clearly sets out that although previous decisions were made in good faith, they were incorrect and as a result a large proportion of tenants have been overcharged. Therefore, Members need to consider their Fiduciary Duties, which are set out in the ‘Reasons for Recommendations’ section of this report.														
2.7	It is recommended that Members make a policy decision to agree that any money incorrectly charged through either rent, service or de-pooled rental charges is refunded in full.														
Re-setting Current Tenancies (Phase 2)															
2.8	These are tenancies which are currently active. This will involve the rent being ‘re-set’ to the formula rent plus flexibility. This would be 5% flexibility for General Needs Tenants and 10% flexibility for Retired Living Scheme Tenants.														
2.9	There will then need to be a refund issued to each tenant who has been overcharged. We have identified several scenarios outlined below, which we will need to consider before administering any refund.														

2.10	<p>With current tenants (subject to those in receipt of relevant benefits – see below) we are proposing to credit their rent account with the amount due to be refunded. We will then write to each tenant and offer them several options including:</p> <ol style="list-style-type: none"> <li>1. Refund in full (they will need to complete an online form and if they do not pay by Direct Debit (DD), they will need to provide proof of their ID and bank account, i.e., driving licence and a bank statement</li> <li>2. Partial refund/partial account credit (they will need to complete an online form and if they do not pay by DD, they will need to provide proof of their ID and a bank account, i.e., a driving licence and a bank statement</li> <li>3. Full credit to the tenants rent account and reduce or Defer their Standing Order or DD for a period until the credit on their account is reduced</li> </ol>
2.11	<p>The Council has sought legal advice and if a rent account is in arrears, any refund can be used to reduce the arrears level. Therefore, if a refund does not clear the arrears in full, then no refund will be payable to the tenant.</p>
<b>Re-setting Former Tenancies (Phase 3)</b>	
2.12	<p>Former tenancies are tenancies, which have already ended. The former tenant may have moved into a different ESC property, been rehoused by an RP, moved into their own, alternative accommodation, moved into residential care or have passed away.</p>
2.13	<p>There will then need to be a refund issued to each former tenant or their estate, where they have been overcharged. Several scenarios have been identified, which will need consideration before administering any refund.</p>
2.14	<p>With former tenants we are unable to credit ‘clear’ rent accounts. Therefore, we will take reasonable steps to trace all former tenants or contact those responsible for their estate and offer them a refund.</p>
2.15	<p>As they are not current tenants, we will require proof of ID and proof of a bank account before any refunds can be administered.</p>
2.16	<p>All refunds will be counter signed by two officers, to ensure proof of ID, proof of bank statement (where applicable) and the correct amount of money is being refunded.</p>
<b>Refunds of Housing Benefit and Universal Credit – Housing Costs</b>	
2.17	<p>The Council has been working closely with officers from the Anglia Revenues Partnership (ARP) who administer Housing Benefit (HB) claims.</p>
2.18	<p>Once arrangements are ready to commence the refund process, a report detailing all affected tenancies will be uploaded into the ARP system, which will then automatically recalculate any HB entitlement.</p>
2.19	<p>Following this, a report will then be sent back to the Council’s Rent Management system, which will show the level of refund due to HB and the level of refund owed to the tenant.</p>

2.20	For claimants in receipt of Universal Credit Housing Costs, this is not as easy to calculate. For those who are in receipt of an Alternative Payment Arrangement (APA), where their money is paid directly to the Council, it can be quite easily calculated. However, for those who have their Universal Credit (UC) payments, including Housing Costs paid directly to them, the Council may not even know if they are in receipt of UC.
2.21	Officers have met with the DWP, and conversations are still on-going to identify how this may happen. The current advice from DWP is that the contract of paying rent is between the tenant and the landlord, and therefore, any refund should be paid directly to the tenant. The tenant would then have responsibility to notify DWP and make any applicable repayments. We would need to advise all repayment recipients of this obligation as part of the repayment process and would seek to agree the wording of such advice with DWP.
<b>Regulator of Social Housing (RSH) – Regulatory Notice - Update</b>	
2.22	Officers from ESC have been meeting with the RSH each month since the Regulatory Notice was issued in May.
2.23	At each meeting, a comprehensive update on progress made has been provided, in writing.
2.24	The dashboard articulating the current levels of compliance is also shared.
2.25	Each meeting often has a particular focus, which so far has included Asbestos Safety, Water Safety (Legionella) and Fire Safety. All of these have involved Officers preparing a comprehensive paper ahead of the meeting, outlining the approach being taken.
2.26	These meetings will continue to take place on a regular basis, until the Regulatory Notice is withdrawn. However, it should be noted that the Council has engaged pro-actively at all meetings and been able to satisfy the Regulator that a robust approach is and will continue to be taken and improvements being made and embedded within the service.

### 3 How to address current situation

<b>Asset Compliance</b>	
3.1	It is essential that having made huge progress in improving compliance and data management the Council ensures that compliance is embedded as business as usual within the housing service.
3.2	All housing staff who work in East Suffolk properties need to understand risks, such as fire safety and asbestos awareness. Fostering a culture of collective responsibility, ensures everyone visiting a home identifies potential hazards and can report them easily and promptly.
3.3	We need to ensure that tenants can hold us to account. As their landlord we will be transparent with our progress, sharing performance data, safety standards and relevant information so tenants feel safe and are safe in their home.
3.4	<b>Structural Changes:</b>

	To ensure the service has sufficient knowledge, skills and capacity to continue to effectively manage the six big areas of compliance going forward, it was essential that a dedicated team was created to deliver this.
3.5	The complexities of compliance should not be underestimated and without the right knowledge, training, skills and expertise in the organisation there is a risk that the substantial improvements achieved to date will not be sustained.
3.6	A new structure which provides for officers focussed on managing the contracts and remedial works in relation to compliance was approved by Cabinet in December 2022. These jobs have since been advertised and new post holders should be in place by early 2023/24.
3.7	By recruiting dedicated officers to deal with this area of work, it will enable us to reduce our reliance on consultants, which is more expensive than directly employed staff.
3.8	<b>Third Party Assurance:</b> A significant issue identified as part of the Grenfell Inquiry was the lack of third-party assurance. It was assumed by the building managers that everything that should have been done or was needed to be, had been done correctly. It was only as part of the Inquiry following the tragedy that a number of opportunities were identified to have been missed.
3.9	It is now expected that external third-party assurance is obtained to ensure the validity of the data being reported and technical standards are met.
3.10	The Council awarded contracts in late 2022, to enable a regime of external assurance is carried out in relation to Gas and Electrics.
3.11	By completing the assurance checks, it provides reassurance that the data can be relied upon, and all works are being carried out in line with legislative requirements and guidance.
3.12	<b>Review of Fire Alarm Systems:</b> The housing service has identified as part of the Fire Risk Assessments, that several alarms are now reaching the end of their life expectancy and new, more modern alarm installations are required. A tender is being developed to identify an appropriately qualified individual or organisation, who can review the relevant buildings/systems individually, consider the cause and effect' in relation to fire and specify the most appropriate type of replacement alarm system.
3.13	<b>Compartmentation and Fire Door Works:</b> The principle of the 'Stay Put' approach is that each dwelling in a block of flats is protected from fire and smoke by fire resisting walls, floors and doors. The effectiveness of the compartmentation of each flat has come under increased focus since the Grenfell Tower fire. As a consequence, Fire Risk Assessors have recommended detailed surveys of compartmentation be carried out at all of the Council's retired living schemes and at St Peters Court flats. This is because since these properties were constructed there have been significant changes to the recommended design of buildings and fire stopping measures. Additionally, previous programmes of work may have resulted in accidental or unintended breaches to the compartmentation.
3.14	A compartmentation survey has already been completed at St Peters Court, which has identified breaches in the compartmentation. A competitive tender process has been undertaken and a contract awarded for the compartmentation and fire door remedial works, which commences in January 2023.

3.15	Compartmentation surveys at the remaining Retired Living Schemes are now being programmed.
3.16	<b>Fire Safety (England) Regulations 2022:</b> The new Fire Safety Regulations come into effect on 23 January 2023. Further information on the requirements, is set out in the 'legal' section of this report.
3.17	To ensure the Council meets all the new duties a project plan has been developed which sets out all the actions required by 23 January 2023. The progress of this project plan is being monitored by a project team on a weekly basis and the Housing, Health and Safety Board will monitor progress at the monthly meetings.
<b>Rents</b>	
3.18	<b>Embedding Compliance:</b> As mentioned previously, it is essential that compliance is embedded within the housing service. All housing staff who deal with the rent setting and management process for our properties need to understand the relevant regulations and to keep abreast of legislative changes. The Council is keen to ensure that tenants can hold us, as their landlord to account and we will be transparent and provide performance and other data, so they can challenge when necessary.
3.19	<b>Structural Changes:</b> To ensure there is sufficient knowledge, skills and capacity to continue to effectively manage the service, some changes to the structure of the service are required. Therefore, it is proposed that there will be a re-structure of the Tenant Services Team in 2023.
3.20	Additionally, the complexities of rent policy and guidance should not be underestimated and without the right knowledge, training, skills and expertise in the organisation, there is a risk that the considerable improvements now in place will be difficult to sustain. To mitigate this risk a training and development programme will be developed, and regular update training provided.
3.21	<b>Third Party Assurance:</b> It is now expected that external third-party assurance is obtained to ensure the validity of the data being reported.
3.22	We plan to commission a contract to enable a regime of external assurance is carried out in relation to annual rent setting.
3.33	By completing the assurance checks, it provides reassurance to ESC that the data can be relied upon, and all works are being carried out in line with legislative requirements and guidance.

#### 4 Reason/s for recommendation

4.1	For the reasons set out in Sections 1.84 to 1.94 above, it is recommended that Members approve 'Option 1', which enables all converted rents to be re-set back to Formula Rent plus flexibility. By using flexibility, it will enable East Suffolk to improve their homes, including capital improvements, energy improvements and also enable more affordable homes to be created.
4.2	It is recommended that Members approve that any tenant who have overpaid rent or service charges, is refunded in full, from 2010-2023.
4.3	When considering the recommendations, Members must consider their <i>Fiduciary Duty</i> .
4.4	<b>Fiduciary duties</b>

	For some time, the Council has been mistaken in setting its rent policies for its council housing.
4.5	The Regulator of Social Housing (the Regulator) has since April 2020 regulated local authorities in relation to Council Housing. The Regulator has set out its expectations (for the period it has regulated the Council) that the Council's rents for its council tenants should be adjusted to correct the previous mistake and that the tenants are refunded. In view of the Regulator's role the Council is, in practice, expected to implement the Regulator's preferred action.
4.6	Prior to the period the Regulator regulated the Council in relation to rents the Council was also mistaken in its rent setting policies and if it approves the adoption of the recommended option the Council would be seeking to provide restitution to those that were charged higher rents than would have been the case if the Council had not made such a mistake. To an extent this restitution is an exercise of discretion by the Council. The Council should therefore consider its fiduciary duty in considering whether to offer restitution to the affected tenants.
4.7	Prior to April 2020 the Welfare Reform and Work Act 2016 set out requirements and a process for setting social rents which the Council should have complied with. In practice the Council's mistake meant this was not complied with. The council was not challenged about its non-compliance at that time.
4.8	Prior to the 2016 Act the Council was required to have regard to guidance issued by central government in regard to setting council housing rents. The Council's mistake means it did not give proper regard to that guidance.
4.9	In exercising any function, the Council must act rationally, exercise that function for a proper purpose, taking into account only legally relevant considerations and in doing so, consider its fiduciary duties in relation to the Housing Revenue Account (its Council tenants) its taxpayers and residents.
4.10	In making a decision in relation to providing financial restitution to affected tenants the Council should have regard to its fiduciary duties. These could be briefly summarised as it acting as 'a trustee' of rental income, tax and public sector income on behalf of its tenants and rate and local taxpayers and other residents. The Council in effect holds money but does not own it, rather it spends money on behalf of its council tenants and leaseholders (and more widely its business rate and council taxpayers).
4.11	A number of leading cases in this area of law have involved highly politically sensitive subject matters. The Court of Appeal, in one of the leading cases stipulated that a local authority's fiduciary duties extended to having regard to the interests of their ratepayers (though in view of the Housing Revenue Account rules the Council should consider the impact on its council tenants – including future tenants and those who would not receive financial restitution and leaseholders) fairly balancing their wider interests against the beneficiaries of a course of action (in this case the affected tenants). Having regard to those interests does not mean that the council tenant, council tax and business taxpayers' interests are paramount. However, the Council should in making a decision consider those interests as well as the proportionality of the cost of implementing the financial restitution to affected tenants.
4.12	In making a decision on the options, the Council must only take into account relevant considerations and exclude those which are irrelevant. In this context,



	relevant consideration should be given to the reasons the Council is of the opinion that providing restitutions to those of its tenants who have been charged a higher rent due to the Council's mistake is a proper course of action and also beneficial to the Council, its tenants, residents and local taxpayers.
4.13	In such a consideration, the Council should also have regard to the budget effect the restitution may have on the ability of the Council to offer an appropriate council housing service to its existing and future tenants. Though there is a relatively wide discretion given to local authorities in exercising their fiduciary duty; Members should be satisfied that in making financial restitution to the affected tenants the Council's housing service will not be financially affected to the extent that it was at risk of being unable to provide a housing service to the standards required by statute or under statutory guidance or required by the Regulator.

## Appendices

Appendices:	
<b>Appendix A</b>	RSH – Rent Standard
<b>Appendix B</b>	RSH – Home Standard
<b>Appendix C</b>	First Letter to the RSH – 9 <sup>th</sup> February 2022
<b>Appendix D</b>	First Letter to Tenants
<b>Appendix E</b>	Second Letter to the RSH – 10 <sup>th</sup> March 2022
<b>Appendix F</b>	RSH – Regulatory Notice
<b>Appendix G</b>	Second Letter to Tenants
<b>Appendix H</b>	Compliance Dashboard
<b>Appendix I</b>	Housing, Health & Safety Board Terms of Reference

Background reference papers:		
Date	Type	Available From
June 2006	A Decent Home: Definition and Guidance for Implementation	Link: <a href="https://www.publishing.service.gov.uk">COVER (publishing.service.gov.uk)</a>

## Glossary

Acronyms and Definitions:	
ACM	Asbestos Containing Materials
APA	Alternative Payment Arrangement
AR	Affordable Rent
ARP	Anglia Revenues Partnership
DD	Direct Debit
EICR	Electrical Inspection Condition Report
ESC	East Suffolk Council
FRA	Fire Risk Assessment
H&S	Health and Safety
HB	Housing Benefit
HHASB	Housing, Health and Safety Board



HRA	Housing Revenue Account
LHA	Local Housing Allowance
LOLER	Lifting Operations and Lifting Equipment Regulations
MHCLG	Ministry for Housing, Communities and Local Government
RICS	Royal Institute of Chartered Surveyors
RP	Registered Provider
RSH	Regulator of Social Housing
RTB	Right to Buy
SR	Social Rent
UC	Universal Credit
WDC	Waveney District Council