



CABINET

Tuesday, 11 July 2023

Subject	Housing Regulation – Quarterly Update
Report by	Councillor David Beavan Deputy Leader and Cabinet Member with Responsibility for Housing
Supporting Officer	Andrew Jarvis and Heather Fisk Strategic Director and Head of Housing andrew.jarvis@eastsoffolk.gov.uk and heather.fisk@eastsoffolk.gov.uk

Is the report Open or Exempt?	OPEN
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Category of Exempt Information and reason why it is NOT in the public interest to disclose the exempt information.	This report is to be considered during the OPEN part of the agenda.
Wards Affected:	All Wards This predominantly affects the former Waveney District Council area only.

Purpose and high-level overview

Purpose of Report:

To provide an update to Members on Housing Regulation Matters, which led to a Regulatory Notice being issued to East Suffolk Council (ESC) by the Regulator of Social Housing (RSH) for a breach of the Home and Rent Standards.

This report follows paper [ES/1432](#), which was presented to Full Council on 25th January 2023. At the meeting recommendation 6 stated: "Members note that quarterly updates will be presented to Cabinet, detailing the progress against the Compliance and Rent Improvement Plans."

Due to the pre-election period and Cabinet Meetings not taking place during April, this is the first report, following Full Council.

Options:

1. This report is provided for information purposes only. There is no requirement for Cabinet to make a decision.

Recommendation/s:

1. That Cabinet notes the information contained within this report and endorses the actions set out to ensure the Council is compliant with the Regulator of Social Housing Consumer 'Home Standard'.
2. That Cabinet notes the information contained within this report and endorses the actions set out to ensure the Council is compliant with the Regulator of Social Housing 'Rent Standard'.
3. That Cabinet note that the next quarterly update will be presented to October's Cabinet Meeting.

Corporate Impact Assessment

Governance:

The Council 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 such breaches of the social housing regulatory standards from occurring in the future. This report was completed in early 2023 and a final report issued in June 2023. This report was discussed at Audit and Governance Committee on 10th July 2023. Due to report publication dates, an update on the outcome of the Audit and Governance Committee will be included in the October Cabinet Quarterly Report.

To ensure the effective monitoring of Compliance of the Housing Assets, the Housing, Health and Safety Board continues to meet monthly. In April, the Terms of Reference were reviewed, updated and adopted, to reflect how the board has matured since its inception in April 2022. The updated Terms of Reference can be found in Appendix A.

The Rents Development Group continues to meet weekly to review the progress of the forensic audit of historic rent accounts and to oversee the implementation of the Rent Increase in April 2023.

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.

The [Rent and Service Charge Policy](#) 2023 sets out the Council's approach to Rent and Service Charge setting.

Environmental:

There are no environmental factors affected by this issue.

Equalities and Diversity:

An EQIA was completed to accompany the report to Full Council in January 2023, where certain policy decisions were made. The reference for this EQIA was 'EQIA477820335'. As this report is an update on progress made and no decisions are required, a further EQIA is not required.

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 (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 updated on in this report.

It was agreed at Full Council in January 2023, that properties previously converted from Social to Affordable Rent would have their rent re-set back to Formula Rent plus flexibility. This was completed at the start of the new Financial Year, in April 2023.

ESC had been charging additional charges in relation to heating servicing. ESC 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. These charges were removed from all Rent Accounts at the start of the new Financial Year, in April 2023.

The Forensic Audit for 2010/11 – 2021/22 has been completed. A 'mini audit' for 2022/23 is nearing completion and the final outcome should be confirmed in July 2023.

The confirmed refund level for the heating charges totals £4,133,721. 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 £3,745,511. This is calculated based on the incorrect rental charges levied between 2010/11 and 2021/22.

This means that overall, for the period 2010/11 to 2021/22 the confirmed level of refunds is £7,879,232.

In addition to the audit up to and including the financial year 2021/22, an additional 'mini audit' took place for financial year 2022/23. The figures are currently projected to be £353,287 for the heating charges and £387,775 for the incorrect rent charges.

This means that the total due to be repaid for incorrect heating charges for 2010/11 – 2022/23 is £4,487,008 and the total due to repaid for incorrect rental charges for the same period is £4,133,286. This is an overall refund level of £8,620,294.

In addition to the initial refunds of £8,620,294, there will also be an effect on the HRA Business Plan, due to a reduction in income over the medium to long term. Income has been reduced in each future financial year as part of our business plan modelling and including the initial refund levels, the impact on the HRA Business Plan over the rest of its 30-year term is a shortfall of £28.2M.

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 was employed to support the work programme. This included 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 have recruited additional staff on a fixed term basis to support this work.

We have created a new team to manage the compliance of our housing assets, who will lead on contractual management of the external specialist contractors for Fire, Legionella, Asbestos, Heating and Lift Safety.

We are planning to recruit to an additional role, which will focus on Electrical Safety and ensure the effective management of EICR's, so they are treated separately to the day-to-day work scheduling.

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 23rd 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.

Specialist Legal Advice

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 was completed in May 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, has been conducted looking at every rent account, line by line. The audit is 100% complete, and definitive figures for overpayments made by tenants are determined. A proportion of these overpayments will be refunded to DWP/Housing Benefit, but this data must be calculated by ARP and is not available yet. 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. Ongoing work is delivering remedial safety works to buildings.
- Regular meetings are scheduled with Regulator for Social Housing, and reports are provided between meetings.
- 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.
- A full Asset Review of the high-rise building, St Peter's Court, is underway. This will inform decisions about financial investment in the building, including safety works to improve ESC safety standards.

Current Risk Score:

C2 (Amber)

External Consultees:	N/A
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Strategic Plan Priorities

Select the priorities of the Strategic Plan which are supported by this proposal: (Select only one primary and as many secondary as appropriate)		Primary priority	Secondary priorities
T01	Growing our Economy		
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"/>
T02	Enabling our Communities		
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"/>
T03	Maintaining Financial Sustainability		
P10	Organisational design and streamlining services	<input type="checkbox"/>	<input 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 checked="" 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"/>
T04	Delivering Digital Transformation		
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"/>
T05	Caring for our Environment		
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"/>
XXX	Governance		
XXX	How ESC governs itself as an authority	<input type="checkbox"/>	<input checked="" type="checkbox"/>
How does this proposal support the priorities selected?			
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 through 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 impose them on Local Authorities. The only economic standard, for which Councils must comply with, is the Rent Standard.
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>The Tenant Involvement and Empowerment Strategy – Customer Service, Choice, Complaints, Involvement and Empowerment and ensuring there is an understanding of the diverse needs of tenants</p> <p>The Home Standard – 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). (<i>Appendix B</i>)</p> <p>The Tenancy Standard – Allocations, Mutual Exchanges and Tenancy Management</p> <p>The Neighbourhood and Community Standard – 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"> • Ensure council homes meet the Decent Home Standard and are maintained to this standard • 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 <p>Meet all applicable statutory requirements that provide for the health and safety of occupants in their homes</p>
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>
1.15	<p>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.</p>
1.16	<p>A letter was sent to all tenants to advise them of the self-referral to the RSH and set out the reasons why.</p>
1.17	<p>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.</p>
1.18	<p>On 25th May 2022, the RSH issued a Regulatory Notice, which stated that:</p>
1.19	<p><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></p>
1.20	<p><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></p>
1.21	<p><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></p>
1.22	<p>The Notice also stated that <i>'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</i></p>

	<i>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>
1.23	Following their investigation and the issuing of the Regulatory Notice, the RSH also said in the notice: <i>'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>
1.24	Since the Regulatory Notice was issued, a significant programme of improvement has been undertaken, as set out, in detail in the Report , which was presented to Council in January 2023.

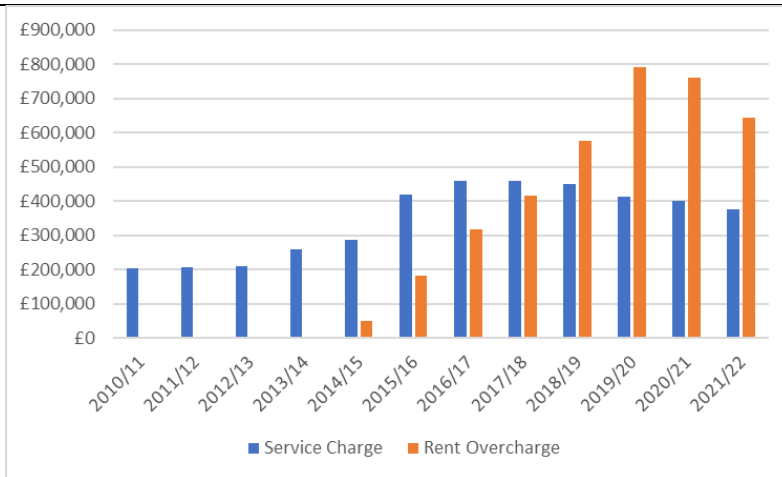
2 Current position

Asset Compliance															
2.1	<p>At, 31st May 2023, the compliance levels were:</p> <table border="1"> <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>99.7%</td> </tr> <tr> <td>Fire Safety</td> <td>100%</td> </tr> <tr> <td>Gas Safety</td> <td>99.9%</td> </tr> <tr> <td>Lift Safety</td> <td>100%</td> </tr> <tr> <td>Water Safety</td> <td>100%</td> </tr> </tbody> </table> <p>The table above sets out our levels of compliance at the end of the previous calendar month. Due to the report publishing dates, May's data has been used.</p>	Aspect of Compliance	Level of Compliance	Asbestos Safety	100%	Electrical Safety	99.7%	Fire Safety	100%	Gas Safety	99.9%	Lift Safety	100%	Water Safety	100%
Aspect of Compliance	Level of Compliance														
Asbestos Safety	100%														
Electrical Safety	99.7%														
Fire Safety	100%														
Gas Safety	99.9%														
Lift Safety	100%														
Water Safety	100%														
2.2	<p>Asbestos Safety – Following a detailed review of ESC's Asbestos data, it was agreed to carry out 3 programmes of surveys to reinspect properties where the data shows the property has a positive result for Asbestos.</p> <p>Programme 1 will survey external elements of dwellings where Asbestos was previously identified. These inspections will be linked with Programme 3 (below).</p> <p>Programme 2 will conduct surveys of 215 blocks. This programme has been commissioned and commenced at the end of May and will be complete by end of August. This meets our legal obligation under the Control of Asbestos Regulations (CAR) 2012.</p> <p>Programme 3 will follow the second programme. We will be commissioning surveys to dwellings that have not been previously surveyed or where the data shows the property has a positive result for Asbestos, which will enable us to hold more detailed data. We are still finalising the timescales for this programme.</p>														
2.3	<p>Electrical Safety - There are 4417 dwellings that require an Electrical Installation Condition Report (EICR).</p>														

	<p>Legislation for Social Housing providers, currently states that these should be carried out every 10 years.</p> <p>On 31st May 2023, there were 12 properties, which have an outstanding EICR, which is over 10 years old. This means our current level of compliance is 99.7%.</p> <p>However, in the Private Rented Sector, it is every 5 years. It is an anomaly, which will be rectified shortly under new legislation being passed. Therefore, we are currently moving towards ensuring these are carried out every 5 years or on a change of tenancy.</p> <p>On 31st May, there were 174 properties, where the EICR was completed more than 5 years ago. Therefore, if we still had this number outstanding when the regulations change, we would be 95.79% compliant.</p> <p>Despite several attempts, we have been unable to gain access to these homes to complete the EICR's. The current legislation only allows us to use reasonable endeavours to gain access, which means we cannot apply to the court for an injunction to obtain access to complete the inspections. This may change with future legislation, but at this time, ESC is making all reasonable endeavours to conduct these inspections. This includes making a reference on their tenancy record, so if they contact us about a repair, we can schedule the EICR in the same time.</p>
2.4	<p>Fire Safety – Following a recent review of our lease arrangements, we have been able to reduce the number of Fire Risk Assessments we are responsible for completing from 89, by 6 to 83. Based on a number of factors, including occupancy, the FRA's are completed on an annual, bi-annual or three yearly basis. All FRA's are completed and we have only one due later this year, all others are not due now until 2024.</p> <p>We currently have 286 outstanding actions from Fire Risk Assessments. There are 217 actions with our 2 main Fire Safety Programme Contractors. These works include Automatic Opening Vents, Compartmentation, Fire Stopping, Fire Doors and Fire Alarms.</p> <p>The remaining 69 actions are under review by the Fire Safety Contracts Manager. In some instances, the work was completed but not 'completed' on the computer system. We have recently had a day's training for multiple officers, to ensure the works are completed on the system, once being physically completed.</p> <p>Staff have now attended Fire Door Inspection training. This will allow them to carry out the quarterly and annual door inspections of the communal and flat entrance doors as per, The Fire Safety (England) Regulations 2022.</p>
2.5	<p>Heating Safety – Within the HRA, we have 3863 homes, which contain a gas heating system, 289 with renewable energy and 2 with oil fired heating.</p> <p>All of these heating systems have an annual service completed.</p>

	<p>On 31st May 2023, there are two properties, which we are unable to gain access to, to complete the services. Therefore, these have been referred to our legal team, in line with the procedure developed during 2022.</p>
2.6	<p>Lift Safety – Within ESC blocks there are 12 passenger lifts, and these are serviced monthly and have an inspection carried out to the LOLER (Lifting Operations and Lifting Equipment Regulations 1998) specification twice a year.</p> <p>In individual dwellings, there are 39 stair lifts, which are serviced once a year and the inspections carried out to LOLER specifications are carried out twice a year.</p> <p>All servicing and inspections are up to date, at 31st May 2023.</p>
2.7	<p>Water Safety – There is a requirement within our blocks where there are communal water supplies, such as our Retired Living Schemes, to have ‘Water Risk Assessments’ completed.</p> <p>We are currently required to complete 15 Water Risk Assessments on a two-year cycle.</p> <p>All of the sites have been surveyed and we are due to start carrying out new risk assessments from March 2024.</p> <p>Our new Asbestos and Legionella Contracts Manager is reviewing our approach to the management of systems following the risk assessments including ensuring that all management tasks are being completed, carried out in the right manner and that they have been recorded and records are stored in the correct system.</p> <p>These tasks would include:</p> <ul style="list-style-type: none"> • Flushing of taps, • Temperature monitoring, • Descaling of showers, • Quarterly Thermostatic Mixer Valve (TMV) servicing, • 6 monthly tank inspections and temperature checks, • Annual ‘blow down’ of calorifiers.
Rents	
2.8	<p>Following the initial ‘High Level Rents Audit’ in early 2022, the ‘Forensic Audit of Rents’ was commissioned and commenced in May 2022, to review all historic rent and heating charges from 2010.</p> <p>The Forensic Audit included:</p> <ul style="list-style-type: none"> • 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. • Review of any additional data sources available to East Suffolk which did not form part of the initial review. • Assessment of the financial impact of service charges incorrectly levied for heating services on an individual tenancy basis to identify over charging. • Affordable Rents – identifying those properties which have been incorrectly converted to Affordable Rents and resetting those rents as Social Housing

	<p>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> <ul style="list-style-type: none"> • 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. • 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 or under charging and recommending any remedial rent and tenancy management activity. • 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. • Identifying any other related issues and escalating them for attention
2.9	The forensic audit reviewed 9,025 tenancies during the period from April 2010 – March 2022. This and the following statistics only relate of the main forensic audit and not the ‘mini audit’ completed for 2022/23.
2.10	The audit has confirmed that 13% of tenancies are not affected by this issue.
2.11	The audit has confirmed that 22% of all tenancies were impacted by incorrect rents being levied. Of these, 13% are current tenants and 9% are former tenants.
2.12	The incorrect rents being levied relate of 2% of Social Rents and 20% of Affordable Rents.
2.13	The audit has confirmed that 84% of all tenancies were impacted by incorrect service (heating) charges being levied. Of these, 38% are current tenants and 46% are former tenants. All of these errors affect Social Rented properties only, there are no incorrect charges levied against Affordable Rented properties. This was expected, as you cannot charge service charges on Affordable Rented properties.
2.14	The confirmed refund level for the heating charges totals £4,133,721. This is calculated based on the charges mistakenly levied between 2010/11 and 2021/22.
2.15	The refunds owed in relation to the incorrect charging of rent is £3,745,511. This is calculated based on the incorrect rental charges levied between 2010/11 and 2021/22.
2.16	This means that overall, for the period 2010/11 to 2021/22 the confirmed level of refunds is £7,879,232.
2.17	This graph sets out the level of refunds due in each financial year. It shows that the incorrect rent levels get higher each year, as more properties were incorrectly converted, then started to reduce as tenancies were converted back to Social Rent upon relet.



2.18 As part of the audit, accounts have been reviewed to identify where there is either current or historical housing benefit claims, associated with the account. The audit has identified 74% of tenancies has a record of being in receipt of housing benefit, at some point during the tenancy.

2.19 We are aware that 3,602 people have had multiple tenancies during this time. The remaining people have only had 1 tenancy. This means we will need to do a manual 'case management' process, so when we write to each tenant, we include a breakdown of all tenancies held and the amount of refund owed for each one.

Tenants	Count
Tenants with 2 tenancies	2708
Tenants with 3 tenancies	656
Tenants with 4 tenancies	164
Tenants with 5 tenancies	60
Tenants with 6 tenancies	6
Tenants with 7 tenancies	0
Tenants with 8 tenancies	8

2.20 A 'mini audit' for 2022/23 is nearing completion and the outcome should be confirmed in July 2023.

2.21 In addition to the refunds up to and including the financial year 2021/22, an additional 'mini audit' took place for financial year 2022/23. The figures are currently projected to be £353,287 for the heating charges and £387,775 for the incorrect rent charges.

2.22 This means that in total due to be repaid for incorrect heating charges for 2010/11 – 2022/23 is £4,487,008 and the total due to repaid for incorrect rental charges for the same period is £4,133,286. This is an overall refund level of £8,620,294.

2.23 In addition to the initial refunds of £8,620,294, 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 as part of our business plan modelling and including the initial refund levels, the impact on the HRA Business Plan over the rest of its 30-year term is over £28.2M.

2.24 An extensive piece of work has been developed, to ensure the refunds can be administered correctly and as quick as practicably possible.

2.25 ESC has recruited 3 additional full time Rents Officers to support the increased workload.

2.26	In March 2023, Cabinet approved ESC's first ever Rent and Service Charges Policy . This was a significant milestone in our approach to being compliant with the Rent Standard, as it sets out clearly our approach to rent and service charge setting.
Governance	
2.27	<p>Within the self-referral letter to the RSH, the Council committed to, amongst other things, an independent governance review, with the following Terms of Reference:</p> <ol style="list-style-type: none"> 1. Establish why there was a delay in ESC identifying and acting upon compliance breaches. 2. Consider the scope and sufficiency of changes made to ESC's Housing management arrangements to address the concerns identified by David Tolson Partnership (DTP) consultancy in February 2022 and the Social Housing Regulator in May 2022. 3. Recommend any structural and/or cultural changes which could be made to ESC's governance arrangements moving forward so that regulatory and statutory contraventions are, as far as reasonably possible, prevented from occurring and if/when they do occur, that they are identified and addressed at the earliest opportunity.
2.28	In August 2022, VWV LLP Solicitors were commissioned by the Head of Legal and Democratic Services and Monitoring Officer to carry out the independent governance review mentioned above.
2.29	The Report produced by VWV LLP has been considered by the Corporate Leadership Team. The report has made the following findings, in relation to the terms of reference set out as part of the review.
2.30	<p>Question 1: Why there was a delay in ESC identifying and acting upon compliance breaches?</p> <p><i>"It is clear is that human error was the fundamental reason for the Council's failings in respect of its Housing Services. We note that the Covid-19 pandemic played some part in respect of the timeframe for responding to the breach. We can find no deliberate malice in any documentary evidence seen but we do see omission. Whether this was pure naivety as to the seriousness of the issues or hope that these problems would resolve themselves/be swept under the carpet and go away – serious errors of judgment were made. The recommendations in this report seek to minimise the possibility of this being able to happen again – accepting you can never fully eradicate risk when it comes to human error."</i></p>
2.31	<p>Question 2: The scope and sufficiency of changes made to the Council's Housing management arrangements to address the concerns identified by DTP consultancy in February 2022 and the Social Housing Regulator in May 2022.</p> <p><i>"All steps taken to identify and address Housing management issues, as endorsed by Full Council, are considered to be sufficient. This includes the extensive steps and work undertaken to fully identify each and every issue. The recommendations in this report aim to support and enhance ongoing work."</i></p>

2.32	<p>Question 3: Recommending any structural and/or cultural changes which could be made to ESC's governance arrangements moving forward so that regulatory and statutory contraventions are, as far as reasonably possible, prevented from occurring and if/when they do occur, that they are identified and addressed at the earliest opportunity.</p> <p>The independent report contains ten recommendations that apply to the whole of the Council.</p>
2.33	<p>The Corporate Leadership Team has accepted the ten recommendations made and a full response to the recommendations can be found in the report, which was presented to Audit and Governance Committee on 10th July 2023.</p>

3 How to address current situation

3.1	Cabinet is asked to note the updates related to actions completed and planned, which are provided within report.
3.2	Cabinet will continue to be updated on a quarterly basis, until the Regulatory Notice has been withdrawn.

4 Reason/s for recommendation

4.1	Cabinet is provided with reassurance that officers are taking appropriate action to remedy the non-compliance with the Regulatory Standards.
4.2	Cabinet will continue to be provided with quarterly updates until the Regulatory Notice is withdrawn.

Appendices

Appendices:

Appendix A	Updated Housing, Health and Safety Board Terms of Reference
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Background reference papers:

Date	Type	Available From
January 2023	Full Council Report on Housing Regulation. Appendices include the self-referral to the RSH.	Decision Details: Housing Regulation (cmis.uk.com)
July 2023	Audit and Governance Report on Housing Governance	Decision Details: Housing Governance Review (cmis.uk.com)