

Decision

# Regulatory Notice: East Suffolk Council (25 May 2022)

Published 25 May 2022

**Applies to England**



© Crown copyright 2022

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gov.uk](mailto:psi@nationalarchives.gov.uk).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at <https://www.gov.uk/government/publications/east-suffolk-council/regulatory-notice-east-suffolk-council-25-may-2022>

# RSH Regulatory Notice

- Provider: East Suffolk Council
- Regulatory code: 5070
- Publication date: 25 May 2022
- Reason for publication: Consumer Standards and Rent Standard
- Regulatory route: Reactive Engagement

## Other providers included in the judgement

None

## Regulatory Finding

The regulator has concluded that:

- a) East Suffolk Council has 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.
- 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 charges to the majority of its stock which should have been included in the rent. It did not apply the 1% rent reduction to these additional rental charges also in contravention of the Act.
- c) East Suffolk converted more than 1,000 properties to Affordable Rent without the requisite permissions, in contravention of both the Act and the Rent Standard.

## The issue

East Suffolk Council made a self-referral to the regulator in February 2022 as it had identified issues with the completion of statutory health and safety checks and the level of rent it had charged a large number of its tenants.

East Suffolk Council told us it had not carried out fire risk assessments on all of its buildings and did not have evidence that remedial actions had been completed following previous assessments. The council also did not have data to provide assurance that it had completed tests and inspections within the relevant timescales in relation to electrical safety, water safety, asbestos management or lift safety.

In relation to the Rent Standard, East Suffolk Council told us that in 2015, it had entered into a consortium under the Affordable Homes Programme. Through the consortium, East Suffolk Council entered into an agreement with the Homes and Communities Agency (HCA), which allowed for up to 260 conversions from social to affordable rent. The council believes it has actually converted more than 1,000 additional tenancies from social to affordable rent outside of the terms of the

agreement with the HCA. East Suffolk Council identified the issue in early 2020 and acknowledges that it should have referred the matter to the regulator at the time.

Recently, East Suffolk Council obtained the services of an external consultancy to independently review its historic approach to rent setting. The review identified that in 2018 additional charges had been added to multiple rent accounts which were defined as 'de-pooled rental charges' as they did not qualify as service charges. East Suffolk Council is exploring whether or not these additional charges should have been levied, but it has identified that they were not reduced by 1% during the period of the Act.

East Suffolk Council has now instigated detailed audit and reconciliation of all of its rent data. This exercise may uncover further errors in relation to rent setting.

In relation to the affordable rent conversion, the council reports that the total overcharge to tenants is in the region of £2.58 million. The council reports an additional £380k overcharge in relation to the de-pooled rental issue.

## **Our investigation**

### **The Home Standard**

As a local authority registered provider, East Suffolk Council is required to comply with the consumer standards, including the Home Standard. The Home Standard requires registered providers to have a cost-effective repairs and maintenance service and to meet all applicable statutory requirements that provide for the health and safety of tenants in their homes.

In respect of fire safety, East Suffolk Council has a statutory duty<sup>[\[footnote 1\]](#)</sup> to regularly assess the risk of fire and to take precautions to prevent the risk of fire. The regulator has learned that almost 100 fire risk assessments (FRAs) were overdue and that the council does not have a record of remedial actions being completed following previous FRAs.

With regard to electrical safety, East Suffolk Council is required to ensure that electrical installations are in working and safe condition both at the start of any tenancy and throughout that tenancy. <sup>[\[footnote 2\]](#)</sup> More than 200 communal electrical inspection certificate records (EICRs) and in excess of 150 domestic electrical EICRs were overdue. It is likely that many EICRs have not been completed for more than 10 years. East Suffolk Council could not provide assurance over the data provided to us.

For lift safety, the regulations<sup>[\[footnote 3\]](#)</sup> require all equipment used for lifting purposes to be subject to periodic examination. The council reported that inspections were overdue for all of its lifts (almost 100). Similarly, for asbestos safety,<sup>[\[footnote 4\]](#)</sup> East Suffolk Council reported that reviews of all the asbestos surveys completed were overdue, and the council also did not have access to all of the information about asbestos surveys completed by its contractors. With regards

to water safety,<sup>[\[footnote 5\]](#)</sup> water risk assessments for a small number of properties were also overdue.

The regulator considered the case as a breach of part 1.2 of the Home Standard and has concluded that East Suffolk Council did not have an effective system in place to allow it to meet its statutory health and safety responsibilities across a wide range of areas.

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.

## The Rent Standard

The Rent Standard requires that East Suffolk Council must set rents from 1 April 2020 in accordance with the Government's Policy Statement on Rents for Social Housing 2019.<sup>[\[footnote 6\]](#)</sup> In addition, the Rent Standard requires that where local authorities identify material issues that relate to non-compliance or potential non-compliance with the Rent Standard, they should communicate them to the regulator promptly.

Ensuring tenants are charged the correct rent is central to the role of all registered providers. Charging rents in excess of the permitted levels puts undue financial strain on both tenants and the public purse. The scale and seriousness of the breach of rent requirements reported by East Suffolk Council is significant and has been compounded by the fact the council continued to charge incorrect rents for a period of almost two years while knowing this may not be permissible. Taking these factors into account, we have concluded that it is proportionate to find a breach of both the Act and the Rent Standard.

In making this decision we acknowledge that since East Suffolk Council re-identified this issue in early 2022, the council has acted in an appropriate manner and understands the issues fully. It has taken appropriate advice and has developed a detailed plan to address all issues in a timely fashion. This includes:

- reimbursing tenants and other bodies who have been overcharged;
- engaging appropriate external advice on the nature of the errors, how they occurred, and the corrective actions;
- developing new rent policies and procedures to reflect current requirements;
- commissioning a detailed examination of its stock to be sure all issues are identified and addressed; and
- improving audit and validation of rent setting and annual rent changes.

The council has accepted the regulatory findings and is engaging positively with us, with support from external advisers, to take all steps necessary to resolve these issues.

## **Our investigation**

Section 198A and 198B of the Housing and Regeneration Act 2008 (as amended) states that the regulator's regulatory and enforcement powers may be used if a registered provider has failed to meet a consumer or economic standard. In relation to consumer matters in order to use regulatory or enforcement powers under section 198A, as well as the failure to meet the standard, there should also be reasonable grounds to suspect that the failure has resulted in a serious detriment to the provider's tenants (or potential tenants) or that there is a significant risk that, if no action is taken by the regulator, the failure will result in a serious detriment to the provider's tenants (or potential tenants).

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.

## **About our Regulatory Notices**

Regulatory notices are issued in response to an event of regulatory importance (for example, a finding of a breach of the Rent Standard or of a consumer standard that has or may cause serious harm) that, in accordance with its obligation to be transparent, the regulator wishes to make public. More detail about Regulatory notices is set out in [Regulating the Standards](https://www.gov.uk/government/publications/regulating-the-standards) (<https://www.gov.uk/government/publications/regulating-the-standards>).

- 
1. The Regulatory Reform (Fire Safety) Order 2005
  2. Landlord and Tenant Act 1985
  3. The Lifting Operations and Lifting Equipment Regulations 1998
  4. The Control of Asbestos Regulations 2012
  5. Health and Safety at Work Act 1974
  6. [Policy statement on rents for social housing](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/781746/Policy_Statement.pdf)  
([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/781746/Policy\\_Statement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/781746/Policy_Statement.pdf))

[↑ Back to top](#)

---



All content is available under the Open Government Licence v3.0, except where otherwise stated

© Crown copyright