

MONITORING OFFICER'S REPORT - FAILURE TO HAVE IN PLACE VALID GAS SAFETY RECORDS IN RESPECT OF COUNCIL DWELLINGS AS REQUIRED BY REGULATION 36 OF THE GAS SAFETY (INSTALLATION AND USE) REGULATIONS 1998

Cabinet	25 July 2019
Report Author	Director of Corporate Governance and Monitoring Monitoring Officer
Status	For Decision
Classification:	Unrestricted
Ward:	All

Executive Summary:

This report relates to a breach by the executive of Regulation 36 of the Gas Safety (Installation and Use) Regulations 1998 which places a duty upon a landlord to have a gas safety check undertaken on an annual basis on appliances and flues to which the regulations apply.

Recommendation(s):

Cabinet is required by law:

1. To consider this report at the meeting on the 25 July 2019
2. As soon as practicable, after the cabinet has concluded its consideration of this report, to prepare a report which specifies—
 - (a) what action (if any) the cabinet has taken in response to this report;
 - (b) what action (if any) the cabinet proposes to take in response to this report and when it proposes to take that action; and
 - (c) the reasons for taking the action specified in the cabinet's report or, as the case may be, for taking no action.

(To assist with recommendation (2) a report with a management response has been prepared and is also on this agenda for consideration and adoption by cabinet as their report in response to the Monitoring Officer's report.)

3. As soon as practicable after the cabinet has prepared its report in accordance with paragraph 2 above, to arrange for a copy of it to be sent to each member of the Council and the Council's Monitoring Officer.

CORPORATE IMPLICATIONS							
Financial and Value for Money	The financial and value for money implications resulting from this report will be set out in the management response to this report.						
Legal	<p>Where it appears to the Council's Monitoring Officer that any omission, in the course of the discharge of functions of the council, by or on behalf of the executive, constitutes, has given rise to or is likely to or would give rise to a contravention, by the relevant authority's executive or any person on behalf of the executive, of any enactment or rule of law with respect to that omission, he or she is required by law to prepare a report to the executive. The relevant statutory provisions are to be found in section 5A Local Government and Housing Act 1989.</p> <p>Cabinet is required by law to</p> <ul style="list-style-type: none"> (a) consider this report at a meeting held not more than twenty-one days after copies of the report are first sent to members of the executive, and (b) As soon as practicable after the executive has concluded its consideration of the report of the monitoring officer the executive shall prepare a report which specifies: - <ul style="list-style-type: none"> (i) what action (if any) the executive has taken in response to the report of the monitoring officer or his deputy; (ii) what action (if any) the executive proposes to take in response to that report and when it proposes to take that action; and (iii) the reasons for taking the action specified in the executive's report or, as the case may be, for taking no action. (c) As soon as practicable after the executive has prepared a report, the executive shall arrange for a copy of it to be sent to each member of the authority and the authority's Monitoring Officer. 						
Corporate	The management response to this report is on the agenda to this meeting and sets out the corporate issues in relation to this matter.						
Equality Act 2010 & Public Sector Equality Duty	<p>Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.</p> <p>Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2">Please indicate which aim is relevant to the report.</td> </tr> <tr> <td>Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,</td> <td style="width: 50px;"></td> </tr> <tr> <td>Advance equality of opportunity between people who share a protected characteristic and people who do not share it</td> <td></td> </tr> </table>	Please indicate which aim is relevant to the report.		Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,		Advance equality of opportunity between people who share a protected characteristic and people who do not share it	
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	Foster good relations between people who share a protected characteristic and people who do not share it.	
There are no equality issues arising directly from this report.		

CORPORATE PRIORITIES (tick those relevant) ✓	
A clean and welcoming Environment	X
Promoting inward investment and job creation	
Supporting neighbourhoods	X

CORPORATE VALUES (tick those relevant) ✓	
Delivering value for money	
Supporting the Workforce	
Promoting open communications	X

1.0 Introduction and Background

- 1.1 Where it appears to the Council's Monitoring Officer that any omission, in the course of the discharge of functions of the council, by or on behalf of the executive, constitutes, has given rise to or is likely to or would give rise to a contravention, by the relevant authority's executive or any person on behalf of the executive, of any enactment or rule of law with respect to that omission, he or she is required by law to prepare a report to the executive. The relevant statutory provisions are to be found in section 5A Local Government and Housing Act 1989.
- 1.2 Where the Monitoring Officer has prepared a report in the discharge of his duties under section 5A, the executive is required to consider it at a formal meeting and to respond to it in accordance with the requirements set out in paragraph 4 of this report. A report setting out the management response has been prepared and is included on the agenda of the cabinet on the 25 July 2019 this will form a draft for the response from the executive.
- 1.3 Regulation 36 of the Gas Safety (Installation and Use) Regulations 1998 places a duty upon a landlord to have a gas safety check undertaken on an annual basis on appliances and flues to which the regulations apply. Further a record of that inspection must be kept and retained in accordance with the requirements of the regulations. This is commonly referred to as a gas safety certificate.
- 1.4 Since March 2019 the Council has a number of dwellings forming part of its housing stock let in respect of which gas safety checks have not been carried out in contravention of the requirements of Regulation 36.
- 1.5 The Council's housing management function is a function of the executive of the Council, hence this report is prepared for consideration by the cabinet in accordance with section 5A Local Government and Housing Act 1989. A copy of this report is also being sent to all members of the Council in accordance with the requirements of that section of the Act.
- 1.6 This report has been prepared by the Council's Monitoring Officer in the discharge of his duty under section 5A Local Government and Housing Act 1989 in view of the fact that gas safety checks have apparently not been carried out in respect of a number of council let properties in accordance with the requirements of Regulation 36 of the Gas Safety (Installation and Use) Regulations 1998

2.0 Gas Safety Records

- 2.1 Regulation 36 of the Gas Safety (Installation and Use) Regulations 1998 requires the Council as the landlord of premises occupied for residential purposes to have annual gas safety inspections of those premises undertaken and to hold records of those inspections. These records are what are commonly referred to as gas safety certificates.
- 2.2 The Council discharges the requirement to have up to date gas safety certificates in place by having a contract with an external contractor. That contract is managed on the Council's behalf by East Kent Housing. East Kent Housing manages similar contracts on behalf of Canterbury City Council, Folkestone & Hythe District Council and Dover District Council in respect of their housing stock. This report is however solely concerned with the situation in relation to properties let by Thanet District Council.
- 2.3 The East Kent Housing quarterly performance reports show low levels of outstanding gas safety certificates for Council owned properties in the Thanet District in the financial year 2018/2019. Assurances were received by the Council from East Kent Housing that outstanding gas safety certificates were being actively addressed.
- 2.4 The low level of outstanding certificates was maintained up to the end of March 2019.
- 2.5 It is acknowledged that in the case of a landlord having a large number of properties it is virtually inevitable that there will be occasions when a small number of properties do not have a valid gas safety certificate. This arises for a variety of reasons, one of the most common being the lack of cooperation of some tenant occupiers to arrange for access by contractors to their homes. Such a situation would not engage the duty of the Monitoring Officer to prepare a report.
- 2.6 The situation deteriorated from April 2019 such that as at 24 May 2019 there were approximately 130 Thanet District Council properties in occupation without the benefit of gas safety certificates. Although undeniably a large number, this should be viewed within the context of the Council's total housing stock which is in excess of 3,000 dwellings.
- 2.7 Gas safety certificates fall due for renewal on different dates. About 50 dwellings fall due for inspection each week. There is therefore a need to inspect properties as their certificates become due for renewal as well as clear the backlog of overdue certificates.
- 2.8 It is emphasised that the lack of a gas safety certificate in respect of a property does not imply that the gas appliances within that property are faulty or unsafe in any way.
- 2.9 It is beyond the scope of this report to consider how this situation has arisen. However, it should be noted that the timing of what has been a rapid decline in the number of gas safety inspections completed has coincided with the Council's contractor giving contractual notice to exit its contract with the Council.

3.0 Regulatory and Legal Implications

3.1 A contravention of the requirement to have in place a required gas safety certificate in respect of any particular property is potentially a criminal offence under the Health & Safety at Work etc. Act 1974. However, a statutory defence is potentially available under Regulation 39 of the Gas Safety (Installation and Use) Regulations 1998 where a person can show that he took all reasonable steps to prevent the contravention. It is not necessary or appropriate for this report to consider whether criminal offences have been committed in this instance, particularly in circumstances where the Health & Safety Executive (who are aware of the situation) have not indicated whether they intend to undertake a full investigation.

4.0 Recent Developments

4.1 The failures in connection with LGSRs have raised questions about the reliability of data and the performance of EKH in other areas of statutory compliance such as electrical certification, lifts, fire safety and legionella testing. These functions are currently being audited by EKAP, and initially findings are revealing that there are failings in these areas too.

4.2 These matters may also have given rise to, or are likely to, or would give rise to to a contravention, by the council's executive or any person on behalf of the executive, of any enactment or rule of law. However it is not possible to be definitive on these points at this stage. Those issues may have to be the subject of further reports.

5.0 Consultation Statement

5.1 The Councils Head of Paid Service (the Chief Executive) and Chief Finance Officer (The Deputy Chief Executive) have been consulted in the preparation of this report as required by section 5A(5)(a) Local Government and Housing Act 1989. They have confirmed that they have no further comments to make/or, their comments are set out in paragraphs 5.2.

5.2 The Head of Paid Service and the Chief Finance Officer note the contents of the report from the Monitoring Officer and will give full consideration to the responses of the Head of Housing and Planning.

Contact Officer:	Tim Howes, Monitoring Officer
Reporting to:	Madeline Homer, Chief Executive

Background Papers

Title	Details of where to access copy
none	n/a

Corporate Consultation

Finance	Chris Blundell, Head of Financial Services and Deputy Chief Financial Officer
Legal	Tim Howes, Director of Corporate Governance and Monitoring Officer