

<b>Committee:</b>	Cabinet	<b>Date:</b>	22 December 2022
<b>Title:</b>	Housing Update		
<b>Report Author:</b>	Peter Holt, Chief Executive pholt@uttlesford.gov.uk 01799 510400	<b>Item for decision:</b>	Key Decision

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## Summary

1. This report updates Councillors on a range of operational housing issues, and what actions are being taken to rectify each problem identified. This includes sharing that Council tenants' rent has been incorrectly set at a higher level than is allowed under national rules for both 2021/22 and for many but not all, also in 2022/23, which will therefore need to be refunded to tenants (and to the Department of Work and Pensions for the share of any rents paid during that period by Housing Benefit). The report also details unacceptable standards uncovered in the handling of damp and mould issues, and the return to the Government required on this subject. The report also provides an update on key health and safety indicator performance, and also some limited commentary on broader repairs and maintenance performance. Finally, the report advises Members of particular corrective measures identified as being necessary for Reynolds Court sheltered housing unit, in Newport.
2. The report explicitly requests Member approval to spend up to £500,000 (plus VAT) to commission an urgent Stock Condition Survey (and associated costs) for the whole of the authority's council housing, to start as soon as possible in 2023, and ideally to be complete within three months.

## Recommendations

3. That Cabinet notes the contents of this report.
4. That Cabinet approves the additional expenditure of up to £500,000 from the Housing Revenue Account.

## Financial Implications

5. The £500,000 will be funded from the operational surplus within the HRA. The monies paid to UNSL each year have included a sum for a rolling stock condition survey (over 5 years) and therefore they have received in effect a substantial proportion for work they have not undertaken. Officers will make best endeavours to recover this sum from UNSL, however it is important the survey work starts now, whilst the recovery of monies is progressed. It should be noted that if there is a failure to recover some or all of the monies there will be a direct impact on the housing capital programme – such as negatively impacting the deliverability timetable for the refurbishment of the two sheltered housing schemes that were planned to commence in 2022/23.

6. The stock condition survey work will be carried out after directly awarding through a Crown Commercial Services Framework agreement - Estate Management. This framework provides high quality suppliers that have already been tested for best value and performance measures to enable public sector buyers to award quickly if required. A direct award through this framework is a fully compliant method of public procurement. The pricing is below standard framework rates as the negotiated price includes an energy survey which would under the framework add a further 33% to the cost.

## Background Papers

7. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.
  - Housing rent assessment report from Altair, December 2022 (provided as a Part Two confidential appendix A)
  - Letter from the Regulator of Social Housing to chief executives of council and social housing landlords, 22 November 2022 on damp and mould (appendix B)
  - Uttlesford District Council's submission to the Regulator on damp and mould on 19 December 2022, as required (Appendix C)
  - Letter of self referral to the Regulator of 19<sup>th</sup> December 2022 (Appendix D)

## Impact

8.

Communication/Consultation	There is regular ongoing communication with tenants, and this is being supplemented by a letter to all tenants addressing the issues covered in this report
Community Safety	None
Equalities	Age/disability: Brings a greater risk of financial hardship and tenants being more susceptible to ill-effects of poorly maintained homes, including damp and mould. Inability to pay for heating/cold homes will increase the likelihood of damp and mould problems. Financial hardship is exacerbated by rent overcharges,  Language barriers: Can make access for arranging appointments for property inspections/difficult. Access is key to ensuring that surveys and repairs visits are successfully carried out.
Health and Safety	As addressed explicitly in this report

Human Rights/Legal Implications	There are a range of possible tenancy breaches (on the landlord's part) represented by this report, as well as a number of important contractual legal issues
Sustainability	Without up to date stock condition surveys the Council cannot properly identify what measures will need to be taken in the future to improve the thermal efficiency of its homes
Ward-specific impacts	All wards affected
Workforce/Workplace	Although principally the homes of the tenants, Council houses are also the workplace of various elements of our workforce.

## Situation

### 9. Rent setting

- 9.1 Members set Council housing rents annually – this is a power reserved to full Council, and rent setting is undertaken as part of the budget suite of decisions in February, taking effect from the subsequent 1<sup>st</sup> April.
- 9.2 Government has established and published different formulae from time to time within which councils are entitled to set the rents. For the 2021/22 year and again for 2022/23, this formula essentially allowed councils to raise the rents by up to inflation plus 1% (having been previously reduced by 1% annually for four years from 2016-20 as part of the Welfare Reform and Work Act 2016.)
- 9.3 Uttlesford District Council in both February 2021 and again in February 2022 at full Council resolved to increase its council house rent by the allowed inflation plus 1%.
- 9.4 It has now been discovered that in so doing, the Council has increased its tenants' rents by more than allowed under the national rules, having locally misinterpreted the specific application of the inflation plus 1% rule.
- 9.5 Specifically, this national rule allows (with some complexities) councils to raise rents from April each year by 1% above the rate of inflation as officially recorded the previous September under the Consumer Prices Index [CPI].
- 9.6 Unfortunately, on checking now, it transpires the Uttlesford District Council officers at both those times applied the wrong inflation measure, namely using CPI (H) [Consumer Prices Index – Housing] instead of CPI, from the relevant September.

- 9.7 CPI (H) is a specific measure of inflation relating to rising prices and costs of issues relating specifically to owner occupiers, and is one of several accompanying measures to the main CPI published regularly. CPI (H) was used by officers in their calculations instead of CPI due to human error. Insufficient systems were in place to check the assumptions behind the officer calculations, and so this error went unnoticed until now.
- 9.8 This error has been uncovered now because, on having self-referred the housing repairs and maintenance function to the Regulator of Social Housing in the summer of 2022, the Chief Executive decided to double check other key elements of Uttlesford's housing function, including its rent setting. He therefore asked the incoming Interim Director of Housing, Health and Communities to commission an appropriate external housing finance consultancy to carry out a check. The Interim Director duly commissioned Altair, a specialist consultancy in this field, and their report has now been received (and is attached as a confidential appendix), which has prompted this report to Members.
- 9.9 The scale of the overcharge relates to the higher level of CPI (H) compared to CPI at each relevant September date, and as detailed in the Altair report, this resulted in an overcharged rent of 0.2% in 2021/22 and a further 0.8% of rent (on top of the elevated 0.2% new baseline excess) in 2022/23.
- 9.10 Council house rent levels vary related to property type. As an illustration of the scale of this impact on an individual tenant, taking a round number of £100 rent per week, this amounts to 20p per week overcharge in 2021/22, and a further 80p overcharge (or £1 including the 20p excess wrongly built into the baseline) for the year to date in 2022/23. The amount that now needs to be refunded (in this example) therefore equals 20p x 52 weeks, plus £1 x 39 weeks (April-December 2022 inclusive), or £49.40 in total.
- 9.11 The timescale for the rent refunds is currently being established, in that there is some complexity in ensuring that the correct amount is individually calculated accurately for each tenant, taking into account any changes in tenancy since April 2021; the calculation of interest payable to them on top of the actual overcharge; and any periods on which since April 2021 they were on housing benefit (thus splitting the refund due between the tenant and DWP).
- 9.12 All reasonable efforts will be made to trace and refund former tenants or the estates of deceased tenants.
- 9.13 The correct (lower) rent levels going forwards (ie reversing the overcharge) are currently being calculated and are expected to be applied as soon as possible in 2023, though this too is complicated by the need to recalculate for those on Housing Benefit.
- 9.14 The total quantum of overpayment which the authority will need to make, plus interest payable thereon, is estimated at c£160,000. This sum will need to be paid from the anticipated operating surplus of the Housing Revenue Account of over £2 million in the current financial year. There may need to

be some modest additional expenditure on staff capacity to calculate and complete the refunds urgently.

- 9.15 The opportunity cost of this c£160,000 income (plus any extra short term staffing costs) is that there will be an equivalently lower sum available in operating surplus from the HRA which can be applied to the Housing Capital Programme. In practice, this will mean that capital schemes currently scheduled to move forwards over the coming year, specifically one or both of the two sheltered housing schemes at Parkside in Saffron Walden and Alexia House in Dunmow, may be further delayed. The revised Housing Capital Programme will be brought to Members for formal decision in the New Year.
- 9.16 The Council will now be urgently writing to all tenants to explain and apologise for the error in increasing their rents above the allowed limit for last year and this year, and setting out arrangements to correct the rent and arrange refunds. Because of the uncertainty in the situation differing between tenancy to tenancy, this communication with tenants will be deliberately low key, and only indicate that there has been an error affecting many but not necessarily all tenants, and that the likely scale of the error is in the order of pennies per week, meaning that any refunds are likely to run to pounds per tenancy, not hundreds of pounds. The letter to tenants also includes a full and unequivocal apology, as is right and proper.
- 9.17 The Council has now also written formally to the Regulator of Social Housing self referring its failure to have properly complied with the Rent Standard, as set out above. This self referral shares the detail of how this has happened, and the proposed remedies. This self referral is now Uttlesford's second self referral this year, on top of that made in the summer in relation to health and safety issues, and lack of compliance with the Home Standard. The Regulator has already initially responded, indicating that they are content to hold their routine follow up discussion with us in January to understand the issues and our proposed action plan to rectify.
- 9.18 Reflecting that this rent setting error occurred by simple human error, but was not caught by any review system, officers are seeking to learn and apply broader learning to appropriate systems elsewhere in council business. A risk based approach has been taken to this, identifying both those low-volume/high-value and other high-volume/low-value financial decisions taken by the authority that each cumulatively accounts for in excess £1 million either expenditure or income annually. Four priority areas for review have been identified by this exercise: Council Tax setting; Rent Setting; management of the UNSL arrangement [c£8 million annually] and management of the recycling contract [c£0.4 million annually]. Substantial checks are already in place to ensure that Council Tax setting is carried out both in line with Member decisions at full Council in February each year, and also in line with Government requirements [inc capping criteria, set at 2.99% for 2023/24]. These CT checks are to be documented and reported for information in the New Year, and learning from this existing good practice to be immediately applied to Rent Setting, from February 2023, when Councillors will be invited to set a new rent level, albeit now based on the

correct base level. Management of the UNSL arrangement with Norse is the subject of extensive reporting, including elsewhere in this report. Management of the recyclable waste contract varies considerably, due to being reliant on quarterly market price fluctuations for various recyclable products (glass, cardboard etc.), so a dip sample double check has been introduced checking both that the correct quarterly index of pricing has been applied and also thereafter that the sums have been done correctly in this contract, which cost a net £414,000 in 2021/22. Further a general check is now being introduced on all multi-year contracts which include periodic uplifts on various formulae related to inflation, to check that the correct inflation figures have been used, and the correct calculations thereafter made.

## **10. Damp and mould**

- 10.1 Everyone was shocked by the tragic death of young Awaab Ishaak in Rochdale, and by the Coroner's official conclusions about how his illness resulted from unacceptable untreated damp and mould in his family home, run by a local Rochdale housing association.
- 10.2 Since that time, every landlord, including Uttlesford District Council, has rightly focused on understanding any major challenges locally of damp and mould in its tenants' homes.
- 10.3 Also quite rightly, the Government has made clear to every landlord that they must ensure they are on top of understanding and then properly handling any such problems, so that tenants can live in decent quality homes that do not contribute to making them ill. This applies to council houses, housing association homes or privately rented homes.
- 10.4 The Regulator of Social Housing wrote to all council and social landlords and required a response from each of them by Monday 19<sup>th</sup> December.
- 10.5 Like every other council landlord and housing association, Uttlesford District Council has therefore been urgently carrying out a fresh assessment on damp and mould over recent weeks in time to meet the Secretary of State's December 19<sup>th</sup> deadline.
- 10.6 The conclusion of this urgent assessment is that Uttlesford District Council, has not met its landlord duty, through the Uttlesford Norse Services Ltd [UNSL] repairs and maintenance partnership, to keep up with the large increase in damp and mould reports over recent weeks, with 88 reports from tenants in November and December yet to be visited by a damp expert to assess and treat, on top of 10 outstanding reports from earlier months. These are of course usually at a relatively early and mild/moderate stage when reported, as damp and mould takes time, untreated, to reach the most serious Category 1 or Category 2 levels, such as were in place for a long time in the Rochdale case that led to the tragic outcome. Every Uttlesford home is checked though for damp and mould amongst any other issues between tenancies when one tenant moves out and before the home is let to a new tenant. These 98 outstanding cases have been identified after now retrospectively checking some 600 current and previously reported concerns, as a desktop exercise.

- 10.7 As a result, officers now propose to bring in a new specialist company to catch up on these 98 outstanding reports and arrange visits as soon as possible to assess and treat accordingly, as well as keeping on top of any new reports from tenants. The costs of this work are anticipated to fall within spending levels delegated to officers to approve, and so no key spending decision is invited of Members in this regard – although in due course, the opportunity cost of this additional expenditure may well also reduce the anticipated operating surplus in the HRA, and therefore in due course future spending available for capital works.
- 10.8 It is important to stress, in context, that notwithstanding this increased number of reports, not a single case [Category 1 or Category 2] has been found in any Uttlesford Council house. This is therefore very much an issue of not being on top of assessing and reporting damp and mould issues leading to a lack of appropriate confidence and assurance that there are no serious [Category 1 or Category 2] instances of mould, and not a matter of there being known-but-untreated such serious issues.
- 10.9 For understandable reasons, Uttlesford (probably like many other big landlords) is behind on its rolling five year programme of stock condition survey visits – as routine visits inside peoples’ homes when there wasn’t a report to investigate or a particular problem to fix were put on hold for large parts of the Coronavirus pandemic period.
- 10.10 As a result therefore, Uttlesford District Council cannot hand on heart give the full assurances sought by the Regulator by her December 19<sup>th</sup> deadline in regard to properly and proactively understanding the state of its housing stock outside of those where the tenants have actually reported any damp and mould concerns.
- 10.11 The Council’s response to the Regulator of Social Housing in their questionnaire, as required by 19<sup>th</sup> December, is attached as an appendix.
- 10.12 After speaking to the Council’s existing assigned lead officer inside the Regulator of Social Housing, officers have resolved not to write a third letter of self referral at this time, pending a meeting with the Regulator in January. Regular contact with the Regulator, and demonstration of our thoroughness and transparency with them has built some trust and confidence in our proactive approach.
- 10.13 Officers are now seeking authority from Cabinet for the expenditure of up to £500,000 (+ VAT) to urgently commission a Stock Condition Survey visit for every Council House, at £150 per property, and ideally to be complete before end March 2022 (and to cover ancillary costs). This Stock Condition Survey will not only include inspection of damp and mould issues, but also cover the general state of the Council’s stock overall, to determine whether it meets the nationally determined Decent Homes Standard, and thus inform the future capital programme. (The Decent Homes Standard requires that there are no health and safety hazards, homes have a certain degree of thermal efficiency and have relatively modern fixtures and fittings). The absence of a current complete Stock Condition Survey is a significant barrier to both the proper ongoing management of the council’s homes, but also to its future planning.

- 10.14 Recovery of funds from the existing UNSL contract will be actively explored, but will not be allowed to delay essential, urgent work to be commissioned externally.
- 10.15 The Council has updated the website to provide more comprehensive information on damp and mould, for both council tenants and private tenants. The information provides more detailed guidance on how to prevent and deal with damp and mould and when/how to report damp and mould. Instructional videos have also been included.

## **11.Reynolds Court**

- 11.1 Reynolds Court in Newport is Uttlesford's flagship sheltered housing unit, having been rebuilt from scratch between 2016 and 2018, when it was handed over. It provides high quality accommodation across two floors, and is generally very popular with its residents.
- 11.2 Its popularity notwithstanding, there have been some ongoing snagging issues ever since its handover, including problems with the heating system. One such routine problem reported by some residents was the transmission of cooking smells between flats. On having this cooking smells issue investigated, including looking inside the walls, a concern was raised with the council that there was a possibility that some of the fire transmission restriction measures expected to be visible inside the walls were not visible. Specifically, it was reported that down pipes carrying waste water between floors (Reynolds Court is a two storey building) did not have the expected fireproof collars at the point where they went through the floors. These collars should be in place so as to hinder fire travelling easily between floors, inside the walls.
- 11.3 On receipt of this initial report, the Council immediately risk assessed the issue, and instituted immediate additional protective measures, whilst the problem was further investigated, assessed and treated as appropriate. The main additional safeguard introduced was a 'waking watch', in which the Council drafted in a suitably fire trained individual to stay in Reynolds Court, on duty, overnight, keeping a physical waking watch, and being on hand to raise alarm and provide support in the event of fire.
- 11.4 This measure, considered alongside all the other existing fire protection measures in Reynolds Court, was checked with the Essex Fire and Rescue Service, who confirmed that this was a suitable interim counter-measure, and that immediate decant of the building would not be necessary.
- 11.5 The further expert investigation into the building has now been undertaken, and it has been confirmed that a number of the waste downpipes are indeed missing the collars that should have been installed prior to handover in 2018. A number of other faults requiring rectification have also been reported in this thorough check that the Council urgently commissioned – principally around the fitting of fire doors, as well as a dry riser issue.



- 11.6 The Council is in ongoing discussion with the builder with a view to getting these faults rectified as soon as possible, and is continuing with the waking watch in the meantime, as a proportionate counter measure. The builder has responded very positively, and is attending on site for an initial site visit before Christmas, with specialist work people booked on site to investigate and ideally begin (if not fully complete) remedial works the same day.
- 11.7 Residents of Reynolds Court have of course been advised of the situation by Council officers, and the Ward Councillors have also been briefed.
- 11.8 A desktop comparison of Reynolds Court to other sheltered housing units has been undertaken, and there is no reason to believe or indicate that there may be any other similar issues at other buildings, which were all built at different times, by different builders, and to substantially different specifications.

## **12. Update on Repairs and Maintenance**

- 12.1 The Chief Executive has previously reported to Members that he self-referred the Council to the Regulator of Social Housing in the summer of 2022 around failings to meet the Home Standard, particularly in regard of the management of two aspects of health and safety, namely 5 and 10 year electrical checks, and also asbestos monitoring and management. These two key health and safety indicators sit alongside four other key such requirements, relating to gas (and other fuel powered) heating system checks; lift checks; legionella checks; and fire risk assessments – variously for individual properties and for communal areas. Since October 2022, a seventh key health and safety indicator sits alongside these six, namely checks on fire alarm and carbon monoxide detector systems. [NB – damp and mould is not at present one of the seven nationally required health and safety indicators, and is ranked in with other general repairs and maintenance issues.]
- 12.2 On this first self referral to the Regulator, the Chief Executive reported that the [then] four other key indicators were showing acceptable performance levels, in line with the landlord's duty. The Chief Executive undertook however to ensure that the data behind all six (now seven) key health and safety indicators was independently checked and verified, so as to stand up this degree of assurance. As such, the new Interim Director of Housing, Health and Communities commissioned another external firm of housing property management experts, Pennington Choices, to carry out this data check and verification exercise. The Pennington's report is expected in January 2023, and so the following performance indicators reported up from UNSL are not yet fully verified.
- 12.3 The latest performance indicators for the suite of health and safety indicators are healthy, and showing substantial improvement. Although compliance with 5 electrical checks and with asbestos was intended to be reached by Christmas 2022, this has not been achieved, and current rate of progress suggests instead reaching compliance by April 2023.

12.4 For example, where 5 year domestic electrical compliance stood at 75%, it is now shown as up to 86%, and where there was no data reported at all for asbestos report compliance, it is now reported as up to 68% compliance (with all outstanding reports to bring this up to 100% reported as already scheduled for completion by 31<sup>st</sup> December 2022).

<b>Compliance area</b>	<b>Position as reported by UNSL</b>	<b>Comments</b>
Electrical safety testing Domestic within 10 years	24 non-compliant i.e. 99.13% compliant)	10 have appts booked 14 are in the legal process for injunctions to gain access
Electrical safety testing Domestic within 5 years	380 non-compliant i.e. 86.16% compliant)	105 of the 380 are still refusing access, despite many attempts to engage – legal actions will be considered after we have dealt with the 10 year+ which have fallen out of compliance  UNSL have taken on more contractors, who are working through the remainder, whilst also ensuring that other homes do not fall out of compliance.  UNSL moved the timescale for completing all outstanding checks from the end of December to the end of March 2022.
Electrical safety testing Communal areas, within 10 years	100% compliant	N/A
Electrical safety testing Communal areas, within 5 years	63% compliant	UNSL have yet to complete 13 inspections within the five year period – UNSL have stated that the outstanding inspections will be completed by the end of January
Annual gas service/check domestic	1 outstanding 99.95% compliant	Legal action commenced to gain access because tenant is not engaging. This property is one of the non-compliant 10 year+ for EICR
Annual gas service/check Communal areas	N/A	There are no properties on the communal gas programme

Fire Risk Assessments (FRAs)	100% compliant for inspections	N/A
FRAs – outstanding actions from previous assessments Medium risk – 30 day target Low risk – 90 day target	Sheltered housing: 0 high risk, 5 medium risk, 5 low risk, 5 advisory General needs: 17 medium risk, 25 low risk, 17 advisory	Weekly meetings take place between UNSL and UDC to work through each case and agree an appropriate course of action
Water hygiene	1 expired legionella assessment 95.24% No follow up actions reported	The one outstanding assessment was booked in for 13 December 2022. Awaiting confirmation that this has been done
Lifting equipment	100% have been serviced within timescale	There have been issues relating to UNSL obtaining the insurance inspection records for LOLER – the Council has been working with UNSL to resolve this as it has been identified that the Council holds the information and it has not been passed to UNSL
Asbestos	17 out of 25 blocks have had an asbestos survey this year. (i.e. 68% compliance)	UNSL have provided a target date of 31 December 2022 for the eight remaining blocks to have a survey
C02/smoke alarms	New measure	Reporting systems currently being introduced.

12.5 As officers have previously indicated, their focus on addressing these seven (previously six) areas of health and safety compliance are the precursor to addressing compliance with repairs and maintenance duties generally, as provided by UNSL (including issues such as damp and mould, although this has now effectively been escalated to be handled on a par with the seven established health and safety indicators).

12.6 Officers will bring further reports on general repairs and maintenance performance in 2023.

## Risk Analysis

13.

Risk	Likelihood	Impact	Mitigating actions
Risk of not being on top of reports of damp and mould leading to tenant ill health, and also non-compliance with Home Standards leading to regulatory intervention	Moderate	Moderate to severe	Both the additional expert firm being brought in to inspect the 98 reported cases outstanding, and the other firm being proposed to be brought in to carry out a stock condition survey should reduce these risks to low and low respectively

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.