

This Report will be made public on 11 February 2020



Report Number **C/19/68**

To: Cabinet
Date: 19 February 2020
Status: Key decision
Responsible Officer: Tim Madden, Director of Transition and Transformation
Cabinet Member: Councillor David Godfrey, Cabinet Member for Housing, Transport and Special Projects

SUBJECT: Housing management options appraisal – outcome of formal consultation

SUMMARY:

An options appraisal was completed in October 2019, reviewing the delivery of housing management services provided by East Kent Housing (EKH) on behalf of Canterbury City Council, Dover District Council, Folkestone and Hythe District Council and Thanet District Council. The four councils agreed that the preferred option for future service provision to the four councils' tenants and leaseholders is that it should become an in-house service, subject to consultation. This report sets out the outcomes from the formal consultation exercise undertaken with EKH tenants and leaseholders. It proposes that officers from across the four councils be instructed to negotiate ending the agreement with EKH and to make preparations for the housing management service to be brought in-house.

REASONS FOR RECOMMENDATIONS:

- EKH has experienced serious performance problems and health and safety non-compliance issues.
- Tenants and leaseholders have expressed their views clearly, that they would prefer their homes to be managed by the individual councils rather than retain the existing Arms-Length Management Organisation structure.
- It is in the best interests of tenants and leaseholders for the four councils to terminate the management agreement and transfer housing services back in-house.
- The integration of the housing management service with each council's remaining housing services would provide a more transparent and accountable structure for the housing service.

RECOMMENDATIONS:

1. To receive and note report C/19/68 and to present this report to Council for its consideration and comments.
2. That having noted the results of the tenant and leaseholder consultation, the cost/benefit analysis and the risk analysis, it is agreed that the management of the council's housing stock be brought back in-house.
3. That the Director of Transformation and Transition, in consultation with the Portfolio Holder for Housing, Transport and Special Projects be authorised to negotiate and conclude a termination of the management agreement with EKH as soon as practicable.
4. That the Director of Transformation and Transition, in consultation with the Portfolio Holder for Housing, Transport and Special Projects be authorised to take such decisions as may be necessary to facilitate the process of bringing the housing service in-house in discussion with the appropriate statutory officers..

1. BACKGROUND

- 1.1 The four councils of Canterbury City Council, Dover District Council, Folkestone and Hythe District Council and Thanet District Council are neighbouring district councils located in East Kent.
- 1.2 On 1 April 2011, the councils established EKH under section 27 of the Housing Act 1985, delegating the management of its housing stock of approximately 17,000 homes. EKH is an Arms-Length Management Organisation (ALMO), jointly owned, in equal share, by the four councils. EKH was managed by an independent board up until 12 December 2019, when it was replaced by a new board consisting of the chief executives of the four councils.
- 1.3 In early 2019, the four client councils raised concerns about a number of key areas of the services provided by EKH in relation to asset management, procurement and delivery of the capital programme, which were further exacerbated by serious health and safety compliance by EKH in relation to the internal control of health and safety, including fire safety, electrical safety, lift safety and legionella and limited assurance for gas safety.
- 1.4 The four councils agreed to self-refer to the Regulator for Social Housing (RSH), confirming that the councils, through EKH, had failed to meet statutory health and safety requirements across a range of areas. In September 2019, the RSH's investigation concluded that the four councils (under their statutory landlord responsibilities) were non-compliant, resulting in a Regulatory Notice being issued. The notice remains 'live' for 12 months or until full compliance is achieved. The council is currently in the final stages of agreeing a voluntary undertaking to give a clear plan of action for monitoring improvements. At this stage, it is expected that the council will work closely with the regulator over the next 12 to 18 months.
- 1.5 As a result of the above, the four councils have continued to present reports to their various governance groups explaining why they have concerns about the way in which EKH has been managing council owned homes.
- 1.6 In June 2019, the four councils endorsed a review of the potential future options for the management of the housing stock. On 16 October 2019, FHDC's Cabinet (report reference C/19/29) approved the report on future options for the future housing management arrangements for the district. The following recommendations were agreed:
 - To approve the recommendation that the council's preferred option is to withdraw from EKH and return housing management services back in-house under direct management of the council, subject to formal consultation with all tenants and leaseholders to satisfy the requirements of Section 105 of the Housing Act 1985.
 - To approve that council makes available up to £250,000 from the HRA in 2019/20 and 2020/21 (split to be determined) to support interim transition management costs, subject to option 2 being supported.

- To approve for any minor amendments to the options and consultation documents to be delegated to the Head of Paid Service in consultation with the Cabinet Member for Housing, Transport and Special Projects.
- To approve for the consultation results to be presented to Overview and Scrutiny Committee and Cabinet for consideration in early 2020.

- 1.7 Pennington Choices housing consultancy service was appointed by the four councils to investigate the circumstances leading to the compliance failures, the main underlying causes, the effectiveness of the recovery action plans put in place and to make recommendations to ensure that the identified compliance failures do not happen again. The final report was presented to members on 20 December 2019 (report reference C/19/54), with each council endorsing the production of an 'action plan' to implement the recommendations outlined in Pennington's report. The action plan, which is being compiled by Pennington Choices, will seek to bring improvements in the operation and performance of EKH, such that the RSH is in a position to remove the Regulatory Notices served on the four councils.
- 1.8 On 23 December 2019, EKH's Chief Executive stepped down from the role in light of the changes to the Board and the four councils' consultation with tenants and leaseholders. Interim measures have been put in place by the four councils, with an EKH Chief Executive appointed as a temporary time-limited resource as the councils conclude the important detailed work on compliance recovery, whilst still delivering housing management services.

2. TENANT AND LEASEHOLDER CONSULTATION

- 2.1 All four councils provided their formal endorsement of the preferred option to withdrawal from EKH and return housing management services back in-house under direct management of each council, subject to consultation with all EKH tenants and leaseholders to satisfy the requirements of Section 105 of the Housing Act 1985.
- 2.2 The consultation exercise was administered by Canterbury City Council, running for 8 weeks from Tuesday 22 October to Friday 20 December 2019 and sought a test of opinion rather than a formal ballot in order to achieve consistency with the process used prior to the formation of EKH.
- 2.3 A programme of consultation was implemented across the four councils. All EKH tenants and leaseholders were written to by letter on 22 October 2019, informing them of the consultation survey and provided with a Frequently Asked Questions information sheet. Tenants and leaseholders were given the option to complete the consultation survey online or by post (using a pre-paid envelope).
- 2.4 Consultation drop-in sessions were organised and hosted in Canterbury, Dover, Folkestone & Hythe and Thanet between October to December 2019. The sessions were staffed and attended by council members and officers. All EKH tenants and leaseholders, including sheltered schemes, were invited and attendance was as follows:

Local authority	No. of attendees (tenants and leaseholders)
Canterbury City Council	167
Dover District Council	77
Folkestone & Hythe District Council	50
Thanet District Council	11

- 2.5 The Corporate Consultation Manager at Canterbury City Council dealt with 45 tenant and leaseholder enquiries across the four council areas during the consultation, providing help and support, for example if someone needed information in a different format or additional information regarding the consultation. Other enquiries included tenancy, leaseholder, performance and repairs issues.
- 2.6 The Council's Cabinet Member for Housing, Transport and Special Projects attended all of the Council's drop in sessions during the consultation period to hear the views of residents on the Council's Housing Services delivered by EKH and their aspirations for the service going forward. He also attended the Shepway Tenants and Leaseholders Board Meeting in December of last year and confirmed the Council's commitment to building on the tenant and leaseholder involvement processes put in place by EKH with residents. In addition, he has been involved in detailed casework and has gained a familiarity and knowledge of some of the issues facing tenants. He has also set out a commitment that should the housing service return in-house, residents will continue to be at the heart of the service, working with the Council to shape the service now and in the future.

3. RESULT OF THE TEST OF OPINION

- 3.1 The purpose of the consultation was to gauge opinions and gather feedback from tenants and leaseholders, evaluate their attitudes towards the proposal and identify any concerns they might have. This is usually referred to as a test of opinion.
- 3.2 The test of opinion consultation closed on 20 December 2019. Tenants and leaseholders were asked to provide their level of agreement with the proposal to bring the service back in house. The consultation document is attached as Appendix 4.
- 3.3 At the close of the consultation, across the four districts, 17,201 questionnaires were issued and 2,603 completed and returned. 332 of these were submitted online and 2,271 were paper copies.
- 3.4 Canterbury City Council
In total, 5,510 consultation surveys were issued. Of these, 843 were returned (15%). In terms of who has responded:
- 821 tenants and leaseholders
 - 4 other individuals
 - 18 respondents did not say in what capacity they were responding

3.5 Dover District Council

In total, 4,694 consultation surveys were issued. Of these, 731 were returned (16%). In terms of who has responded:

- 707 tenants and leaseholders
- 13 other individuals
- 11 respondents did not say in what capacity they were responding

3.6 Folkestone & Hythe District Council

In total, 3,575 consultation surveys were issued. Of these, 602 were returned (17%). In terms of who has responded:

- 588 tenants and leaseholders
- 4 other individuals
- 1 Shepway Tenants and Leaseholder Board
- 1 Age UK Hythe and Lyminge
- 1 shared ownership resident
- 7 respondents did not say in what capacity they were responding

3.7 Thanet District Council

In total, 3,422 consultation surveys were issued. Of these, 427 were returned (12%). In terms of who has responded:

- 403 tenants and leaseholders
- 17 other individuals
- 1 Addington Street Community Group
- 1 Newington Community Association
- 1 shared ownership resident
- 1 former tenant
- 3 respondents did not say in what capacity they were responding

3.8 Across the four councils, the majority of respondents strongly agree or tend to agree with the proposal to bring the housing service back in house. In Canterbury, 81% of respondents agree to some extent to the proposal, Dover 81%, Folkestone & Hythe 74% and Thanet 81%.

3.9 Canterbury City Council

	All respondents	Tenants and leaseholders
Strongly agree	60% (492)	60% (487)
Tend to agree	21% (171)	21% (167)
Neither agree nor disagree	12% (96)	11% (92)
Tend to disagree	4% (30)	4% (30)
Strongly disagree	4% (37)	4% (37)

3.10 Dover District Council

	All respondents	Tenants and leaseholders
Strongly agree	62% (445)	62% (433)
Tend to agree	19% (138)	19% (135)
Neither agree nor disagree	12% (84)	12% (82)
Tend to disagree	3% (20)	3% (20)
Strongly disagree	5% (36)	5% (33)

3.11 Folkestone & Hythe District Council

	All respondents	Tenants and leaseholders
Strongly agree	54% (323)	54% (316)
Tend to agree	20% (120)	20% (119)
Neither agree nor disagree	13% (76)	13% (75)
Tend to disagree	4% (21)	4% (21)
Strongly disagree	9% (53)	9% (51)

3.12 Thanet District Council

	All respondents	Tenants and leaseholders
Strongly agree	60% (257)	60% (243)
Tend to agree	21% (91)	22% (88)
Neither agree nor disagree	9% (37)	9% (35)
Tend to disagree	3% (12)	3% (11)
Strongly disagree	7% (28)	6% (25)

3.13 The full consultation report for Folkestone and Hythe is attached as Appendix 5. The detailed responses for other councils can, if required, be referred to at:

<https://www.folkestone-hythe.gov.uk/your-council/democracy/appendices>

However, a snapshot of comments made by respondents who strongly agree or tend to agree with the proposal is below:

- Lack of action by East Kent Housing to deal with repair and maintenance issues
- The council would be more responsive in dealing with issues
- The council would be more accountable than East Kent Housing
- The service provided by East Kent Housing has deteriorated in the last few years
- Lack of communication from East Kent Housing
- The council would be more accountable than East Kent Housing
- The council ran the service well before East Kent Housing was created
- Unhappy with the general standard of service provided by East Kent Housing

- Bringing the service back under council control would be more cost effective
- The council could build stronger relationships with its tenants

3.14 What the council should focus on for housing services

Respondents across the four council areas were asked what they feel are the three most important things for the council to focus on for housing services from the following list:

- Dealing with repairs and maintenance including monitoring outcomes
- Dealing with anti-social behaviour
- Providing value for money for your rent and service charges
- Building new council homes
- Estate services (such as grass cutting, cleaning communal areas etc)
- Dealing with customer enquiries and complaints
- Involving and listening to residents

Other:

- Maintain reasonable rent charges
- Improve efficiency
- Improve consultation with residents
- Improve dialogue with disabled residents
- Dealing with communal repairs

At the close of the consultation, respondents highlighted the three most important areas of focus for Canterbury, Dover and Thanet as (in order of priority):

1. Dealing with repairs and maintenance
2. Dealing with anti-social behaviour
3. Providing value for money for your rent and service charges

In Folkestone & Hythe, respondents highlighted the three most important areas of focus as (in order of priority):

1. Dealing with repairs and maintenance including monitoring outcomes
2. Dealing with anti-social behaviour
3. Dealing with customer enquiries and complaints

3.15 Should members make the decision to return the service in house, then these comments will provide a clear focus for improvements to the service. Where possible, immediate actions will be taken to address issues, however this will be along side both medium and longer term plans to improve the services to tenants and stakeholders.

3.16 Government guidance on ALMO consultation

Government issued guidance in 2011 to Local Authorities (see Appendix 1) considering the future of their ALMO housing management services. Councils are

asked to undertake a cost-benefit and risk analysis exercises before reaching a final decision. These exercises have been completed and the results are given in appendices 2 (cost/benefit analysis) and 3 (risk analysis). Cabinet is invited to consider the two documents before reaching decision on the report's recommendations.

4. PROPOSED IMPLEMENTATION PROCESS

- 4.1 At present, the Secretary of State is not required to consent to the transfer of landlord functions from the EKH ALMO to the council.
- 4.2 The four councils as joint owners of EKH, in accordance with the terms of engagement, will need to achieve a mutually agreed termination. Once the process has been concluded, it is proposed that an in-house service be established. The primary aim will be to ensure the service is safe and stable and to effect immediate improvements where possible. During the period of transition, it may be that there is a phased transfer of services back to the council depending on the appropriateness of the proposals. During this period the councils will be drawing up proposals for the future housing service, which will cover new governance arrangements, organisational structures, integration with existing council services (e.g. call handling, property and grounds maintenance, community safety, communications) and the priorities and plans of the new service.
- 4.3 Officers from the four councils will establish a Transition Board to co-ordinate the overall project. It is likely that officers within each council will also need to establish a corporate project management group to oversee the various work streams necessary to wind up EKH and to create a new in-house service.
- 4.4 A communications strategy will be of critical importance. The corporate project management group in each council will have responsibility for overseeing the communications necessary with tenants, leaseholders, staff, elected members and other stakeholders. There are many tenants and leaseholders who have expressed their views strongly at many of the consultation meetings, and it will be important to address the concerns that they raised at those meetings.
- 4.5 The Head of Paid service has been in contact with the Chair of the Shepway Tenants and Leaseholders group and has committed to regular meetings to discuss the future delivery of the Council's Housing Services. The Portfolio holder and officers will also continue to attend quarterly Shepway Tenants and Leaseholders Board meeting. The four East Kent Chief Executives have also agreed to engage with the local Tenant and Leaseholder Group when they meet as the EKH Board. Going forward it is essential that the Council also involves wider tenants in shaping its future housing service. Resident involvement is a key requirement of the standards set by the Social Housing Regulator. Details of this requirement are set out in the Tenant Involvement and Empowerment Standard 2017. The EKH board has also met with staff and trades unions and this engagement is planned to continue during the process.

5. ISSUES NEEDING FURTHER DECISION

- 5.1 The transition process set out above will give rise to the need for decisions on a number of key issues:
- The name or branding to be used for the new in-house service (if required).
 - The transfer / recruitment of staff
 - Arrangements for leadership and management of housing (both strategic and housing management) through the transition and beyond.
 - Decisions on the potential for the integration of EKH and council services which are currently provided separately.
 - The establishment of a new Tenant and Leaseholder Panel as quickly as possible to sustain resident involvement in key housing management decisions.
 - Decisions about the winding up of East Kent Housing as a separate company once the contract transfer has occurred (as required)
 - Decisions about the novation of any contracts currently held by EKH to the council, such as ICT contracts.
- 5.2 These issues are discussed further in Appendix 2, the Cost/Benefit analysis.
- 5.3 These decisions will either be taken by officers in consultation with the Portfolio Holder or reported to Cabinet for decision as appropriate.

6. CONCLUSION

- 6.1 At the close of the tenant and leaseholder consultation, across the four districts 17,201 questionnaires were issued and 2,603 completed and returned. 332 of these were submitted online and 2,271 were paper copies. 2,037 (78%) respondents strongly or tend to agree with the proposal to bring the service back in house.
- 6.2 The level of responses to the consultation was very good and the considerably greater support amongst tenants and leaseholders for the preferred option to bring the service in-house is considered to be significant and decisive. However, independently of the consultation, joint work has already begun to improve the service, plan for a more fundamental transformation of the service and a smooth period of transition if the four councils decide to formally adopt the preferred option in February 2020.
- 6.3 The EKH Board, consisting of the four council chief executives, retains accountability for the service, but additional measures have been put in place to advance joint working to improve the service now, and to plan for the future. It also ensures that there is a collaborative and inclusive approach and that we communicate a single message to tenants, leaseholder, EKH employees and council officers and members.
- 6.4 Bringing the service in-house provides each of the four councils with the opportunity to re-position the housing service with the aim of improving a broad range of outcomes for over 17,000 households. This is not necessarily the lift and shift of a self-contained housing service into each council's structure. This option

provides the opportunity to engage the housing service with each councils' wider corporate agenda in order to secure improved outcomes for residents.

- 6.5 The four councils will each be able to redesign the corporate approach and consider afresh the opportunities that arise from having the housing management unit under direct council control. There is desire to progress an overarching plan for returning EKH in-house, which is being developed by council officers.
- 6.6 FHDC has appointed a Director of Transformation and Transition, who will oversee and plan for a smooth period of transition and a more fundamental transformation of the service, if the Cabinet decides to formally adopt its preferred option when it meets on 19 February 2020.
- 6.7 2020 would then be a transition year for EKH and the four councils. Establishing an in-house service, if agreed, is complex and will take time to set up, with an assumption that this would need to be completed and the new in-house service fully operational by 1 April 2021.

7. RISK MANAGEMENT ISSUES

Please refer to risk analysis, see Appendix 3.

8. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

- 8.1 **Legal (NE)** – As required by the guidance issued in December 2011 by MHCLG, a risk analysis has been prepared. This document sets out the risks and their implications in detail and is given as Appendix 2. There will be the need to transfer supply and service contracts and other assets held by EKH as part of the process. While the Council will take the benefit of those agreements, it will also have the burden of them.
- 8.2 **Finance (CI)** – If the decision is taken to bring the service in house, then it is expected there will be transition costs over and above the existing management fee. EKH have requested an additional one off costs assessed at £900,000 (across all 4 councils) in 2020/21 to cover these. This has not been agreed at this stage however FHDC has set aside £250,000 for 2020/21 in order to meet any transition costs.

This sum is in addition to the EKH management fee of £2,480,260 for 2020/21 which includes items previously agreed by Cabinet to support the EKH improvement plan. As the proposals for the future service are developed, a close monitoring of costs will be undertaken and as the structures are developed and work programmes are defined, there will be a greater clarity as to the likely cost of the future service. As the detail develops, there will be appropriate reporting as to the estimated future cost of the service in order to ensure this achieves the objectives of the council.

As required by guidance issued in December 2011 by the Government, a cost/benefit analysis has been prepared and is given as Appendix 2.

As EKH approaches dissolution, the EKH and the four councils will want to ensure that EKH maintains adequate cash flow and cannot at any point trade whilst insolvent. The councils will want to ensure that steps are taken as is necessary to provide funding to EKH during this period. In order to respond quickly to such a scenario, it is necessary to monitor the position and for the S151 officer to allocate such funds as necessary and to agree with the other councils the apportionment of costs.

The HRA budget is used for the management and maintenance of the HRA stock and for the repayment of the HRA debt. The HRA is a ring-fenced account.

- 8.3 **Human Resources (CG/PR)** - A decision to bring the ALMO back in house may result in a TUPE transfer of staff from EKH to FHDC. This will be the case where, at the point of transfer, there is an organised grouping of staff whose main purpose is the provision of the housing service to FHDC residents. The main effect of TUPE is that staff employed or assigned to work in the areas of the relevant business transfer functions and services (e.g. all those employed or engaged at the point of transfer by EKH) will be covered under the Regulations. The TUPE regulations effectively provides that staff affected by relevant business transfers have their terms and conditions protected from change following the transfer.

In light of the above, the implications of TUPE for bringing EKH back in-house may be summarised in the following terms:

- All staff employed by EKH at the point of transfer may have a right to transfer under TUPE to the four council owners.
- Staff who transfer to FHDC under TUPE will have their EKH differential employment terms and conditions protected from harmonisation or standardisation that may be connected to the transfer of the service in-house.
- It is essential that relevant staffing information is gathered in regard to current terms and conditions (all formal and informal contractual terms) of relevant staff so that an assessment can be made of likely costs in preparation for moving towards a new delivery model for the eventual in house service.

Staff affected by TUPE will need to be determined. A HR work-stream will need to support the above to ensure that there is early identification of staff likely to be affected and appropriate consultation with all staff affected and trade unions.

Not all EKH staff are employed for the main purpose of providing services on behalf of a single council. Some staff are organised on a functional basis, providing services across all four councils. As a result, it is unlikely that TUPE will apply to all EKH staff. That said however, the councils will want to retain as many staff as possible with key specialist skills that will be required in the new in house services and local arrangements to facilitate the transfer of staff not protected by TUPE will be needed.'

- 8.4 **Property (SR)** - An assessment of the future staff accommodation requirements will need to be quantified. An Asset Management Strategy for the council's

housing stock will also need to be established, considering alignment and opportunities for efficiencies with our corporate property asset portfolio. The Director of Housing and Operations will lead on developing these two work strands.

- 8.5 **Equality (SR)** – Considerable efforts were made during the consultation to consult harder to reach groups. Of note, consultation meetings were held in the council’s sheltered schemes and responses to the consultation could be provided online, by telephone or by post. Therefore, we can be confident that all council tenants and leaseholders were given the opportunity to participate in the consultation. People on low incomes, older people and more vulnerable households are all over represented among council tenants. Therefore, any changes to the service which will deliver efficiencies and improvements will benefit these people and households with these protected characteristics. An Equality Impact Assessment is attached at Appendix 6.
- 8.6 **Communications (KA)** – This report outlines that good communication, informing and involving tenants and leaseholders, elected members, EKH, council staff and other stakeholders will be required. A communications strategy will be developed to support the corporate project management group.

9. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officers prior to the meeting:

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Adrian Hammond

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The following background documents have been relied upon in the preparation of this report:

Cabinet Report C/19/29: East Kent Housing - Housing management: future options appraisal (16 October 2019)

Cabinet Report C/19/54: East Kent Housing – Pennington Choices investigation and recommendations (20 December 2019)

Appendices

- Appendix 1: CLG Updated guidance for councils considering the future of their ALMO housing management services (2011)
- Appendix 2: Cost/benefit analysis
- Appendix 3: Risk analysis
- Appendix 4: Tenant and Leaseholder consultation document
- Appendix 5: Analysis of consultation responses, Folkestone & Hythe District Council
- Appendix 6: Equality Impact Assessment