

REPORT TO: Audit and Governance Committee

MEETING DATE: 24 November 2020

BY: Head of Development

SUBJECT: Housing Annual Assurance Statement

1 PURPOSE

- 1.1 To advise the Audit and Governance Committee of the Scottish Housing Regulator's regulatory framework and in particular, the requirement for East Lothian Council to produce an Annual Assurance Statement, which requires to be signed off by the Service Manager – Internal Audit on behalf of the Audit and Governance Committee.
- 1.2 To obtain approval for East Lothian Council's Annual Assurance Statement as detailed in Appendix 1.

2 RECOMMENDATIONS

- 2.1 That the Audit and Governance Committee notes the regulatory framework and the requirement for the Service Manager – Internal Audit to sign-off the Annual Assurance Statement (AAS) on behalf of the Audit and Governance Committee.
- 2.2 That the Audit and Governance Committee notes that the regulatory framework has been temporarily amended to allow landlords additional time to submit the AAS and highlight any areas of non-compliance that relate specifically to the impact of the Covid-19 pandemic.
- 2.3 That the Audit and Governance Committee notes the findings from Internal Audit's assurance work as outlined in Appendix 2.
- 2.4 That the Audit and Governance Committee approves the Annual Assurance Statement as detailed in Appendix 1, noting that East Lothian Council was fully compliant with the regulatory requirements for the financial year 2019/20 and was partially compliant for the first half of 2020/21, limited to the Council's ability to effect gas safety checks when tenants were either shielding or self-isolating during the height of the pandemic and to the data collection of all the protected characteristic groups under the Equality Act 2010.

3 BACKGROUND

- 3.1 In 2019, the Scottish Housing Regulator (SHR) revised its regulatory framework following extensive consultation with social landlords, tenants and stakeholders. A summary of the framework is attached at Appendix 3.
- 3.2 This places a requirement on all social landlords to normally submit an Annual Assurance Statement to the SHR by the end of October each year (which has been extended to 30 November 2020 this year to recognise the impacts of the pandemic). This statement must either confirm the relevant committee is assured that the landlord is complying with all regulatory requirements and standards or alternatively highlight any areas of material non-compliance and how the landlord will address these.
- 3.3 In many respects the process for gathering evidence to ensure the committee has the necessary level of assurance it needs to sign the statement is more important than the statement itself. Appendix 4 highlights key evidence of where the Council demonstrates compliance with the new regulatory framework.
- 3.4 East Lothian Council has existing scrutiny and performance structures in place to ensure the ongoing review of performance and service delivery. These processes are subject to continuous review and improvement. The Annual Assurance Statement is reviewed by Internal Audit and the findings from Internal Audit's assurance work are detailed in Appendix 2.
- 3.5 It is important to note that the Council also has various arrangements in place to support its governance, finance and controls environment, which are the subject of other regular reports to Audit and Governance.
- 3.6 It is also important to note that the Council's housing services are delivered across various teams in the Council (Community Housing and Homelessness, Property Maintenance, Revenues and Engineering Services being the main ones). In this regard the Community Housing and Homelessness service has taken a lead and developed quarterly and annual assurance checklists, which all areas of housing service delivery will be asked to sign-off on at service manager level. These checklists once signed will be passed to the Service Manager – Community Housing and Homelessness to check for completeness.
- 3.7 In addition, the Social Housing Charter Working Group will consider evidence gathered from these service areas. In the event of material partial or non-compliance, this group will consider action plans and monitor progress to ensure full compliance. This group comprises staff across the range of these service areas as well as members of East Lothian Tenants and Residents Panel.
- 3.8 The Service Manager – Community Housing and Homelessness will prepare the Annual Assurance Statement with a summary report for the Audit and Governance Committee each year for approval before the deadline of 31 October under normal circumstances, noting the extension date of 30 November 2020 as referenced at paragraph 3.2.
- 3.9 Relevant managers across the Housing teams are expected to be aware of the regulatory requirements and impacts of non-compliance and immediately advise the Service Manager – Community Housing and Homelessness of any such instances. The SHR has not provided a prescriptive list of material non-compliance examples, but it is felt these would be in the areas of Health and

Safety breaches reported to the Health and Safety Executive, Data Protection breaches reported to the Information Commissioner's Office, Care Inspectorate or Scottish Social Services Commission interventions or regulatory failures.

- 3.10 The Council has determined that it has fully complied with the regulatory framework for the 2019/20 year.
- 3.11 For the first six months of 2020/21 full compliance has not been achieved in the area of gas safety checks. The legal requirement is that the landlord must conduct a gas safety check within 12 months of the previous one. Due to a combination of tenants self-isolating and shielding due to Covid-19, out of time cases totalled 212 at its peak in June 2020. With easing of lockdown constraints and the suspension of shielding, and targeting of the out of time cases, all properties unable to be accessed were re-booked in accordance with HSE and Gas Safe advice. The Council can now confidently report full compliance with in this area with no cases currently out of time and has resumed normal practice in this area, albeit with Covid-19 risk assessments in place. The Audit and Governance Committee may wish to note the fantastic efforts of staff to restore the Council's performance in this area.
- 3.12 Due to Scottish Government imposed lockdown restrictions around carrying out normal day to day repairs and house moves, the Council was unable to fully deliver services (as with all other social landlords) in these areas until the Scottish Government indicated the lifting of the housing market suspension and the re-start of construction related activity. The Council has fully complied with the legislative requirements related to Coronavirus placed on it during the height of the lockdown but was unable to deliver normal services in full. The Council, however, is not of the view that it did not comply with the regulatory framework during this period, but would accept that normal service delivery was curtailed in light of the pandemic.
- 3.13 In dealing with the pandemic, both operationally and in developing new ways of working, the Council has been unable to advance work around the data capture and reporting against all of the protected characteristic groups under the new regulatory framework. It is understood that the SHR will not begin measuring this until April 2021 and the Council is now developing its application forms and IT systems to attempt to meet this target date.
- 3.14 The SHR expectation is that the Annual Assurance Statement is brief confirming compliance or otherwise. In the event of material non-compliance a statement of how this will be addressed must be included.
- 3.15 The statement when signed should be made available to tenants and service users.
- 3.16 In April each year the SHR publishes an engagement plan for each landlord. This is informed by the Annual Return on the Charter (ARC), Scottish Government homeless statistics, previous engagement with the landlord and the new Annual Assurance Statement going forward. East Lothian Council's current engagement plan can be found at:
<https://directory.scottishhousingregulator.gov.uk/2019%20Documents/East%20Lothian%20Council%20EP.pdf>

4 POLICY IMPLICATIONS

- 4.1 The new regulatory framework, and in particular the requirement to produce an Annual Assurance Statement will give tenants, service users and stakeholders greater confidence in the delivery of the Council's Housing Services.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have significant impact on equality, the environment or economy. The Council already collects data on most of the protected characteristics of existing tenants, new tenants and housing list applicants, which in turn informs housing policy and service delivery notwithstanding the requirement to capture information on all of the protected characteristic groups, which is now in hand.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – None
6.2 Personnel – None
6.3 Other – None

7 BACKGROUND PAPERS

- 7.1 Link to SHR web-pages on the amended Regulatory Framework:
<https://www.housingregulator.gov.scot/for-landlords/advisory-guidance/recommended-practice/annual-assurance-statements-advice-for-landlords-on-temporary-changes-to-our-regulatory-approach-in-response-to-covid-19#section-1>

Appendices:

- Appendix 1 – Annual Assurance Statement
Appendix 2 – Internal Audit Assurance Report
Appendix 3 – Summary requirements for Local Authorities and RSLs
Appendix 4 – Evidence List

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DESIGNATION	Service Manager – Community Housing and Homelessness
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DATE	12 November 2020

Appendix 1

Scottish Housing Regulator
Buchanan House
58 Port Dundas Road
Glasgow
G4 0HF

Date:

Dear Sir/Madam,

East Lothian Council – Annual Assurance Statement

Subject to the areas detailed below, we can confirm that the Council complies with the regulatory requirements set out in Chapter 3 of the Regulatory Framework. This includes that we:

- ❖ Achieve all of the standards and outcomes in the Scottish Social Housing Charter for tenants, people who are homeless and others who use our services.
- ❖ Comply with our legal obligations relating to housing and homelessness, equality and human rights, and tenant and resident safety.

The following areas are highlighted:

Annual Gas Safety Inspections

Properties where tenants were shielding for Covid-19 purposes from 23 March 2020 led to access being denied for the annual gas safety check. All properties unable to be accessed were re-booked in accordance with HSE & Gas Safe advice. These properties were all accessed by 24 September 2020 and at this date we again became fully compliant. This was due in full to Covid-19.

Reporting against all the protected characteristic groupings

We do not currently collect and hold data for all of the protected characteristics specified by the Equality Act 2010. In dealing with the pandemic, both operationally and in developing new ways of working, the Council has been unable to advance work around the data capture and reporting against all of the protected characteristic groups under the new regulatory framework. It is understood that the SHR will not begin measuring this until April 2021 and the Council is now developing its application forms and IT systems to attempt to meet this target date. This is due in part to Covid-19.

General

Although other services were restricted because of the Scottish Government's response to the Covid-19 pandemic, we do not view these restrictions to be in breach of the regulatory framework.

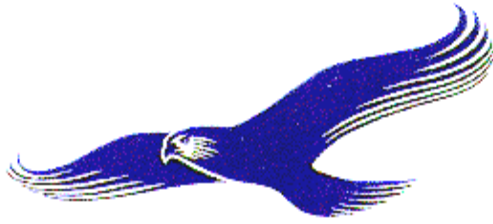
We confirm that we have seen and considered appropriate evidence to support the level of assurance.

We approved our Annual Assurance Statement at our Audit and Governance Committee on 24 November 2020.

I sign this statement on behalf of East Lothian Council's Audit and Governance Committee.

Yours sincerely

Duncan Stainbank
Service Manager – Internal Audit



Appendix 2

East Lothian Council Internal Audit Assurance Report

From:	Duncan Stainbank, Service Manager – Internal Audit Stuart Allan, Senior Auditor
To:	Douglas Proudfoot, Head of Development James Coutts, Service Manager – Community Housing and Homelessness
Date:	12 November 2020

SHR Annual Assurance Statement

1. Background

The Council is required to provide the Scottish Housing Regulator (SHR) with an Annual Assurance Statement (AAS) to confirm its compliance with the regulatory requirements set out in Chapter 3 of the SHR's Regulatory Framework. This includes that the Council:

- achieves all of the standards and outcomes in the Scottish Social Housing Charter for tenants, people who are homeless and others who use our services;
- complies with all legal obligations relating to housing and homelessness, equality and human rights, and tenant and resident safety.

This is the second year that the Council has been required to prepare an Annual Assurance Statement and submit it to the SHR. We note that on 31 August 2020, the SHR made further adjustments to its regulatory approach in response to Covid-19, including allowing landlords more time to complete their Annual Assurance Statement by extending the deadline this year from October 2020 to November 2020. The SHR also published new advice for landlords on completing Annual Assurance Statements and noted that the landlord should "have assurance and evidence that it is meeting all of its legal obligations associated with housing and homelessness services. Covid-19 has had a profound effect upon landlords' ability to meet its legal obligations across a range of activities. Where a landlord is unable to meet a legal obligation, the landlord should note the non-compliance and specify whether the failure to comply is due to Covid-19 or not. Where the landlord judges the non-compliance to be material it should be specifically disclosed in the AAS."

The scope of the audit is to obtain, review and consider the adequacy of the evidence available to support the Council's compliance with the regulatory requirements set out in Chapter 3 of the SHR's Regulatory Framework. The audit covers compliance with the following five areas of regulatory compliance as set out in Chapter 3:

- Assurance and Notification – the Council is required to prepare an Annual Assurance Statement, submit it to the SHR and make it available to tenants and other service users; have assurance and evidence that it is meeting all of its legal obligations associated with housing and homelessness services, equality and human rights and tenant and resident safety; notify the SHR of any tenant

and resident safety matters; and make its Engagement Plan easily available and accessible to its tenants and service users;

- Scottish Social Housing Charter Performance – the Council is required to report its performance in achieving or progressing towards the Charter outcomes and standards;
- Tenants and Service Users Redress – the Council provides tenants and other service users with the information they need to exercise their right to complain and seek redress;
- Whistleblowing – the Council has effective arrangements and a policy for whistleblowing by staff and elected members, which it makes easily available and which it promotes;
- Equality and Human Rights – there is assurance and evidence that the Council considers equality and human rights issues properly when making all of its decisions, in the design and review of internal and external policies and in its day-to-day service delivery.

2. Findings

2.1 Assurance and Notification

Key findings are:

- The Council prepares an Annual Assurance Statement, which it submits to the SHR and makes available to tenants and service users.
- The service area has introduced a quarterly Assurance and Notification Self-Assessment Checklist, which requires to be signed off by appropriate managers/representatives and is included as part of the evidence gathering regarding regulatory compliance. One area of non-compliance has been highlighted – for the quarter April to June 2020, the checklist for Engineering Services highlighted that “properties continue to be inaccessible for Gas Servicing due to Tenants Shielding for Covid-19 purposes. All properties unable to be accessed have been re-booked in accordance with HSE and Gas Safe advice. The number of properties with a landlord’s record out of time has now remained around 200 for some time in line with the number of residents shielding and these shall be addressed as soon as access is allowed into the property”. As of 4 November 2020, we were further advised that “the properties referred to in the previous report as being inaccessible for Gas Servicing due to Tenants Shielding for Covid-19 purposes reached a peak of 212 on 20 June 2020. All properties unable to be accessed on the anniversary date were re-booked for the first available date in accordance with HSE and Gas Safe advice. All properties were then accessed for servicing and fully compliant again by 24 September 2020. This remains the current situation”. We note that shielding ended in Scotland from 1 August 2020 and that full gas safety was achieved less than two months after this date. No other regulatory compliance concerns were highlighted in the completed checklists.
- Confirmation was sought from the Council’s Health & Safety Adviser and Insurance & Risk Officer and we were advised that they do not have a record of any HSE investigations relating to tenant or resident safety, nor have the Council had any notification from our insurers of any concerns.
- The SHR’s Engagement Plan for East Lothian Council can be accessed on the Council’s website.

2.2 Scottish Social Housing Charter Performance

Key findings are:

- The Council submitted the 2019/20 Annual Return on the Charter to the SHR on 10 July 2020 and the Council has involved tenants, and where relevant other service users, in the preparation and scrutiny of performance information through the East Lothian Tenants and Residents Panel (ELTRP), the umbrella organisation for tenants and residents in East Lothian.
- In response to the Covid-19 pandemic, the SHR extended the deadline for landlords to report to their tenants and service users on their performance against the Scottish Social Housing Charter

from October 2020 to December 2020. We are advised that the Landlord Report to Tenants 2019/20, providing information on the performance of the Council as a housing provider, is currently being prepared and will be published prior to the December 2020 deadline.

- The 2020-23 Tenant Participation Strategy was approved by Cabinet on 10 November 2020.

2.3 Tenants and Service Users Redress

Key findings are:

- The Council provides tenants and other service users with the information they need to exercise their right to complain and seek redress, and responds to tenants within the timescales outlined in its service standards, in accordance with guidance from the Scottish Public Services Ombudsman (SPSO).
- Full details of the Council's Complaints Procedure are provided on the Council's website including the online Complaints, Compliments and Comments form; a link to the pages providing full details of the Council's Complaints Handling Procedure; advice on what to do if the person making the complaint remains dissatisfied with how the Council has handled their complaint; links to the SPSO and SHR; and details of the Council's complaints performance.

2.4 Whistleblowing

Key findings are:

- The Council has a Whistleblowing Policy in place, which is available to employees in the Human Resources section of the Council's intranet. The Policy was last updated in May 2018.
- A dedicated whistleblowing hotline and whistleblowing email address are both in place.

2.5 Equality and Human Rights

Key findings are:

- The Council has a detailed "East Lothian Equality Plan 2017-2021" in place, dated August 2017.
- All Council, Cabinet and Committee reports require an Integrated Impact Assessment to be carried out if the subject of the report affects the wellbeing of the community or has a significant impact on equality, the environment or economy.
- The SHR states that to comply with its duties in respect of equality and human rights "landlords must collect data relating to each of the protected characteristics for their existing tenants, new tenants, people on waiting lists, governing body members and staff. Local authorities must also collect data on protected characteristics for people who apply to them as homeless. Landlords who provide Gypsy/Traveller sites must collect data on protected characteristics for these service users." The nine protected characteristics, as per the Equality Act 2010, are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. We note that the Community Housing and Homelessness section do hold some relevant data, however they do not currently collect and hold data for all of the protected characteristics detailed in the legislation.
- We are advised by the service area that the requirement under the previous regulatory framework was to collect data relating to ethnic origin and disability only, which the Council complied with. However, the new framework requires data collection on all of the protected characteristics. This requires changes to IT systems and housing and homeless application forms and this work is now underway. We are further advised by the service area that the SHR's original plan was to measure compliance with this element of the new regulatory framework by April

2021. The Council will aim to have the mechanisms in place to capture and record this data by April 2021, but will require the cooperation of our software suppliers to enable this.

3. Conclusions

3.1 Subject to the two exceptions detailed in paragraph 3.2 below, we can confirm that the Council complies with the regulatory requirements set out in Chapter 3 of the Regulatory Framework. This includes that the Council:

- achieves all of the standards and outcomes in the Scottish Social Housing Charter for tenants, people who are homeless and others who use our services;
- complies with all legal obligations relating to housing and homelessness, equality and human rights, and tenant and resident safety.

3.2 The two areas of non-compliance that require to be highlighted in the Annual Assurance Statement are:

- Properties have been inaccessible for gas servicing due to tenants shielding for Covid-19 purposes. As of 4 November 2020, we were advised that the properties inaccessible for gas servicing due to tenants shielding for Covid-19 purposes reached a peak of 212 on 20 June 2020. All properties unable to be accessed on the anniversary date, and with a landlord's record out of time, were re-booked for the first available date in accordance with HSE and Gas Safe advice. All properties were then accessed for servicing and were fully compliant again by 24 September 2020. This remains the current situation. This failure to comply was due to Covid-19.
- The Community Housing and Homelessness section do not currently collect and hold data for all of the protected characteristics specified by the Equality Act 2010, however we are advised that they aim to have data collection and reporting requirements in place by April 2021, the date by which the SHR will start to measure compliance. This failure to comply is not directly due to Covid-19, however we are advised that much development work had to be put in abeyance as the service has prioritised its response to the pandemic.

REQUIREMENTS FOR LOCAL AUTHORITIES AND RSLs

Appendix 3

EACH LANDLORD MUST:

ASSURANCE & NOTIFICATION

- ✓ Prepare an Annual Assurance Statement in accordance with our [published guidance](#), submit it to us between April and the end of October each year, and make it available to tenants and other service users.
- ✓ Notify us during the year of any material changes to the assurance in its Assurance Statement.
- ✓ Have assurance and evidence that it is meeting all of its legal obligations associated with housing and homelessness services, equality and human rights, and tenant and resident safety.
- ✓ Notify us of any tenant and resident safety matters which have been reported to, or are being investigated by the Health and Safety Executive, or reports from regulatory or statutory authorities, or insurance providers, relating to safety concerns.
- ✓ Make its Engagement Plan easily available and accessible to its tenants and service users, including online.
- ✓ Register all requirements for providing data to us with the Information Commissioner's Office as a purpose for which they are acquiring data under the Data Protection Act 2018.

SCOTTISH SOCIAL HOUSING CHARTER PERFORMANCE

- ✓ Submit an Annual Return on the Charter to us each year in accordance with our [published guidance](#).
- ✓ Involve tenants, and where relevant other service users, in the preparation and scrutiny of performance information. It must:
 - agree its approach with tenants
 - ensure that it is effective and meaningful – that the chosen approach gives tenants a real and demonstrable say in the assessment of performance
 - publicise the approach to tenants
 - ensure that it can be verified and be able to show that the agreed approach to involving tenants has happened
 - involve other service users in an appropriate way, having asked and had regard to their needs and wishes.
- ✓ Report its performance in achieving or progressing towards the Charter outcomes and standards to its tenants and other service users (no later than October each year). It must agree the format of performance reporting with tenants, ensuring that it is accessible for tenants and other service users, with plain and jargon-free language.

SCOTTISH SOCIAL HOUSING CHARTER PERFORMANCE (CONTINUED)

- ✓ When reporting its performance to tenants and other service users it must:
 - provide them with an assessment of performance in delivering each of the Charter outcomes and standards which are relevant to the landlord
 - include relevant comparisons – these should include comparisons with previous years, with other landlords and with national performance
 - set out how and when the landlord intends to address areas for improvement
 - give tenants and other service users a way to feed back their views on the style and form of the reporting.
- ✓ Make our report on its performance easily available to its tenants, including online.

WHISTLEBLOWING

- ✓ Have effective arrangements and a policy for whistleblowing by staff and governing body/elected members which it makes easily available and which it promotes.

TENANTS AND SERVICE USERS REDRESS

- ✓ Make information on reporting significant performance failures, including our [leaflet](#), available to its tenants.
- ✓ Provide tenants and other service users with the information they need to exercise their right to complain and seek redress, and respond to tenants within the timescales outlined in its service standards, in accordance with guidance from the Scottish Public Services Ombudsman (SPSO).
- ✓ Ensure it has effective arrangements to learn from complaints and from other tenant and service user feedback, in accordance with SPSO guidance.

EQUALITY AND HUMAN RIGHTS

- ✓ Have assurance and evidence that it considers equality and human rights issues properly when making all of its decisions, in the design and review of internal and external policies, and in its day-to-day service delivery.
- ✓ To comply with these duties, landlords must collect data relating to each of the protected characteristics for their existing tenants, new tenants, people on waiting lists, governing body members and staff. Local authorities must also collect data on protected characteristics for people who apply to them as homeless. Landlords who provide Gypsy/Traveller sites must collect data on protected characteristics for these service users.

APPENDIX 4 – EVIDENCE LIST

- Submission of the Annual Return of the Charter (ARC) and Energy Efficiency Standards for Social Housing (EESH) reports each year to the Scottish Housing Regulator (SHR)
- Production of an Annual Landlord Report based on the ARC return in conjunction with the East Lothian Tenants and Residents Panel (ELTRP)
- Statutory returns to the Scottish Government
- Non-statutory benchmarking exercises with Scottish Housing Network
- Regular internal performance monitoring and reporting of key indicators to PPRC
- Regular transactional customer surveys and three yearly comprehensive tenant satisfaction survey
- Complaints monitoring and handling
- Regular reviews of housing policies and procedures in tandem with ELTRP, including integrated impact assessments where appropriate
- Social Housing Charter working group
- Financial monitoring and reporting
- HRA project board
- Adherence to Council Standing Orders
- Care Inspectorate reviews and reports
- Internal and external audit reviews and reports
- Management of public protection matters through the MAPPA process
- Detailed process mapping and procedures within all parts of the Service
- Formalised committee reporting cycles and submission of relevant reports
- Production of our Strategic Housing Investment Plan (SHIP)
- Regular contractor review meetings
- Compliance with procurement legislation and policies
- Business Continuity Plans
- Development Risk Register
- Service Plans
- Data Protection/GDPR reporting and monitoring framework in place
- Tenant Participation Strategy, including Tenant scrutiny framework
- Quarterly and Annual Assurance checklists
- Rapid Rehousing Transition Plan 2019-24
- Spheracloud Health and Safety incident reporting and risk assessments
- SHR Engagement Plan publically available
- Information on reporting Significant Performance Failures to SHR publically available
- Data collection of protected characteristics (partial)

