



Regulatory Notice September 2019

Registered Provider

Folkestone & Hythe District Council (Folkestone & Hythe DC)
(29UL)

Regulatory Finding

The regulator has concluded that:

- a) Folkestone & Hythe DC has breached the Home standard; and
- b) As a consequence of this breach, there was the potential for serious detriment to Folkestone & Hythe DC tenants.

The regulator will work with Folkestone & Hythe DC as it seeks to remedy this breach and will continue to consider what further action should be taken, including whether to exercise any of its powers.

The Case

As a local authority, Folkestone & Hythe DC is required to comply with the consumer standards. Folkestone & Hythe DC's landlord services, including repairs and maintenance and statutory compliance are provided by its arms-length management organisation, East Kent Housing (EKH). The regulator has received information from third parties and through a self-referral made by the council to the regulator which demonstrates that Folkestone & Hythe DC, through EKH, has failed to meet statutory health and safety requirements across a range of areas namely gas safety, fire safety, electrical safety, water safety and lift safety.

As part of the council's Internal Audit Plan for the year ahead, Folkestone & Hythe DC commissioned an internal audit of wider health and safety compliance. The audit concluded no assurance for fire safety, electrical safety, lift safety and legionella and limited assurance for gas safety.

In respect of fire safety, Folkestone & Hythe DC has a statutory duty under the Regulatory Reform (Fire Safety) Order 2005, to regularly assess the risk of fire in properties where it has responsibility for maintenance. Having identified the hazards and people at risk, it is also required to take precautions to prevent the risk of fire. The regulator has learned that up until mid-2019, Folkestone & Hythe DC had around 500 outstanding actions arising from Fire Risk Assessments. Some of the actions had been outstanding for a significant period of time.

Alongside specific statutory duties in relation to gas, electrical, lift and water safety, Folkestone & Hythe DC also has a duty under the Health and Safety at Work Act 1974 to conduct its undertakings in such a way that third parties (including tenants) are not exposed to risks to their health and safety. The internal audit identified failings across these areas of health and safety compliance. For gas safety there were around 120 Landlord Gas Safety Records outstanding in May 2019, the oldest being several months overdue. For electrical safety, no action was being taken to address unsatisfactory Electrical Installation Condition Reports including the high risk actions identified from these and no action taken to repair a significant number of faulty emergency lights. For water safety the audit found that little work had been undertaken to address a high number of Legionella Risk Assessment recommendations, some of which were outstanding for a significant period. For lift safety, faults were not rectified for up to 18 months. The audit noted the lifts were still in use during this time..

Since identifying these issues, Folkestone & Hythe DC through EKH has been carrying out a programme of works arising from the internal audit recommendations. This includes using additional resources particularly in relation to gas safety work. Mitigating actions have also been put in place while the programme is being delivered.

The Regulator's Findings

The regulator considered the case as a potential breach of part 1.2 of the Home standard which requires registered providers to have a cost-effective repairs and maintenance service in place, and to meet all applicable statutory requirements that provide for the health and safety of occupants in their homes. The regulator has concluded that Folkestone & Hythe DC did not have an effective system in place to allow it, through EKH, to meet its statutory health and safety responsibilities across a range of areas.

The regulator noted that Folkestone & Hythe DC has since been working to ensure the required statutory checks, and relevant safety actions, are completed. However, taking into account the breadth and scale of this failure, and the longstanding nature of the issues, the regulator has determined that it is proportionate to find a breach of the Home standard in this case.

Complying with statutory health and safety requirements is a fundamental responsibility of all registered providers because of the potential for serious harm to tenants. Folkestone & Hythe DC has demonstrated to the regulator the progress it has now made in addressing the internal audit report recommendations, however, taking into account the seriousness of the issues, and the duration for which tenants were potentially exposed to risk, and the number of tenants potentially affected, the regulator has concluded that it is proportionate to find that Folkestone & Hythe DC has breached the Home standard and that there was a risk of serious detriment to tenants during this period.

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

Folkestone & Hythe DC has put in place a programme to rectify these failures. The regulator will work with Folkestone & Hythe DC as it seeks to address the issues which have led to this situation, and will consider what, if any, further action to take in relation to the breach of the Home standard.