

---

**Executive Member Decision Session – Housing  
and Adult Social Services**

**27<sup>th</sup> April 2010**

Report of the Head of Housing Services

**Update on the access procedure for gas safety**

**Summary**

1. This report advises the Executive Member of the successful outcome of the trial change of procedure within Housing Services to evaluate the potential to use the Environmental Protection Act 1990, Schedule 3 to gain access to Council Homes to ensure that we comply with our statutory duties to ensure that gas appliances within our properties are serviced on an annual basis.
2. It recommends adoption of the new procedure to ensure that we have taken all reasonable steps to ensure that, where required, all council properties have a current gas safety certificate.

**Background**

3. As you are aware from the information paper brought on the 10<sup>th</sup> March 2010 there are a number of tenants who whilst they eventually allow access to their homes, there can be a significant period where the property does not have a current gas safety certificate. There are also a small number of tenants who repeatedly fail to allow the council access to carry out this essential works. In both these instances these tenants are not only placing themselves at risk but also their neighbours.
4. As a result of the above, Housing Services have trialed a different approach to gaining access to council homes to ensure that we comply with our statutory responsibilities. The approach trialed was the use of the Powers of Entry under the Environmental Protection Act 1990, Schedule 3 (Duty to Seek Out and Investigate Statutory Nuisances). See the attached procedure Appendix A.
5. The trial focused on the small number of tenants who have repeatedly failed to allow the council access with the most out of date certificates. 14 warrants were obtained from the Magistrates court. The Magistrates were fully satisfied with the evidence submitted for all 14 cases. In line with the new procedure the tenants were sent letters advising them that a warrant had been obtained and that it would be executed at least 7 days after the date of the letter unless they arranged an appointment. This resulted in half of the tenants making appointments, leaving 7 warrants needing to be executed.

6. A complete list of the actions can be found in Appendix 2. However it should be noted that three of the fourteen properties were found to have dangerous appliances including one with a major gas leak with a faulty appliance, which wasn't being used by the tenant. One amendment which we did make to the process as a result of the trial was to ensure that all correspondence clearly stated the need for the gas safety check irrespective of whether the tenant used their gas appliances.
7. Although the trial has concentrated on the tenants with the most significant out of date certificates, there are still more than 100 tenants that have not allowed the council access to their home and have out of date CP12 certificates.
8. In addition this year's new gas servicing programme has just started. The gas safety team will, in line with new procedure, make at least 3 attempts to gain entry to council homes within the CP12 12 month period. The procedure is timed so that the failure to gain access following the final 3rd letter will also mean that the CP12 is out of date. This will be the trigger to apply for a warrant. If granted by the magistrates the tenant will then be given one more opportunity to make an appointment within 7 days otherwise the warrant will be executed. Historical evidence indicates that initially this could be up to 50 homes each month where access cannot be gained so initially 50 warrants could be applied for each month.
9. This would have a significant impact on the resources of the Housing Standards and Adaptations team who are currently obtaining and leading on the execution of the warrants. An additional enforcement officer will be required to ensure that the council can discharge its legal duty.
10. It is anticipated that there will be a reduction in activity as the more proactive message about ensuring gas safety is brought to the attention of council tenants. However it is also recognised that we need to ensure that we have robust procedures in place to ensure that we have taken all reasonable steps.

## **Consultation**

11. Consultation with the tenants federation and staff. Given the timing of this report and the tenants federation meeting. A verbal update will be given regarding the tenants federation feedback at the Executive members briefing. The executive member can be advised that staff have welcomed this procedure in particular the gas safety team who have found trying to gain access using the breach of tenancy to be inadequate.

## **Options**

12. The options available to the Executive Member are:
  - **Option 1.** To adopt the new procedure as council policy, to ensure that council tenants, residents and the wider community are safe and that the council fulfil its statutory responsibilities to annually service its domestic gas appliances.
  - **Option 2** –Maintain the current procedure with no revisions

- **Option 3** to amend the above proposals

## **Analysis**

13. **Option One** – Will ensure that the council has taken all reasonable steps to ensure the safety of council tenants and their neighbours.
14. **Option Two** – The council's current processes have shown to be ineffective and do not ensure that the council meets its statutory responsibilities. If we have not taken all reasonable steps to ensure we do meet our statutory responsibilities the council could be subject to legal sanction. Regulation 39 of The Gas Safety (Installation & Use) Regulations 1998 states:

*'No person shall be guilty of an offence by reason of contravention of (the relevant regulation) in any case in which he can show that he took all reasonable steps to prevent that contravention.'*

15. In assessing if the council had taken all reasonable steps, we would need to show that we had taken all steps to gain access to the property, including the use of powers of entry. Historically the process we have employed is the use of letters giving appointments for the works, door knocking to follow up and where necessary the use of breach of tenancy regulations for failing to allow access. Unfortunately, even the threat of the loss of one's home has not had the desired effect of allowing access. The key difficulty here is that it is very unlikely that a court would give the council possession of a property in these circumstances.
16. In recent months, Housing Services have carried out an internal assessment against the Audit Commission's Key Lines of Enquiry. The area of Gas Servicing was identified as an area for improvement given the number of properties that did not have a current gas safety certificate.

## **Corporate Priorities**

17. The council's corporate strategy identifies wanting to make York a Healthy City as a priority. Ensuring any risk to health as a result of un-serviced gas appliances in its properties is minimised clearly supports this aim in its widest sense. Meeting our statutory requirements and minimising the delays and any subsequent financial costs associated with un-serviced appliances support the Effective Organisation priority.

## **Implications**

18. The implications arising from the report are:
- **Financial** – Additional Enforcement Officer resource will be required as a result of this new approach. The extent of this additional resource will be dependant upon the success of the procedure, the more properties that we gain access to without the need to execute a warrant, the less resource will be required. The cost associated with this additional resource, if a full time post is required would be £32k at the middle of the grade. The funding will be met from savings within the existing gas servicing budget.

- **Human Resources (HR)** – Additional post will be required to undertake this work on a permanent basis. The recruitment to this post will be in accordance with the councils HR procedures.
- **Legal** – These are outlined in the information report dated 10 March 2010 and updated within the body of this report
- There are no **Equalities, Crime and Disorder, Information Technology (IT), Property or Other** implications.

## Risk Management

19. The risks associated with the proposals in this report are low and score less than 16. In compliance with the Council's risk management strategy there are no direct risks.

## Recommendations

20. That the Executive Member agrees option 1, as outlined in Para 12, to adopt the new procedure as council policy.

Reason: To ensure that council tenants, residents and the wider community are safe and that the council fulfil its statutory responsibilities to annually service its domestic gas appliances.

## Contact Details

### Author:

#### Ruth Abbott

Housing Standards & Adaptation Manager  
Communities & Neighbourhoods  
Housing Services  
Ext 4092

### Chief Officer Responsible for the report:

Steve Waddington  
Head of Housing Services

Report Approved



Date 8<sup>th</sup> April 2010

### Specialist Implications Officer(s)

#### Legal

Rajoo Verren  
Locum Housing Solicitor  
Legal Services  
Ext. 1043

#### Finance

Debbie Mitchell  
Head of Finance  
Ext 4161

**Wards Affected:** *List wards or tick box to indicate all*

All

**For further information please contact the author of the report**

Annexes –

Appendix A Flow chart of new gas safety procedure and  
Appendix B Spreadsheet showing results of trial