
Summary Sheet

Council Report: Cabinet Meeting, 14 March 2016

Title: Report recommending the use of 'Warrant for Entry' under the Environmental Protection Act (1990) to Service Gas Appliances which have become non-compliant due to tenant non access.

Is this a Key Decision and has it been included on the Forward Plan? Yes.

Strategic Director Approving Submission of the Report:

Graeme Betts, Interim Strategic Director of Adult Care and Housing

Report Author(s) Mark Nearney

Ward(s) Affected All

Executive Summary : To ensure full compliance with statutory requirements and best in class performance it is proposed that the Council utilises a procedure under the Environmental Protection Act 1990 ("EPA") where the tenant has failed to allow the Council access to their property to carry out the required annual safety check/service of gas appliances. Failing to ensure all domestic heating systems are properly checked and serviced is one for the most severe health and safety risks faced by the housing service and our tenants.

This procedure would ultimately involve the Council seeking a warrant of entry to authorise access for gas engineers to cap off/safety check/service gas appliances in properties with internal gas meters following the anniversary date or the previous service date where access has been denied by residents.

Recommendations :

- 1.1 That Cabinet agree that RMBC uses powers under the Environmental Protection Act (1990) to allow forced entry to service gas appliances/cap off gas supplies for properties with internal meters only, when all other reasonable avenues to gain access for the annual gas service have been exhausted.

- 1.2 To agree to gaining approval to utilise the Environmental Protection Act (1990) where the property is abandoned and/or where the RMBC's tenant is in prison/otherwise incapacitated so long as all other reasonable attempts to service the gas appliance and make it safe have failed.
- 1.3 The Assistant Director of Housing, Asset Management and Neighbourhood Services to authorise (under delegated power) nominated officers to seek a warrant from the Magistrates' Court which is required to gain entry into the tenant's home to allow the Council to carry out the necessary gas safety check/service.

List of Appendices Included Yes including up to date set of KPIs, RMBC Gas Safety Policy and a brief summary of the EPA (1990).

Background Papers – None

Consideration by any other Council Committee, Scrutiny or Advisory Panel No

Council Approval Required Yes

Exempt from the Press and Public No

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1. Recommendations

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2. Background

- 2.1 As a landlord the Council must comply with its duties under Regulation 36 of the Gas Safety (Installation & Use) Regulations 1998 RMBC to safety check/service any domestic gas fittings (not including residents own cookers) and any flues that serve them within 12 months of the previous service anniversary date. RMBC’s aspiration is to ensure all of our resident’s gas fittings have a valid Landlord Gas Safety Record (LGSR) in place ensuring maximum safety for all our residents, their families and neighbouring properties.
- 2.2 Gaining access for Gas Servicing is an issue for all Local Authorities and RSL’s and the HCA have made risk and compliance a governance priority with some RSL’s being downgraded for non-access and non-compliance in this specific area. It has been widely reported in the housing press that non-compliance in regard to gas safety puts any organisation and its customers at great risk.
- 2.3 The current RMBC process for accessing properties to carry out an annual gas service utilises Injunction Orders to gain access, if other means of contacting the tenant for access has failed. This can be a lengthy process which has left properties without a valid LGSR in some cases for up to 12 months.

In the last 12 months RMBC Legal opened 132 new Gas Access cases. Of the 132 cases; 129 got to the 1st and 2nd letter stage and were

closed when service was complete. The 3 remaining cases were escalated to court. Of these: 1 was withdrawn, 1 RMBC obtained a court order and 1 case is still ongoing.

- 2.4 As well as the issue of failing to meet the gas servicing KPI, RMBC have significant health and safety concerns about the amount of time it takes to gain entry using the current legal process.
- 2.5 The powers under the Environmental Protection Act (1990) would be used only for those properties of RMBC where the gas is supplied by an internal meter. Where there is an external meter, the gas supply is capped without need for entry to properties themselves (but this only occurs when all reasonable attempts for access have been exhausted).
- 2.6 RMBC carry out a 10 month gas servicing cycle. RMBC commence access procedures for servicing gas appliances 2 months in advance of the service anniversary date, with a number of appropriate letters, communications and telephone calls to the resident taking place.
- 2.7 The proposal is that once all access attempts have failed (during the previous 2 month period), shortly prior to the anniversary date, the RMBC Partnering Manager (or delegated officer) will contact the Magistrates' Court to request an appointment at the next available hearing when an application can be made for a warrant of entry under the EPA. An appointment with the Courts would normally take no more than a week. Once a court hearing date is obtained, a letter will immediately be hand delivered to the tenant (or posted through the letterbox if the tenant is not at home) notifying them of the hearing details so they can attend and make representations to the Court, if they wish. The letter will also act as a very final opportunity for the tenant to allow the Council access to their property to carry out the gas safety check/service before the application for the warrant is formally made to the Court. It is believed the Health & Safety Executive (HSE) would view this as having taken all reasonable practicable steps to gain access should there be an incident during this period.
- 2.8 Should the tenant still fail to grant/provide access prior to the Court Hearing, RMBC's Partnering Manager (or delegated officer) will attend Court on the given date and present the case to the Magistrates. (which would take approximately 10 minutes) and then should the Court grant the warrant, on the same day RMBC staff (Housing Officer and CSD Gas Safety Team) will attend the property with a tradesperson and gain access via the warrant and change the locks. The appliances will then either be checked/serviced, or should there be no credit on the meter, the internal meter will be capped and the property will become both safe and compliant. If the property has been deemed "high risk" the Police may also attend to ensure staff safety.
- 2.9 If the tenant is not in attendance at the point of the warrant being

actioned a key safe will be fitted on or adjacent to the external door with the new keys inside. A notice will be placed on the door advising the tenant to contact Connect. A letter would be left inside the property explaining the locks have been changed and that the gas supply has been capped or the appliance has been serviced. Connect would go through a series of security questions (at any time night or day), with the resident seeking access. Once these security checks have been passed, the key safe code will be issued to the resident over the phone granting them immediate access back into the property. If temporary heating is urgently required for vulnerable/elderly tenants, RMBC will provide this via an emergency call out.

3. Key Issues

- 3.1 Utilising powers under Schedule 3, paragraph 2(1)(a) of the Environmental Protection Act (1990) RMBC should be fully compliant under Regulation 36 of the Gas Safety (Installation & Use) Regulations 1998 (usually within a maximum of 28 days of the previous anniversary date) This ensures RMBC are tough on non-compliance and provide safer homes and communities for our residents.
- 3.2 Using the EPA will also ensure RMBC meet all KPI targets within agreed timescales. These powers will ultimately ensure that all our residents and their neighbours are safe under the Gas Safety Regulations, as approximately 50 people die in the UK from Carbon Monoxide poisoning on an annual basis.
- 3.3 Other Local Authorities are using this legislation successfully and are obtaining 100% compliance and safety. It is a tried and tested method and delivers gas safety within council owned housing stock.
- 3.4 A warrant would only be sought for properties with an internal gas meter, as those with external meters can be dealt with by an alternative route as mentioned previously. On average it is anticipated that the EPA would be used for approximately 2/3 properties per month.

4. Options considered and recommended proposal

- 4.1 Alternatives to the currently used Injunction process include Possession Orders which are considered to take longer and more costly than to obtain Injunctions, and could potentially result in a resident losing their own home. For those reasons this is not recommended.
- 4.2 A minority of Registered Social Landlords (RSL's) are not entering into any legal process and are entering a property on the anniversary date and capping the meter. This course of action is recommended by Gas Safe Ltd – the governing body promoting Gas Safety in the UK. However, this is a high risk strategy as this has not been tested through

any Courts yet and could result in these RSL's being deemed to have acted unlawfully. For that reason this is not recommended.

- 4.3 It is proposed to use the Environmental Protection Act (EPA) because it is a legal and fair way to ensure access into tenant's properties ensuring RMBC can deliver 100% gas safety and compliance. It is an accepted method and is already used by other local authorities. Utilising the EPA is cheaper than the Injunction process and takes less time and does not pose the risk of the tenant losing their home unlike a Possession Order.

5. Consultation

- 5.1 Although the proposal is a change of approach by the Council, this is a legitimate and efficient alternative means of the Council discharging its statutory duty to carry out annual service gas safety check on its occupied housing stock. The proposal does not involve any variation to the Council's tenancy agreement as the existing tenancy agreement already requires tenants to give the Council access to properties to allow it to carry out the necessary annual gas safety check. Therefore, tenants have not been consulted on this proposal. However, if the proposal is agreed, it will be made very clear to tenants what the Council's approach is in the various letters that are issued as part of the new process.

6. Timetable and Accountability for Implementing this Decision

- 6.1 Assistance would be sought from the Legal Department to ensure that all legal paperwork is correct for Court, and once this has been agreed the first case can be taken to Court. Once a decision has been agreed the first case would be within a month from this date.

7. Financial and Procurement Implications

- 7.1 The cost to lodge a request for a Warrant is £20 compared to £280 for an Injunction Order. The resident would be recharged for all charges incurred by RMBC.
- 7.2 Adopting the new procedure recommended in this report will save RMBC (and therefore tenants) £260 per injunction case and will save time as an Injunction Order can take up to 4 months to go through the Courts. The Injunction Order instructs the resident to make an appointment with RMBC enabling RMBC to gain access and service the gas appliances; the resident may not adhere to the Injunction Order which leads to significant delays in gaining access as the Council have to take further proceedings in the Court to enforce the injunction order. Under the Environmental Protection Act, it is one visit to Court and access to the property should be achieved the same day under the power of the warrant issued by the Court.

8. Legal Implications

- 8.1 The proposed EPA procedure requires the Council to establish before the court that the lack of an annual gas safety check amounts to a statutory nuisance. There are potential legal arguments to counter such a finding, but on balance it is felt that the Council could successfully argue that a statutory nuisance does arise in those circumstances. Ultimately that will be a decision for the court on a case by case basis, but is worthy of note that a number of other Authorities are currently successfully using the proposed procedure under the EPA.
- 8.2 All necessary paperwork in the proposed process must be in order before attending Court to ensure that the correct court process has been followed, and so the Magistrates are able to understand the seriousness of the cases put before them. Assistance will be sought from the Legal Department in this regard.

9. Human Resources Implications

- 9.1 As the access process is already managed daily by RMBC existing staff there are no HR implications. The only "extra" to the current process is the need for the RMBC Partnering Manager to attend Court. Again this will only be for a minority of properties where all other avenues for access have been exhausted and where there is an internal gas meter. The RMBC Legal Team would need to offer some assistance in the first few cases.

10. Implications for Children and Young People and Vulnerable Adults

- 10.1 There is a potential risk in the proposed procedure that we could be leaving vulnerable individuals/families without a gas supply for cooking/heating for a short period. However we can supply temporary heating (if required by the tenant) if we cap the gas supply but under the Gas Safety regulations RMBC has a legal requirement to access and carry out a gas service of any new installation or by the previous service date.
- 10.2 For every case where we have to take a tenant to Court or where we will cap the gas supply, RMBC's Partnering Manager will be working closely with our Housing Team, to notify them of the address and any proposed or pending actions. Any vulnerable residents will be identified and discussed at this stage and plans established. Every effort will have been made (over the previous 2 months) to contact the resident and this process may well highlight who our most vulnerable residents are and potentially result in them gaining additional support/ assistance for their needs.

11. Equalities and Human Rights Implications

- 11.1 It is a requirement that as much information about the current tenant is held on tenancies file. In order to comply with duties imposed on the Council under the Equality Act 2010, on each case where action is required, a prior check of the files will always be made to identify any need for the Council to modify its ordinary approach to cater for the needs of a particular tenant so for example should the resident have learning difficulties, the process for gas safety is communicated and explained to them in an appropriate manner.

12. Implications for Partners and Other Directorates

- 12.1 RMBC Contract/Service Partners will need to ensure that they have fully adhered to the access procedure/processes in order to fully comply with the Court enabling them to grant a warrant.

13. Risks and Mitigation

- 13.1 The Magistrates will not grant access if RMBC documentation is incorrect or inaccurate, or there appears to be a lack of competence and due diligence in RMBC staff and its representatives. Agreed procedures set out by the Court must be obeyed and RMBC must evidence that the Gas Safety Policy has been adhered to at every stage and every reasonable attempt has been made to contact the resident. With continued gas safe training for RMBC staff in conjunction with a positive and joined up working relationship with the Court Clerk this risk should be mitigated.
- 13.2 Regulation 36 of The Gas Safety Regulations applies to all private and social landlords to ensure the safety of all residents living in rented accommodation and their neighbours. Adhering to the Gas Safety Regulations sends a clear message to all landlords and residents in the Borough that RMBC are serious about Gas Safety.
- 13.3 Once RMBC have gained entry into the property (via the warrant) it is imperative that appropriate staff attend on the agreed time and day to mitigate any potential resident allegations at a later date.
- 13.4 Appropriate consideration needs to be taken by RMBC for risks present in the property, such as dangerous dogs or drugs paraphernalia etc. and appropriate risk assessments are reviewed and adhered to prior to access.
- 13.5 It is vital that Connect are made aware of such warrants on a daily basis and the measures that they need to take in order to allow the legal resident to gain access back into their property are in place should the locks have been changed.
- 13.6 It is vital that Housing Teams and Partnering Managers work closely together so that all reasonable avenues for access under RMBC's Gas Safety Policy and Procedures have been exhausted ensuring

vulnerable and non-English speaking residents receive the appropriate help and assistance regarding gas safety and servicing.

14. Accountable Officer(s)

Dave Richmond Assistant Director Housing Asset Management and Neighbourhoods

Approvals Obtained from:-

Strategic Director of Finance and Corporate Services: - Stuart Booth

Director of Legal Services: - Catherine Parkinson

Head of Procurement (if appropriate):- NA

Name and Job Title

Mark Nearney – Contracts Service & Development Manager