

# Breach of Regulation and Resulting Requirement to re-set Affordable Rents (Briefing paper for Officer Delegated Decision). January 2024

## 1. Summary

Cambridge City Council implemented a rent policy for Affordable rent setting in 2016, which was technically and legally incorrect. Although the policy sought to minimise costs to tenants whilst still making new build feasible, it failed to implement a rent reduction, so tenants were legally overcharged (whilst paying significantly lower rents than the Council was legally permitted to charge).

This issue came to light in late 2023, and will be corrected in 2024, with rent corrections and refunds to affected tenants. This issue was formally reported to the Regulator of Social Housing in January 2024. The initial estimate of the financial impact has been included in the HRA Budget-Setting Report (January 2024); further updates will be provided during 2024/25.

## 2. Background

Rent-setting is covered by complex regulations, and government guidance, which have changed over the years. The Regulator of Social Housing now regulates Council housing; the Council is required to comply with their Rent Standard and Consumer Standards.

Officers became aware of rent regulation issues affecting other landlords in late 2023 and began to review rent-setting at Cambridge City. Two issues emerged, and officers sought and received legal advice. This identified that decisions taken in prior years had led to errors in rent-setting with some tenants overcharged. The Regulator was contacted proactively in December 2023, and formally notified of a breach in January 2024.

Whilst two rent-setting errors were identified, one (relating to social rents) is still under investigation. This paper relates only to the issue affecting Affordable rents, where the investigation has concluded, and a decision can be taken.

### 3. Issue Identified

3.1 From 2013, Councils and other Registered Housing Providers were able to let new homes at Affordable Rents (ARs) with ARs capped at 80% of market rent. The City Council began a programme to deliver new Affordable Rented homes but decided to cap Affordable Rents (ARs) at the Local Housing Allowance (about 55% of market rent) plus an addition for a garage or parking space, to make them more affordable (but still higher than social rents).

3.2 From April 2016, the Welfare Reform and Work Act 2016 introduced a requirement for landlords of Affordable Rented homes to reduce rents on those homes by 1% pa for four years from April 2016.

3.3 Cambridge City Council considered that setting rents on new build homes higher than they needed to be for the scheme to proceed, and then reducing them each year, would disadvantage low-income tenants moving into those homes. Instead, it set its rents lower and increased them each year. The table below shows this impact:

Government Regulation	Local Implementation
Rent up to 80% of market rent (MR)	Rent capped at Local Housing Allowance – around 55% MR
Rent decreases each year by 1% Rent would drop to a maximum of 76% of the 2015 MR	Rents increased by the increase in the Local Housing Allowance each year. Rent started at around 55% of the 2015 MR – increased to around 60% of 2015 MR

3.4 Whilst these rents were maintained throughout the four-year period at around the Local Housing Allowance Threshold – and well below the 80% of market rent level legally required for an Affordable Rent, the failure to apply the policy as set out in the Act, is a breach of regulations. The policy meant that the increase in 2020 was lower than was otherwise allowed.

3.5 In addition to failing to fully apply the 1% rent cuts for the four years from April 2026, the authority also applied incorrect rent reviews in a small number of these cases as a result of identifying service charges separately from rent as part of what should

have been an all-inclusive affordable rent and treating the service charge element differently for the rent when applying the rent review.

#### 4. Advice Taken and Options considered

4.1 Officers sought legal advice from specialist housing lawyers, Trowers and Hamblins. The advice was clear that this approach was not legally permissible and must be treated as a breach.

4.2 Officers reviewed the options, including modelling the impact of the rent re-setting and of refunding affected tenants who had overpaid against the new, recalculated rents.

4.3 Further legal advice from Cornerstone Chambers confirmed the breach, and that there are no alternative options available to the Council in terms of dealing with the affected tenants and their rent accounts.

4.4 The legal advice also supported consulting tenants to move away from notionally breaking down the all-inclusive rent into rent and service charge elements to mitigate against future errors. This consultation has been issued.

#### 5. Impacts: on tenants, on finance and on reputation

5.1 Impact on tenants: no tenants will owe the Council money. Some 214 current tenancies will be owed refunds, varying depending on how long they have been in their tenancy, and whether they pay their rent in full or receive partial or full Housing Benefit. A full communications plan has been drafted and initiated with letters to tenants sent in January 2024. Setting correct rents from April 2024 is a key priority, in order to ensure tenants are paying corrected rent as soon as possible. Refunds will be processed after this, as there is not sufficient capacity to process them whilst setting rents.

5.2 Financial Impact: the exact amount of refunds will not be known until they are calculated individually for each account. The initial estimate of the scale of the refunds is £1.15M. The reduction in these rents will have a significant impact on income to the Housing Revenue Account, reducing rents by £187,120 in 2024/25, and continuing to impact on income throughout the life of the HRA Business Plan. This will mean that the Council has to borrow more money to finance essential works to tenants' homes, reducing its ability to invest in improving services.

5.3 Equalities Impact: the impact of setting rents at a lower level than was legally required has benefitted low-income tenants since it was introduced in 2013. Whilst those tenants have been technically overcharged (due to a legally non-compliant policy), they have paid lower rents than would otherwise have been the case. No equalities impacts have been immediately identified, but officers are aware of the need to be careful in designing and implementing a refund policy and process, to ensure fair treatment to tenants from a variety of circumstances, including those on benefits, or those whose personal circumstances have changed since they began their tenancy.

5.4 Reputational Impact: clearly, admitting to an error in prior rent calculations may impact negatively on the Council's reputation. However, it is vital that the Council is open and honest and demonstrates a willingness to identify and learn from failings. Officers will review and identify key lessons learned from this issue (including the need to seek legal advice on any policy implementation which may, or seems to, vary from the absolute letter of the legislation or guidance).

## 6. Delegated decision by Officer

This paper is produced to provide evidence for the Director of Communities to take a decision on rent-setting, delegated by the Executive Councillor of Communities.

1. To Recalculate Affordable Rents for tenants whose tenancies commenced before the first Monday in April 2019 (taking account of government requirements to reduce rents in 2016/17/18 and 19, but retaining the benefit of any increases at lower than was otherwise allowed), and
2. To provide resources for a team to work on these affected rent accounts, in order to calculate overpayments, so that refunds can be paid after April 2024.

Note that further decisions on details of the refund scheme may be required.