

HUNTINGDONSHIRE DISTRICT COUNCIL

Title/Subject Matter: Investigation of complaints against Luminus Housing Group
Meeting/Date: Council – 25th February 2015
Executive Portfolio: Executive Leader, Councillor J Ablewhite
Report by: Managing Director
Wards affected: All Wards

Executive Summary:

Briefly, allegations were originally made at the full Council meeting of Cambridgeshire County Council on 22nd July 2014 in respect of issues raised by tenants in respect of their landlord, Luminus Housing Group (Luminus). Luminus responded in writing, rebutting the allegations, a copy of which was published on the County Council's website. The allegations were then the subject of an interview on Radio Cambridgeshire on 23rd September 2014. The County Council referred the allegations to the Homes and Communities Agency as the appropriate regulatory body. At the same time, the matter was raised at the District Council and Councillor Paul Bullen was invited to submit documentation in support of the allegations to Huntingdonshire District Council as the Local Housing Authority for investigation.

Recommendation:

That the contents of the report attached at Appendix 1 are noted and that Council agree that there is no further issue to investigate.

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1. PURPOSE?

- 1.1 The report brings to a conclusion the investigations into complaints raised by County Councillor Bullen on behalf of some tenants about Luminus.

2. WHAT IS THIS BACKGROUND TO THE REPORT

- 2.1 The initial investigation into the complaints was carried out by an independent housing expert, Ms Goode, who worked through the individual cases to clarify the allegations and to guide the areas for further review. The report attached at Appendix 1 is the final report which takes the recommendations from Ms Goode's review and tests the balance of evidence.

3. TIMETABLE FOR IMPLEMENTATION

- 3.1 The report concludes that none of the complaints have been upheld, so this report now concludes the matter as far as the District Council is concerned.

4. CONSULTATION

- 4.1 Both Luminus and Councillor Bullen have been sent advanced copies of the report in order to correct any factual errors.

5. REASONS FOR THE RECOMMENDED DECISIONS

- 5.1 There are no further issues to investigate.

6. LIST OF APPENDICES INCLUDED

Appendix 1 - Investigation of Complaints against Luminus Group

BACKGROUND PAPERS

Deborah Goode Associates: Investigation of complaints against Luminus Housing Group October 2014.

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INVESTIGATION OF COMPLAINTS AGAINST LUMINUS GROUP

1. INTRODUCTION

- 1.1 Huntingdonshire District has been asked to examine allegations by County Councillor Paul Bullen relating to Luminus Group (Luminus). Briefly, the allegations were originally made at the full Council meeting of Cambridgeshire County Council on 22nd July 2014. Luminus responded in writing, rebutting the allegations, a copy of which was published on the County Council's website. The allegations were then the subject of an interview on Radio Cambridgeshire on 23rd September 2014. The County Council referred the allegations to the Homes and Communities Agency as the appropriate regulatory body. At the same time, Councillor Bullen submitted extensive documentation in support of his allegations to Huntingdonshire District Council (the District Council) as the Local Housing Authority for investigation.
- 1.2 It is important to state at the outset that, whilst the District Council is a Local Housing Authority and has a symbiotic relationship with Luminus for the provision of accommodation and associated services that enables the District Council to fulfil its legally prescribed housing duties, the District Council has no authority over Luminus and has no powers to compel it to act. The District Council, as a Local Housing Authority, nevertheless, has an interest in the activities of one of its agents, an organisation which is also one of its strategic partners.
- 1.3 This relationship could create the perception that the District Council has not been impartial and objective when investigating the allegations. For this reason, the allegations have been treated in particular ways, as follows:-
- ◆ the extensive documentation submitted by Councillor Bullen has been reviewed by an Independent External Consultant, Deborah Goode of Deborah Goode Associates (DGA). Deborah Goode is an Independent Housing Consultant who has extensive experience in this field and formerly worked for the Audit Commission;
 - ◆ Deborah Goode's analysis identified which allegations required no further investigation and analysed those where more work was required, including key questions to be pursued;
 - ◆ during the next stage of the enquiry, the Council sought information on the questions identified by Deborah Goode. A comment on the purpose and approach taken here is necessary. As has been said, the Council has no jurisdiction over Luminus and in relation to some parts of the allegation, no qualification to express the views – for example, the question of the disputed garden boundary is a matter for the Court to determine. In these cases, the approach will be merely to set out relevant facts. Where the Council does have some responsibility, for example, the treatment of tenants, actions are identified;
 - ◆ furthermore, during the Council's enquiries, evidence from all sides has been taken and, subject to preserving anonymity where it is requested, it has been shared for comment;
 - ◆ it has been stated that factual data has been presented. The aim has been to provide a clear explanation of the events that took place, the issues involved and the potential implications of differing versions of the events where a single explanation cannot be identified. This enables the Council to verify whether it needs to take any action. It also provides

data, which could be subject to scrutiny by the Council's relevant Overview and Scrutiny Panel. The intention of the latter would be to demonstrate that complete scrutiny of the allegations has taken place. This will hopefully refute the perception that the Council has not been impartial and objective. It could also lead to the establishment of arrangements that will have mutual benefit for the Council and for Luminus. These might also be extended to other registered providers.

Finally, it is worth noting before commencing with the examination of the allegations, that all parties have co-operated fully with the enquiry.

2. THE ALLEGATIONS

- 2.1 The report by DGA takes the documents submitted by Councillor Bullen to coalesce around six key allegations. For consistency and ease of reference, a similar structure is maintained in the current report.

Allegation 1. Home Loss Payments - Luminus has a County Court Judgement against it for failing to pay statutory Home Loss payments to their tenants; Luminus has pressurised elderly tenants into foregoing their legal right to Home loss payments, and Luminus has misled both Cambridgeshire County Council and Huntingdonshire District Council regarding the payments for Home Loss.

- 2.2 This Allegation concerns former tenants of five identified properties who did not receive Home Loss payments when they moved out of their homes prior to a formal scheme commencing in the summer of 2009, which would have eventually required them to leave. Entitlement to Home Loss Payment arises when a tenant has been in a property for at least one year and is moving out permanently due to redevelopment or clearance. In the case under investigation, one of the tenants who moved out of Cromwell Square on 26th May 2008, made a legal claim for payment of the Home Loss payment plus interest. The claim was submitted on 24th April 2014. Luminus decided to settle the claim before it got to Court and on 15th May 2014 made the payment that was requested. Luminus has stated that it was a commercial decision to settle the claim.

- 2.3 Luminus argues that at the time its interpretation of the legislation was that there was no displacement or pressure on the residents to move for some time and so Home Loss payments did not apply. Councillor Bullen says that, as of 2014, Luminus has a County Court Judgement against it, which in his view is a conviction for failing to make a statutory Home Loss Payment. Technically, Luminus has a County Court Judgement against it but this is because it chose to settle the claim and not because the case was heard in Court and fault was determined. This needs to be made clear because Councillor Bullen, on more than one occasion, including at the County Council meeting on 22nd July 2014, has asserted that it has been proved that Luminus has failed to make statutory payments. As things stand, it is only possible to state the facts with no definitive view on the actions that were taken. Luminus points out that it has obtained expert legal opinion that entitlement to Home Loss payment when moving out of a property early is a legal "grey area".

- 2.4 The second consideration under this allegation is whether Luminus pressurised tenants to forego payments. Subsequently, this has been extended to include an allegation that Luminus bullies some tenants. Councillor Bullen says he has spoken to tenants of Cromwell Square who had

signed a Home Loss payment waiver. He was accompanied by a solicitor who can confirm what was said. The individual who accompanied Councillor Bullen has been contacted and she has verified that when acting as a friend of Councillor Bullen an elderly couple stated to them that they had signed a paper to the effect that they agreed that by moving early, they would not receive a payment they would have been entitled to had they waited until they were moved compulsorily. Neither Councillor Bullen nor the friend has a copy of a signed waiver. And, unfortunately, Luminus does not have access to records from the time. As a way forward, the DGA report recommends that tenants are interviewed to seek to understand the circumstances under which they felt “pressurised” to sign payment waivers. Relevant evidence has been provided by Luminus’ tenant representatives, the Luminus Tenant Services Consultative Forum and the Oak Foundation Forum, as follows:

“Over many years we have come into contact in our roles as tenant representatives with hundreds, if not thousands of Luminus tenants. Whilst some of them have not always been 100% happy, there has never been a situation where we have found or heard of a tenant feeling they have been bullied or treated with disrespect by Luminus. We also know there are many ways we can report problems to either Luminus or others, such as local councillors, their MP and even the local press. Tenants are not backward in coming forward, as we observe from the very public Residents Conferences, which are attended by Dr Abraham, Board members, councillors and the Police. It would be very surprising for such issues to go unnoticed. In addition, we regularly review customer satisfaction data and have no cause for concern”.

It is not uncommon that, whether or not it is justified, members of the public sometimes fear repercussions as a result of complaining to public sector or publicly funded organisations and instead approach local Councillors. This is well known within the District Council. The above statement directly addresses this point.

2.5 Moving on to events in 2014, the DGA report says:

“it is disappointing that Luminus allowed this to get to this stage. Although Luminus maintains it took a commercial decision to settle the claim, and presumably the other four cases, a more conciliatory approach might have seen Luminus attempt to resolve this at an earlier stage”.

While Luminus took a decision it was entitled to take, and were acting on legal advice they had been given a more conciliatory approach could have delivered an earlier resolution for all parties. In mitigation, it might be pointed out that in November 2013, the individual who subsequently brought the legal claim was asked by the County Council whether she wanted assistance with the Home Loss payment issue but this offer was declined. The legal claim was submitted less than six months after that. See also paragraph 2.8.

2.6 The extract from the DGA report above contains an important assumption here; that the commercial decision included the former tenants of the other four Cromwell Square residents. Luminus settled the court case on 15th May 2014. The DGA report (dated October 2014) states that Luminus “is also contacting four residents who moved out of Cromwell Square before the departure date...to make Home Loss payments at the level as set at the time by regulations and with interest”. Luminus made the payment at this time based on the expert legal opinion it had obtained more recently. The present position is that Luminus has attempted to contact all of the former tenants of

Cromwell Square and tenants of two of the properties received the payments on 3rd and 16th October 2014. The tenants of the other two properties are deceased with no surviving relatives so no payment has been made.

- 2.7 On the final aspect of this Allegation; that is, whether Luminus misled the County and District Councils, Luminus has said that it is “not aware of previous correspondence relating to this”. Councillor Bullen has been asked for this and has provided correspondence from the County Council to Luminus dated 7th March 2014, which unquestionably contains an assumed expectation that the individual who made the claim had received Home Loss payment. Furthermore, it is clear that Luminus had informed the County Council that every resident who had moved out had received the Home Loss payment. Luminus clarified the position to the County Council by email on 10 January 2014 and by letter as early as 23 March 2010 and again in a letter dated 17th March 2014. The position was that it had been explained to residents at the earliest opportunity that Home Loss payments would not be triggered until the construction of the new building was well under way in the summer of 2009. Residents were told that if they wished to move at any point prior to this date they would be doing so voluntarily and so the Home Loss payment would not be made. The particular individual concerned moved out in May 2008 to move to a property, which was close to family members and the position in respect of Home Loss payment was explained. The County Council has confirmed that it accepted the clarification relating to the trigger for Home Loss payment.

Allegation 2. Over-charging for Utilities - Luminus has overcharged tenants for utilities, which were in fact included in their rent.

- 2.8 The DGA report finds that over-charging for utilities, including payment of water rates, has not taken place but recommends that, to prevent similar misunderstandings from arising, Luminus should consider amending tenancy agreements to reflect the required payments.
- 2.9 Luminus welcomes the finding in the specific case identified by Councillor Bullen. Councillor Bullen does not accept this finding and has said that a tenant was told that he had to pay an additional £30 every fortnight and that this additional payment was to cover his water rates yet the rent the individual was paying included a charge of £6.21 per week for water. Luminus has explained that the individual had fallen behind with his payments and that Luminus came to an agreement with him, as is normal in such cases, that he would pay more than the stated weekly amount until he had cleared his debt. A statement for the individual's payments has been provided and the payments in question have been verified. Further on this matter, Councillor Bullen has also said that when tenants have failed to notify Luminus once they have had a meter fitted and, as a consequence, have paid twice for their water usage, Luminus has failed to pay back any over-payment. In response, Luminus has confirmed that if tenants fail to inform it they have had a water meter fitted and this is subsequently discovered, the tenants are immediately reimbursed for any payments they have made to Luminus for water usage after the meter was installed.
- 2.10 With regard to the recommendation that housing tenancy agreements are amended, Luminus states that this is not logical, practical or in accordance with established practice in the sector. Indeed, Luminus has pointed out that it would be bureaucratic, costly, impractical and probably confusing for tenants. Given that the last point is precisely what this recommendation is intended to

prevent, the practical solution of issuing an annual breakdown of the rent due is acceptable.

Allegation 3. Sheltered Housing / Warden Charges – Luminus has continued to charge elderly tenants for a warden or sheltered housing scheme when the facility was removed without notice some two years previously and no refunds have been paid to either tenants or, for those on Housing Benefit the local authority.

The DGA report is unable to reach a conclusion on this matter through insufficient evidence. That said, Councillor Bullen is of the view that the DGA report has not addressed the point of his complaint, which relates to the “Support Charge” or “Supporting People Charge” of between £6 and £8 per week paid between 2009 and March 2014. He says tenants were told that this charge was to pay for an on-site warden, which they had until the end of 2011 when the warden left and was never replaced. As soon as this fact was pointed out to Luminus by Councillor Bullen he says the charge was stopped. He further says tenants will state that they had no Warden Service whatsoever between the end of 2011 and March 2014 when the Roving Scheme started.

- 2.11 Luminus has said that there has never been a sheltered housing warden / manager at the premises identified by Councillor Bullen. One of the DGA recommendations is that the Council should seek to understand, through discussion with affected residents, the claim that a significant reduction in the sheltered housing service was implemented in advance of April 2014. Consequently, the Luminus Tenant Services Consultative Forum and the Oak Foundation Forum have provided the following statement:

“There is no evidence that the residents of the sheltered scheme at [Name Removed] have been charged by Luminus for services they have not been receiving for two years.

A number of us are residents of sheltered schemes, or have regular contact with sheltered scheme residents. We are satisfied that Luminus has not reduced or withdrawn support to its sheltered schemes or residents. Having had a detailed explanation about the launch of the “Embrace” service in April 2014 we are satisfied that all sheltered scheme residents were consulted on this in February and March 2014 and had plenty of opportunity to ask questions about the new arrangements. We think that Embrace is an enhancement to the sheltered housing service. We are pleased to hear the Luminus staff will be doing follow-up visits to all the sheltered schemes in November 2014 to ensure that residents fully understand the Embrace Service and how Luminus is continuing to support older residents”.

This statement appears to be conclusive.

Allegation 4. Mutual Exchange – Luminus allowed an existing tenant to move to a property in an unacceptable condition through a mutual exchange, did not respond to the tenant’s requests for repairs to be carried out and charged her for the repairs after she moved out.

- 2.12 The case of the mutual exchange leading to a tenancy between April 2013 and May 2014 raises the rights and responsibilities of the tenant and of the landlord to carry out repairs to a property. This general issue is exemplified in

two documents submitted by Councillor Bullen, which are copies of letters from the tenant requesting repairs to be carried out.

- 2.13 Taking the question of Luminus' responses to the tenant first, the DGA report recommends that the record of repairs to the property during the tenancy period is obtained. Luminus has made the record available. The problems with the property centre on faulty electric sockets, the dilapidated state of the kitchen and an intermittent fault with the central heating boiler. The repairs record contains several entries relating to the identified problems but a comment is needed here. There does not seem to have been a direct response to the two letters. On this point, Luminus has no record of receiving the letters. The repairs record does, nevertheless, indicate that a number of the works were addressed just prior to the letters being written but not all of the requested works were carried out, such as repairs to the kitchen (and some other matters), because some were deemed to be the legal responsibility of the tenant. The legal position has been verified.
- 2.14 The last point relates directly to the general one of the tenant and the landlord's rights and responsibilities for repairs to a property. In this case, the tenant was re-charged for a number of repairs after the tenancy had been terminated. The DGA report confirms that re-charging for repairs etc. is standard across the housing sector and is a common element of tenancy agreements. The report goes on to suggest that because some of the re-charged items had previously been reported to Luminus, some discretion might have been applied to the level of the re-charge. The list of re-charged items has been compared with the repairs record for the property during the tenancy period and with the mutual exchange inspection statement, which would have been signed by the tenant. The suggestion that there might have been flexibility because items have previously been reported suggests that Luminus should have taken some responsibility for them but the two documents provided by Luminus relating to required repairs indicate that the tenant was aware most of them were her responsibility. The three "other" items for which the tenant was charged are not disputed. The question, which naturally follows is whether the previous tenant was sent a bill for re-chargeable work because there is a strong sense from the tenant's letter of 22nd July 2013, that the property was not in a suitable state when she moved in. Luminus has confirmed that the previous tenant was sent a bill for repairs and the works were carried out. In conclusion, the matters recommended for further investigation have been followed up and have been found to be in order.
- 2.15 While the legal position is clear: Luminus is not technically at fault, it is equally understandable that a tenant might accept a tenancy in a worse condition than he / she would prefer simply to secure the move. In this situation, if discretion was to be applied, it could also have been done during the tenancy. It is understood that this was the third time that the tenant had made a mutual exchange, so she should have been aware of the implications of leaving the property in an acceptable condition. As the word "discretion" implies, Luminus was entitled to take the decision that it took. A view can be taken either way, so it is necessary to try to establish whether this case is symptomatic of a wider trend. To this end, satisfaction data for Luminus tenants has been obtained. Figures for relevant measures compiled according to national methods show Luminus is in or is within 1% of the Upper Quartile.

Allegation 5. Disputed Garden Boundary - Luminus is attempting to reclaim the garden from a disabled tenant and that it continues to harass the tenant to give up land which is

covered by a secure tenancy agreement. A key feature of this allegation is that the tenancy agreement did not include a plan.

2.16 The DGA report contains the following analysis:

“Luminus has pursued a legal route to reclaim the land which, on the evidence I have seen, cannot be said to constitute harassment as alleged by Councillor Bullen. However, it is unfortunate that this case has taken so long to resolve and that clarity about the Reserved Land was not sought by Luminus through the tenancy agreement, and an agreed plan, at the outset. Luminus should review its procedures for the letting of all future properties where development opportunities are sought”.

This analysis is accepted by Luminus. Councillor Bullen has said that the matter is now for the Court but that the way the individual was treated by her landlord should be examined.

2.17 This is a matter for the Courts. At a Court hearing took place on 4th February 2015, the Judge found in favour of Luminus and granted full costs of £4,300 and damages of £500 to Luminus. The tenant now has 42 days to return the land to Luminus.

Allegation 6. Photographic Evidence and Condition of Property

2.18 Councillor Bullen has submitted a considerable amount of photographic evidence from around 2006, which appears to show the condition of two properties at the time they were let and during the tenancies of particular tenants occupying a single property. It is evident there are particular circumstances, which mean that it is appropriate to treat them separately and not necessarily indicative of a wider trend.

2.19 With regard to the particular case, meetings directly with the Luminus Group Chief Executive and, separately, mediation by an independent accredited mediator paid for by Luminus have been offered. This was in 2006; that is, considerably before the current allegations were made. These facts alone suggest that the case should be treated differently from others. The offers have either been not accepted or declined. A further offer of mediation by a mediator of the tenants' choice was made on 29th September 2014. This offer also has been declined. In the circumstances, it is difficult to see how this matter can be taken forward.

2.20 The question of the general state of properties is a separate matter. The DGA report recommends that that it would be useful to understand the trends and outcomes of surveys conducted by Luminus of new tenants about the condition of their properties in recent years. In addition, it would also be helpful to understand trends in complaints received and whether Luminus receives a high number of complaints about the condition of its properties at the Lettings stage. This information has been provided and no significant levels of dissatisfaction are evident. The information is attached as at Appendix A hereto. It indicates at question 6 that 85% of respondents have positive views about the way Luminus deals with repairs and maintenance compared with the figure of 86% for the Upper Quartile nationally and at question 2 a similar situation exists with regard to the quality of homes.