

Subject:	Housing Electrical Works		
Date of Meeting:	27 March 2018		
Report of:	Executive Director Neighbourhoods, Communities & Housing		
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Ward(s) affected:	All		

FOR GENERAL RELEASE**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 At Audit & Standards Committee on 19 September 2017, recommendations were made that the Housing service should review and resolve (in conjunction with the contractor) discrepancies between work carried out and the charges for electrical work under the Term Partnering Agreement between the Council and Mears Ltd, (now Mears Group Plc) dated 30 March 2010 ("the Contract"). An update was provided to Audit & Standards Committee on 9 January 2018.
- 1.2 This report considers the outcomes of the work undertaken to date and sets out the implications of the findings of the review, highlighting the proposed next steps.

2. RECOMMENDATIONS:

- 2.1 That Audit & Standards Committee note the content of the report.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 The Council and Mears entered into a long term partnership agreement in 2010 for the provision of a full range of property maintenance services and other associated works primarily but not exclusively for those properties held within the Council's Housing Revenue Account. This report relates solely to domestic rewire activities undertaken as part of the planned maintenance programme set out in that Contract.
- 3.2 In 2016/17 finance officers raised queries about the charges relating to domestic rewires undertaken under the Contract. These queries were initially investigated as a desktop exercise by Housing who reviewed contract and works order information stored within the Mears job management system ("MCM"). The results were flagged up with Internal Audit colleagues who carried out a small number of site visits alongside Housing surveyors to verify the accuracy of the data.
- 3.3 The audit review identified nine areas for further investigation.

- 3.4 Of the nine categories some relate to the interpretation of the specification and the application of the contract schedule of rates as amended and updated since the commencement of the contract in 2010. The issues in respect of each are set out in the confidential Appendix 1 together with recommendations as to specific aspects of the claims arising in relation to electrical work streams.

Contract provisions relating to dispute resolution procedures

- 3.5 The Contract in the Standard Form of Contract for Term Partnering 2008 as amended provides that the parties “shall work together and individually in the spirit of trust, fairness and mutual co-operation”. As such, it is the expectation that the parties shall act reasonably, adopting the partnering ethos. The Contract sets out an initial hierarchical methodology of problem solving involving discussion and consultation in relation to issues arising under the Contract, followed by a reference to a chosen Alternative Dispute Resolution (ADR) procedure to be agreed by the parties if the matter has not been resolved locally.
- 3.6 There are a number of ADR options available. The Contract terms promote flexibility in accordance with the partnering ethos and it is open to the parties to agree, possibly with the advice of the Partnering Advisor named in the Contract (Trowers & Hamlin LLP), the form that procedure will take. Each has its own cost implications but generally they are usually cheaper and quicker than submitting disputes to the jurisdiction of the courts. In any event, the courts will expect that the dispute resolution procedures have been complied with, before court proceedings are commenced.
- 3.7 The choice of the more formal ADR procedures embarked on should the pipeline of negotiation procedures in the contract not result in a resolution of the issues are for the most part confidential, subject to FOI rights. They may take the form of, for example, conciliation, expert determination or adjudication all of which involve the appointment of a third party who will objectively consider the issues and reach a decision on those issues. The choice of process should be agreed by the parties (with the assistance of the Partnering Advisor if necessary), and enable agreement to be made in the context of clear and defined issues whether they be of fact, matters of expert determination of a technical issue or of law in interpretation of contractual terms.
- 3.8 Proceedings, whether in the form of an ADR procedure or through the courts, are not to be advised until all options for a considered and pragmatic approach to problem solving have been explored which is proportionate in terms of cost, the importance to the parties, the management of the contract and the delivery of the services going forward.

Contract management

- 3.9 It should be recognised that some of the issues raised as part of this review relate to different interpretations of the contract by the council and contractor. It is accepted that, in some cases, there were issues with the management of the contract in the early years and issues of interpretation were not raised or discussed with contractors through the usual contract management arrangements. This has led to delay on the part of the Council in addressing in a

meaningful manner some of the issues which are considered in this report and which the council recognises should have been reviewed in a more timely manner. In addition to specific issues arising in relation to certain work streams a number of more general learning points have been highlighted with the assistance of the audit review. The following are recommendations for improving the contract management procedures going forward.

- Robust compliance with the contract variation procedures with a full audit trail of changes involving staff with specialist technical knowledge as appropriate.
- Change the current practice of recording costs for different orders on one “main” works order.
- Where an issue relates to interpretation of the contract terms including the specification and the application of a schedule of rates that the issues are dealt with promptly using the problem solving hierarchy in the contract and the methodology to be applied in future works agreed.
- Strengthen council processes for receipt, recording, analysis and review of electrical certification received from the contract.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

4.1 None directly related to this report.

5. COMMUNITY ENGAGEMENT & CONSULTATION

5.1 None directly related to this report.

6. CONCLUSION

6.1 This report sets out the actions undertaken to review each of the nine categories identified. It also sets out the pathway proposed for taking these forward for further consideration.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

7.1 The budgets for the responsive repairs service to council tenants (including electrical works outlined in this report) is held within the Housing Revenue Account (HRA). The appendices to this report are held in part 2 of this agenda and they describe the actions to be taken by officers in each of the categories and the possible sums involved. In most cases this involves pursuing through the normal contract resolution processes with Mears as described in the body of the report as well as review of current processes. The financial implication of this is therefore unknown at this stage and will depend on the outcomes agreed by both parties. Any costs due to or from the council will be managed through HRA Property and Investment budgets.

Finance Officer Consulted: Monica Brooks

Date: 16/03/18

Legal Implications

The legal implications are contained within the body of the report and of the Appendices

Lawyer Consulted: Judith Fisher

Date: 14.03.2018

Equalities Implications:

- 7.2 There are no equalities implications arising directly from this report.

Sustainability Implications:

- 7.3 There are no sustainability implications arising directly from this report.

Any Other Significant Implications:

- 7.4 No health and safety implications were identified as a result of the works reviewed and properties visited by Housing officers.
- 7.5 Housing surveyors have carried out inspections to 199 of the 265 properties covered within categories six and eight. For the 66 properties that have not been inspected, all have had multiple attempts to gain access including telephone contact and letters. 12 of these are now leasehold properties. The 44 tenanted properties where there has been no access will be referred over to the tenancy teams to carry out tenancy audits and any new information will be shared when available. No health and safety concerns have been identified relating to the jobs inspected. Five emergency repairs have been raised associated with the visits but these were not related to the works being inspected.

SUPPORTING DOCUMENTATION

Appendices:

Appendix 1 – (copy circulated to Members only)

Documents in Members' Rooms

None

Background Documents

None