

**HOMES & COMMUNITIES COMMITTEE**  
**23 NOVEMBER 2020**

**GAS SERVICING ACCESS ARRANGEMENTS**

**1.0 Purpose of Report**

1.1 To provide Committee with details of our current access procedures to carry out gas servicing and an opportunity to consider alternatives, including incentives, to improve access and ensure the Council continues to comply with its statutory duty under the Gas Safety (Installation and Use) Regulations 1998.

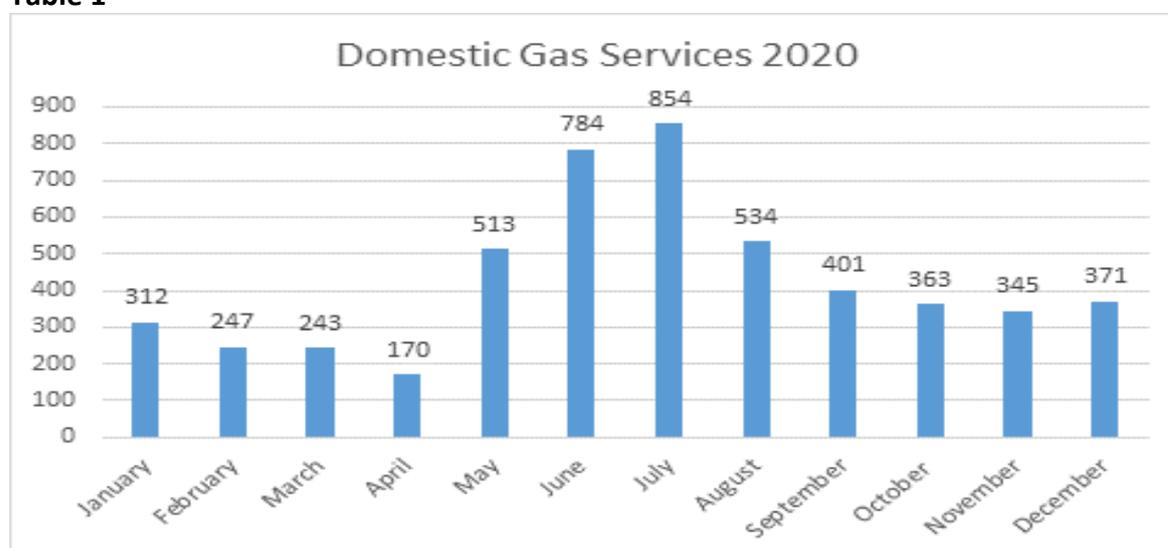
**2.0 Background Information**

2.1 Under the Gas Safety (Installation and Use) Regulations 1998 landlords are required to ensure that each and every fitting, appliance and flue, to which that duty extends, is checked for safety within 12 months of being installed and at intervals of not more than 12 months since it was last checked for safety.

2.2 As a landlord the Council must comply with its duties under Regulation 36 of the Gas Safety Regulations 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. Our aspiration is to ensure all 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.

2.3 Gaining access for Gas Servicing is an issue for all Local Authorities and Registered Social Landlords (RSL's) and the former Homes & Communities Agency (HCA) 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 regarding gas safety puts any organisation and its customers at significant risk. Table 1 indicates the number of properties requiring access by Newark & Sherwood District Council over the annual programme, a total of 5137 every year. The budget for the work is Circa £250,000/annum.

**Table 1**



## 2.4 The Current Process

- 2.5 NSDC follow an 11-month gas servicing cycle. This means we commence access procedures for servicing gas appliances 1 month in advance of the service anniversary date, with a number of appropriate letters, communications and telephone calls to the resident taking place. This will shortly be reduced to a 10-month cycle in an attempt to improve access rates before properties reach their service anniversary date.
- 2.6 The current escalation process for accessing properties where other means of contacting the tenant for access described above has failed, utilises Injunction Orders issued by the courts. This can be a lengthy process which has left properties without a valid LGSR in some extreme cases for up to 6 months.
- 2.7 The escalation commences following 3 failed attempts by our contractor to gain access to carry out the work, supported by written letters of appointment requesting access each time, the matter is then passed to our Tenancy & Estates team to commence the legal process.
- 2.8 This process includes writing to the tenant again in the form of a legal “Letter Before Action” making a final request for access before the matter proceeds to court. If this fails a court hearing is requested to obtain an injunction to allow access under the terms of the Tenancy Agreement, namely clause 3g which states:

*“We have a right, upon giving you 24 hours’ written notice, to come into your home at all reasonable times to inspect it or to carry out work in your property or an attached property. The Council, our employees, contractors, subcontractors and agents also have this right. (We do not have to give you 24 hours’ notice in an emergency).”*

- 2.9 An injunction is then usually provided by the Court authorising the Council to gain entry to the property to carry out the work. The cost of this process, including the forced access if still required, is recharged to the tenant. The costs recharged will be in the region of £500.
- 2.10 Historically, failure to allow access would require a court application every time that a tenant would not allow access. More recently, we obtain “in perpetuity” injunctions so access can be gained in future years without a further injunction application and therefore costs to the Council and the tenant.
- 2.11 Current non –access performance is as follows:

Cases sent to legal for final drafting but cancelled <u>before</u> sending to court:	1
Cases that were sent to court and issued but then withdrawn (due to tenant providing access prior to being served with application)	21
Cases we have obtained an order to adjourn generally with liberty to restore (as tenant had provided access after being served but before court hearing)	7
Cases we have obtained an injunction:	3

Current cases we have sent to court and waiting hearing date/have hearing in the future	9

### **3.0 Proposals**

3.1 The current arrangements and ultimate sanction of an injunction have proven highly successful over the years with the pre- pandemic numbers of properties without a valid LGSR seldom reaching double figures.

3.2 Despite this success we should not be complacent as we rarely achieve 100% compliance, currently 99.7% and alternative means of gaining access, including incentives, are always worth considering. This is especially important following the COVID-19 pandemic which has resulted in even greater difficulty in accessing properties, due to tenant’s concerns over admitting gas engineers into their home and the heightened risk of contracting the virus. The remainder of this section of the report considers these alternatives.

### **3.3 Forced Entry**

3.4 Some social landlords force entry to properties in order to undertake the gas safety inspection. Whilst this may be quicker and cheaper than pursuing court action for an injunction this is certainly not a recommended course of action. Whilst such a landlord may be seeking to comply with their obligation to service the gas appliances it is a potential breach of a tenants rights as there is no legal right to force access to a property, even if all other routes have been exhausted. Landlords who undertake such action are at risk of claims being brought against them by their tenants.

### **3.5 Possession Orders**

3.6 Alternatives to the currently used Injunction process include Possession Orders which are considered to take longer and are more costly than to obtain Injunctions and could potentially result in a resident losing their home. For those reasons, as a responsible landlord we would not propose this action as proportionate or good practice.

### **3.7 Use of the Environmental Protection Act**

3.8 The use of the Environmental Protection Act (EPA) is a legal way to ensure access into tenant’s property more quickly than through an injunction. It is an accepted method, used in the correct circumstances and is already used by other local authorities to gain access for gas safety checks. Utilising the EPA is generally 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. However, not all Local Authorities consider their use appropriate, as the EPA provisions only empower the Local Authority to access a property to investigate whether there is a statutory nuisance or not. It does not necessarily, therefore, provide a legal power to enter to do annual gas safety checks and servicing. The advice of our Senior Legal Officer is that their use involves a high risk of challenge, judicial review and being sued for falsely entering the premises and preventing the tenants’ quiet enjoyment of same. For these reasons this option is also not recommended.

### 3.9 Capping Off External Meters

3.10 From time to time we do encounter situations where we cannot arrange access with the tenant, perhaps where they have been taken into care or are otherwise away from the property for a protracted period. In situations such as this, where an external meter is present, we would recommend the gas supply is capped off at the meter (approx. costs £100). This will be subject to a pre-capping protocol, requiring a risk assessment of the individual's circumstances, with reference to the tenancy team and authorisation to cap from the Tenancy and Estates Manager or a Senior Housing Officer. Once the tenant returns, we can reinstate the supply and carry out the gas safety checks within 24 hours, or sooner if required. This safeguards the property and surrounding area from the risk of gas explosion, where the property is left unoccupied.

### 3.11 Service Interval Timers

3.12 Where tenants persistently fail to provide access for the annual gas service and safety check, the use of Service Interval Timers could assist with gaining access. These devices: -

- start a countdown to let the tenant know the service is becoming due
- display a message on the screen to remind the tenant that a boiler service is due.
- If the service is overdue, the programmer may be set to switch off the heating system, to ensure the tenant's safety and provide a telephone number to contact us to arrange the service.

or

- Provide an override and alarm to allow the boiler to continue running intermittently to create a nuisance situation rather than to shut the system down completely.

3.13 These devices are relatively inexpensive and easy to install and we would recommend considering their use only where tenants persistently deny access.

### 3.14 Incentives

3.15 Some organisations enter tenants into a monthly prize draw, for *honouring their first appointment for the gas service*. The winner would be selected at random each month and awarded the advertised prize. The cost of the incentive would be shared with the gas servicing contractor, as they benefit considerably from improved first-time access.

3.16 We would recommend a six month trial of such an incentive at say, £200/month to establish if this improves our first-time access rates and reduces the number of tenants referred to the courts for an injunction. The annual cost of this would be around £2400/annum with the Council meeting half of this cost.

3.17 It won't be possible to properly assess the financial impact of the scheme until any trial period has ended and the results are properly scrutinised. Following this, the scheme could continue, or be scrapped if there were no tangible benefits arising.

3.18 Vinshires would contribute 50% as they will also benefit from scheme through reduced operating overheads, as their administration costs and costs associated with engineer abortive visits are reduced.

3.19 For the Council, we know for each property referred to court for failed access, there are court costs of c.£500 when an injunction is obtained. If the tenant allows access before the date of the actual hearing any costs incurred up to that point are not recharged - around £300 in wasted staff time. This year to date we have had 21 such cases, if just 4 of these had been incentivised to allow access early we would have recovered our annual costs involved for the scheme.

#### **4.0 Equalities Implications**

4.1 Activities to restrict service may affect vulnerable tenants to a greater extent although the arrangements in place are there to protect the health and safety of all by achieving timely access to servicing. Significant preparation work around risk assessing individual circumstances is in place to understand and mitigate any impact.

#### **5.0 Digital Implications**

5.1 There are no digital implications arising from this report.

#### **6.0 Financial Implications**

6.1 There are no material financial implications arising from this report. However, it should contribute to Members' understanding of the way in which resources are allocated to meet our statutory and regulatory responsibilities to ensure we keep our tenants and residents safe in their homes.

6.2 The cost of supplying service interval timers is approximately £150. Based on non-access cases that have reached court over the last year, the financial implication would be minimal and contained within the existing budget.

6.3 The costs of running the incentive scheme would be £1200 per annum which again would be contained within existing budgets and save resources that are involved in the preparation of legal papers, attendance at Court, home visits and chasing letters.

#### **7.0 Community Plan – Alignment to Objectives**

7.1 The performance of the gas servicing contract contributes to the delivery of the objective "To create more and better homes through our roles as landlord, developer and planning authority".

#### **8.0 Comments of Director(s)**

8.1 Our landlord responsibilities relating to gas safety are of the highest priority. This report explores additional tools available that will enhance an already high performing service. Representatives at Housing Advisory Group held on 29/10/20 supported the use of capping and interval timers only in exceptional circumstances. There were mixed views around the use of incentives. Additional cost information has been added at 3.16 to show the potential impact on costs of increased first time access.

#### **9.0 RECOMMENDATION(S)**

9.1 Committee is asked to note the content of the report and to approve the recommendations to:

- Cap off external gas meters in the circumstances described at 3.9
- Install Service Interval Timers in the circumstances described at 3.11
- Pilot the incentivising of the gas servicing process as described at 3.14

**9.2 Reason for Recommendation(s)**

To improve the performance of the gas servicing programme to 100% compliance and to further enhance tenant safety. Particularly given the current challenges around access whilst we live with Covid-19.

**Background Papers**

Nil

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