OVERVIEW AND SCRUTINY COMMITTEE

EVICTION REVIEW PANEL TASK AND FINISH GROUP

REPORT AND RECOMMENDATIONS

FEBRUARY 2010
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1 INTRODUCTION

1.1 The purpose of the report is to set out the Recommendations of the Eviction Review Panel Task & Finish Group. The Group commenced a review of eviction review process following a decision of the City Council on 18 May 2009 and called on witnesses from Gloucester City Homes, Gloucester Law Centre, Gloucester CAB, Gloucester City Homes Customer Forum, the City Council’s Cabinet Member for Housing and Health and officers of the City Council.

1.2 The Group met on the following dates –

- 19 November 2009
- 3 December 2009; and
- 12 January 2010

2 MEMBERSHIP

2.1 The Task and Finish Group had cross-party membership comprising of –

Councillor Jim Porter – Spokesperson / Chair
Councillor Gordon Heath
Councillor Mark Hobbs

3 TERMS OFREFERENCE

3.1 The Terms of Reference, based on the resolution of Council, were approved by the Overview and Scrutiny Committee on 7 December 2009 as follows –

1. That the continued operation, future management and constitution of the Eviction Review Panel be reviewed with a report being brought back to Council as soon as possible in the new civic year.

2. That the Housing Management Operator (Gloucester City Homes) be asked to consult with tenants on this issue as part of the review following the consideration by Scrutiny.

3. That in the interim and pending the results of the review and consultation process referred to above, the ERP operates as an advisory group of the Council providing advice to Gloucester City Homes on eviction appeals issues, as currently.

4. That an unlimited pool of non-executive Council Members be set up to act as independent members of the Review Panel on an interim basis. Three Members be drawn from this pool to serve on each hearing with a Housing Officer and voluntary sector representative; with a quorum of two Members.
4 CONCLUSIONS AND RECOMMENDATIONS

4.1 From the outset the Task and Finish Group agreed that there must be clarity and certainty in the eviction process and procedures, and that all possible information and evidence must have been carefully considered. The process does not start when the first recovery action is taken, but starts when the tenant first takes on a property and therefore has a duty to maintain the payment of rent, whilst at the same time Gloucester City Homes has a responsibility for ensuring that the tenant is helped and supported throughout their tenancy.

4.2 The tenant is responsible for ensuring that their rent is paid on time and should do everything possible to keep the payments up to date. If they are facing problems they should alert Gloucester City Homes as soon as possible and ensure that the debt does not reach a level, or the period of non/late payment means, that recovery action is required. At the same time, Gloucester City Homes have a duty to monitor the payments of rents and take any necessary action following a default in payment. However, Gloucester City Homes work goes far beyond just the collection of rent as they will seek to support the tenant and help them to maintain the necessary resources to stay in their home. Gloucester City Homes Financial Inclusion Strategy and Worklessness Strategy seeks to maximise the incomes and benefit take up of all tenants.

4.3 However, there will be occasions when, for one reason or another, a tenant may face possible eviction from their home and the process and procedures to be followed must be open, transparent and fair. Any eviction process should have the necessary checks in place, such as a formal review procedure or a right of appeal. The Task and Finish Group’s remit was to consider the nature and scope of the appeal / review process that should be put in place.

Recommendation 1

4.4 Day to day management of the Council’s housing stock was transferred to Gloucester City Homes in 2005. Since that time Gloucester City Homes have been responsible for the collection of rents and for taking any necessary court action following a default in payment. Both the City Council and Gloucester City Homes submissions to the Task and Finish Group supported the transfer of responsibility for eviction appeals / reviews to Gloucester City Homes as opposed to the City Council convening an “Eviction Review Panel” consisting of Councillors, as was previously the case prior to the amendment to the Council’s Constitution in March 2009. However, submissions from the CAB, Law Centre and Customer Forum supported an independent review of eviction cases and contended that City Councillors provided the necessary degree of independence.

4.5 On balance, the Task and Finish Group supported the transfer of responsibility for eviction appeals / reviews to Gloucester City Homes and this was supported by the Council’s previous decision to transfer day to day management of the housing stock to Gloucester City Homes.
However, the Task and Finish Group wished to ensure that there was some continued independent involvement in the process and this is covered in a later issue for further consideration.

Recommendation 1

It is Recommended that responsibility for the administration and consideration of Eviction Appeals / Reviews be transferred from Gloucester City Council to Gloucester City Homes.

4.6 Having concluded that responsibility for the administration and consideration of Eviction Appeals / Reviews should be transferred to Gloucester City Homes, the Task and Finish Group reflected on some additional issues that they would ask Gloucester City Homes to include in their eviction process. The following “Issues for Consideration” are therefore drawn to the attention of Gloucester City Homes for further deliberation when drawing up that process.

Issue for Consideration A

4.7 In their submission to the Task and Finish Group, Gloucester City Homes had clearly shown that there were rigorous procedures to be followed before any court action was taken. It was also noted that Gloucester City Homes do some excellent work to ensure that tenants are taking up as much of their benefit entitlement as they could, so as to provide them with the means of paying their rent. In addition, the Courts now place far more emphasis on the “reasonableness” of action being taken to evict a tenant. That said, experiences from Councillors who had sat on the Eviction Review Panels had shown that there were occasions when new evidence came to light at a very late stage and that this evidence often supported the need for the tenant to remain in the property.

4.8 The evidence identified the need for an appeal / review mechanism and it was noted that Gloucester City Homes had stated that they could introduce an appeal / review procedure whereby the tenant could ask for their case to be reviewed by two senior managers, with the tenant being present. Whilst the Task and Finish Group supported such a move, they were concerned that this would remove the independence provided by the current arrangements, that not only involved City Councillors but was also often supported by representatives from either the CAB or Law Centre.

4.9 Whilst fully supporting the involvement of City Councillors in the appeal hearings, the Task and Finish Group were concerned that the limited availability of Councillors to attend the Panel meetings had resulted in hearings being postponed, which in turn could result in the tenant’s debt increasing and no further action being taken in the meantime. There had been a number of occasions where the Eviction Review Panel meeting had to be cancelled as only one Councillor had attended. This
resulted in the tenants being informed that they would have to return for another hearing at a later date.

4.10 The Task and Finish Group supported the need for some independence being maintained in the process and would therefore ask that Gloucester City Homes, when drawing up their Appeal / Review process include a provision for a representative from either the CAB, Law Centre or other advisory group to be in attendance during the consideration of an appeal / review and, where possible, a City Councillor should also be present. The Task and Finish Group would therefore ask Gloucester City Homes to draw up an agreed protocol for seeking a City Councillor to attend the hearing (and whether this would be a formal request to appoint Councillors as Outside Body appointments) but would not wish Councillor unavailability or non-attendance to result in the appeal / review being postponed.

Consideration A

A1. That when drawing up an Eviction Appeal / Review procedure, Gloucester City Homes give careful consideration to including a recommendation for the attendance, at an appeal / review hearing, of a representative from either the CAB; Law Centre or other advisory group (in the role of an advocate) and, where possible, a City Councillor; and

A2. That prior to consultation with tenants, the Eviction Appeal / Review procedure be submitted to the Council for consideration.

Issue for Consideration B

4.11 The Task and Finish Group debated at some length as to when in the process the tenant should have a right of appeal / review of their case. It was clear from the evidence provided that it was for the Courts to issue the necessary legal orders for evictions to take place and that there was a right of appeal as part of the court procedure. However, the Task and Finish Group had already concluded that there was a need for an internal appeal / review process and so there was a further question as to whether this right of appeal / review should be either before the case went to court or before the court order was actioned.

4.12 The Task and Finish Group noted the pre-action protocols and that Gloucester City Homes had rigorous procedures to be followed before taking a case to court. This would suggest, therefore, that there was no need for a further review to be carried out before the courts considered the case. This would suggest, that once the courts had considered the case, there should be no need for any further consideration of the issues. However, evidence had shown that there had been a number of occasions when the Eviction Review Panel had heard new information that supported the tenant’s case and, for whatever reasons, this had not come to light at an earlier stage.
4.13 On balance, the Task and Finish Group concluded that it was preferable to have a final right of appeal / review through an internal review process after the court hearing, so as to provide a final check before the court order was actioned.

**Consideration B**

It is recommended that, when drawing up the Eviction Appeal / Review procedure, Gloucester City Homes give careful consideration to providing a right of appeal / review to take place after the court hearing and before any court order is actioned.

**Issue for Consideration C**

4.14 The Task and Finish Group were concerned to hear that many tenants failed to seek any independent advice or support when facing a possible eviction. It was noted that Gloucester City Homes would always advise a tenant to contact either the CAB or Law Centre but could not force them to take up this advice.

4.15 The Task and Finish Group supported the need for all tenants to seek some sort of independent support and advice prior to submitting an appeal or seeking a review of their case. This would help to ensure that there was some merit behind the appeal / review being submitted.

4.16 In addition, the Task and Finish Group wanted to ensure that as much information as possible was provided to the tenant and as such, that the contact details of the CAB, Law Centre and any other advisory groups, together with the contact details of the respective Ward Councillor be provided to the tenant at the appropriate time, with the necessary encouragement for them to contact one of them as soon as possible.

**Consideration C**

C1. That, when drawing up the Appeal / Review procedure, Gloucester City Homes suggest that tenants seek independent advice prior to submitting an appeal / seeking a review; and

C2. That when advising tenants of the impending court action, that Gloucester City Homes provide them with the contact details for – Gloucester CAB Gloucester Law Centre Any other Advisory Groups; and The relevant Ward Councillor

**Recommendation 2**

4.17 Having recommended a number of changes to the current procedures, the Task and Finish Group would require that the impact of the changes be monitored and reviewed. The Task and Finish Group would,
therefore, recommend that Gloucester City Homes report back to the City Council (Overview and Scrutiny Committee) on the impact the changes have had on the level of rent arrears, the number of evictions and the number of cases where a City Councillor has attended to consider an appeal / review.

Recommendation 2

It is recommended that Gloucester City Homes monitor the impact of the changes outlined in this report and report back to the City Council, 12 months after implementation, detailing the impact, if any, the changes have had on the levels of rent arrears, the number of evictions carried out and the number of cases where a City Councillor has attended to consider an appeal / review.

5 FINDINGS

5.1 Gloucester City Homes

5.1.1 Ashley Green, Chief Executive, Gloucester City Homes; Sam Chambers, Income Services Manager, Gloucester City Homes and Paul Masters, Governance, Research & Business Administration Manager, Gloucester City Homes attended an evidence gathering session on 19 November 2009.

5.1.2 They advised the Group that in 2008 there had been a Governance Review at the City Council and it was suggested that the ERP was now a unique body and outdated. The issue was, therefore, whether there was an alternative way of ensuring that a tenant had a right of appeal against a decision to seek possession of their property. Whilst the review was being carried out, GCH had agreed to administer the Panels.

5.1.3 GCH had introduced many changes to its working practices and the emphasis was on keeping people in their homes with evictions being seen as a last resort. Total rent arrears had significantly reduced and there was a specific aim of reducing this to below £200,000 pa. The Financial Inclusion Strategy, which sought to increase benefit take up by tenants, had been extremely successful with an extra £140K worth of benefits now being received by tenants each year. In addition, the Worklessness Strategy aimed to get people into work, thereby helping them to stay out of debt. Eviction rates continued to drop from 28 in 2006/7 to 13 in 2008/9. In 2009/10 there have been just 3 to date.

5.1.4 The Group were reminded of other instances where the Council took court action against tenants/residents, such as for non-payment of Council Tax, and pointed out that there was no such appeals process in those circumstances, even though the Council could seek a committal to prison.
5.1.5 In answer to a question, GCH confirmed that they would be happy for an appeal process to remain in place but questioned why a City Councillor would need to be involved. The City Council had transferred responsibility for management of its housing stock to GCH and so was no longer responsible for day-to-day management, which included the evictions process.

5.1.6 The Group were advised that the ERP had been set up under a different regime during the 1980’s as there had been a number of Councillors raise concerns about some of the decisions / actions taken. Since then, the Wolfe Reforms had put far more emphasis on “reasonableness” of court action and introduced a Pre-Action Protocol which sought resolution of an issue without the need for court action.

5.1.7 GCH outlined the full details of the Pre-Action Protocol and explained that it was a very thorough process aimed at ensuring that there had been sufficient checks and reviews of each case before proceeding to court. In addition, the tenant can apply back to the court to have the warrant suspended (right of appeal) and more often than not the courts would agree to this. The support mechanisms were now in place to ensure that eviction action was only taken where all other avenues had been exhausted.

5.1.8 It was confirmed that the ERP had always been convened after the case had been to court (not before) and so the court order was already in place. GCH were concerned that Councillors being on the ERP could put them in a difficult position, particularly if they made decisions that differed to the Court Order as the tenants could then find themselves being in contempt of court if they followed the decision of the ERP rather than the Court Order. The ERP also put additional pressures on Councillors time and required them to receive additional training.

5.1.9 GCH confirmed that tenants would always be advised to seek independent advice, although they could not be forced to do so. It was in the interests of GCH to try everything to keep the tenant in the property.

5.1.10 The Group heard that GCH produced Performance Monitoring reports that are considered by both the GCH Board and Gloucester City Council. It was confirmed that there were other circumstances where a tenant could be evicted, eg due to anti-social behaviour, but that there was no such similar Review Panel to consider these evictions.

5.2 Gloucester Law Centre

5.2.1 Anne Whitworth, Gloucester Law Centre attended an evidence gathering session on 3 December 2009.

5.2.2 She said that the ERP was very useful and played a valuable role. She would have been interested to see some analysis of the outcomes from the Panel hearings, particularly whether the hearing had resulted in the eviction being stopped and debt cleared. She felt that the process did
work and that the ERP provided a different, more relaxed, forum for tenants to explain their story and more often than not, more relevant and valuable information came to light at that stage.

5.2.3 She accepted that the protocols and procedures used before a case goes to court are far more thorough than they use to be and she was aware of the additional costs of running the ERP. However, she would be concerned if the ERP were to be removed and the “review” was simply an internal review by GCH. However, she felt that by using Councillors there was a degree of independence brought into the proceedings.

5.2.4 During further questions, it was commented that a decision of the ERP would not necessarily result in a breach of the court order. Having obtained the Suspended Court Order, it was for GCH to decide when to go back to court to seek the eviction warrant and so any agreements reached in the meantime were a matter for the tenant and GCH and not the court. If the tenant failed to stick to the alternative agreement, then GCH could go back to court to seek the warrant.

5.3 Gloucester CAB

5.3.1 John Eden, Gloucester CAB attended an evidence gathering session on 3 December 2009.

5.3.2 The role of the CAB was to look at the robustness of any action plans agreed to help clear the debt. Mr Eden felt that the tenants appealing to the ERP fell into one of two camps, those really seeking help and had merit to their case and those who were simply trying to delay the process. He felt that the ERP provided the perfect forum to hear the real stories behind all the paperwork. The courts do not have the time to hear the real story and quite often the tenant will fail to attend the court as they have been told that the court will simply issue a Suspended Court Order, on Terms, thereby allowing time for further discussions between the tenant and GCH after the court hearing and before any eviction warrant is requested.

5.3.3 Mr Eden said that there had been many cases heard by the ERP that had turned on their head once all of the information came to light. He was concerned, however, that the time taken to hear the appeal can sometimes result in the arrears increasing and so the hearing needed to take place as soon as possible. He was further concerned that tenants failed to engage fully with the process until a very late stage and that they often failed to seek any independent advice or representation. He felt that it should be a prerequisite for all tenants attending either the court or the ERP to be represented.

5.4 Tenants Representatives

5.4.1 Mr Peter Anders and Mr Andrew Harvey attended an evidence gathering session on 3 December 2009.
5.4.2 Mr Harvey felt that many good, strong polices had now been introduced and the laws had changed, all of which helped protect tenants from unnecessary eviction. He felt that County Court judges were far less likely to evict a tenant then say 20 years ago. Take up of benefit entitlement had increased and GCH took a proactive approach to ensuring that tenants claimed as many benefits as possible.

5.4.3 Mr Harvey stated that the number of evictions had decreased and as a result there was less need for the ERP. However, he felt that there was a need for some sort of case review earlier on in the process, before the case went to court. He could see no reason for a right of appeal to an independent review when the court process already had an appeal mechanism.

5.4.4 Mr Anders questioned why the Councillors appointed to the GCH Board could not consider the appeals. He felt that there was a need for some sort of independent or external review. He was concerned that with the Audit Commission pushing GCH to continually improve its performance on rent collection, there could be more of a focus on figures rather than considering individual circumstances. If there was just an internal review there may be too much focus on performance figures.

5.5 Gloucester City Council

5.5.1 Councillor Gravells (Cabinet Member for Housing and Health); Julian Wain, Chief Executive, Gloucester City Council; Martin Shields, Corporate Director for Services and Neighbourhoods, Gloucester City Council; and Gary Spencer (GS), Head of Legal Service, Gloucester City Council attended an evidence gathering session on 12 January 2010.

5.5.2 The Cabinet Member stated that when the ERP was first established in the 1980s there were fewer ways of assisting or supporting tenants who were facing a possible eviction and tenants would go to their local Councillor for help. The ERP was set up to provide tenants with a body to appeal to when facing an eviction. However, that process is now out of date and no other local authorities still operated such a Panel.

5.5.3 The Cabinet Member stated that there are now a number of different ways of providing support and advice to tenants who are facing eviction and the procedure prior to taking a case to court is far more thorough than it use to be. He was concerned that whilst a tenant awaited a hearing by the ERP, the debt can often increase causing a bigger problem. This is not helped when Councillors failed to turn up at the ERP and the hearing had to be rearranged. He suggested that GCH could be asked to ensure that they advise tenants as to who their Councillor is and encourage them to speak to them so as to provide additional support.

5.5.4 The Chief Executive confirmed that he had never been a supporter of such an appeal system as it meant that Councillors were been asked to get involved in the day to day workings of the Council. He confirmed that the process was not illegal, but was not good practice. He advised
that now that GCH had been set up to manage the Council’s housing stock, it was only right and proper that they should manage the whole eviction process. If the Council were to require a review process for evictions then this should form part of the management arrangement between the City Council and GCH. Any such review should be carried out by senior officers of GCH.

5.5.5 The Chief Executive reiterated that the pre-court procedures are far improved and more thorough than they use to be. He confirmed that they had been unable to identify any other Council that operates such a system and he was concerned that it could be seen to hinder the Improvement Agenda. The current set up could also invite criticism from any external inspectors.

5.5.6 The Chief Executive provided some anecdotal evidence of where Councillors can get involved by offering individual support and guidance to specific requests from tenants, such as going to the Housing Office with the tenant to help them reach some sort of agreement to clear the debt.

5.5.7 The Corporate Director for Services and Neighbourhoods commented that the courts were far less likely to rubber-stamp an eviction without due consideration of all of the evidence. He tabled some statistics that suggested that whilst the ERP was seen as “the last chance”, this was not born out by the figures that had shown that of the last 20 cases to be considered by the ERP, 9 had already been before the ERP before, and of those, 3 had been twice before and 1 had been three times before.

5.5.8 Furthermore, the evidence shows that the ERP does not necessarily result in the eviction being stopped and nor does it result in an agreement being kept to. In fact, 6 cases have seen a rise in the debt owed since the hearing. Where agreements were reached at the ERP hearing, 4 have since been breached resulting in further discussions and negotiations between the tenant and housing officers. Only 2 cases have seen the tenant paying off the debt as agreed. A further 6 cases were dismissed by the ERP but a subsequent agreement was then made between the tenant and GCH. There are a further 9 cases that have been waiting a hearing since November with no action being taken in the meantime.

5.5.9 The Corporate Director reiterated that none of our neighbouring authorities had such a system in place. One comment from another authority had stated that it was the courts that have the power to stop/prevent evictions and that Councillors should not be interfering in the court process by altering a court order. He was concerned that the ERP system could reflect badly on GCH during an inspection later this year.

5.5.10 In answer to questions, the Chief Executive said that it would appear that the work of the ERP had not been raised as an issue when GCH was first established although he had questioned its role since joining the Council. Subsequently, during a review of the Constitution in 2009,
the legality of the ERP’s remit came into question. The Corporate Director reminded the meeting of the pre-court action protocols and of the work of the Court welfare officers.

5.5.11 The Chief Executive advised that if concerns were raised about the way GCH were dealing with evictions, representations could be made to them during regular meetings. The Corporate Director advised that as part of the client monitoring arrangements, The City Council could firstly ask GCH to explain any particular issues and if needed, the Council could carry out a detailed audit.

6 ACKNOWLEDGEMENTS

The Task and Finish Group would like to thank the following for their contribution to the review –

- Ashley Green – Chief Executive, Gloucester City Homes
- Sam Chambers – Income Services Manager, Gloucester City Homes
- Paul Masters – Governance, Research & Business Administration Manager, Gloucester City Homes
- John Eden – Gloucester Citizens Advice Bureau
- Anne Whitworth – Gloucester Law Centre
- Andrew Harvey – Tenants representative
- Peter Anders – Tenants representative
- Councillor Gravells, Cabinet Member for Housing and Health, Gloucester City Council
- Julian Wain, Chief Executive, Gloucester City Council
- Martin Shields, Corporate Director for Services and Neighbourhoods, Gloucester City Council
- Gary Spencer, Head of Legal Service, Gloucester City Council
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### Appendix 2

#### Eviction Review Panel Task and Finish Group - Attendance Log

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