

AUDIT COMMITTEE

26 JUNE 2008

OPERATION OF THE HOUSING MAINTENANCE CONTRACT

Report from: Neil Davies, Chief Executive

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Summary

This is a report into the allegations made by whistleblowers into the Council's contract with Erinaceous Property Management.

1. Budget and Policy Framework

1.1 The matters contained in this report are within the budget and policy framework of the Council. The Committee is asked to consider this as urgent as this matter has been requested to come forward at the earliest opportunity.

2. Background

2.1 The Council entered into a contract for the provision of maintenance, repair and improvement of its housing properties "works" with Springrove Property Maintenance, to commence from 1 April 2007. This contract comprised the following elements: -

- Reactive repairs (repairs requested and completed)
- Capital works (the programme of work to bring the council's housing up to decent homes standard)
- Gas Servicing and Breakdowns.

2.2 Springrove Property Maintenance changed its name to Erinaceous Property Management on 1 January 2007, and the contract was accordingly awarded to Erinaceous (EPM).

2.3 On 14 April 2008, KMPG were appointed administrators of Erinaceous Group PLC. EPM did not enter into administration and changed its name to 3C Asset Management. Erinaceous sold 3C to Caley limited on 21 April 2008, and the new company has three shareholders who are HboS, HSBC and Lloyds TSB. A new management team has been in place for 3C since February 2008.

- 2.4 When the contract was tendered, a schedule of rates was sent out with the tender documentation. The schedule of rates is approximately 3,000 individual items, each with a set price against them that the Council would pay, depending on the items of work carried out. Each tenderer was asked to tender how much “uplift” i.e. percentage they would want on top of the prices stated in the schedule of rates, to carry out the work.
- 2.5 The price codes in the schedule of rates is structured on the basis of prices for individual works and composite works. The composite codes are meant to be the inclusive price for complete works, such as renewing roofs, kitchens, bathrooms and installing central heating.
- 2.6 Rand Associates quantity surveyors were instructed by the Council to draw up the specification, as they were experienced in using the National Housebuilding Federation Standards. Rand were chosen as they are one of the leading companies in the application of the NHF Schedule of rates. They are the developers of the NHF Schedule of Rates and its associated modules, which are utilised by some 330 social landlords in the procurement of all aspects of maintenance of over 1.5 million homes. Rand are also experienced in partnering contracts and the issues around decent homes etc and therefore understand the background and pressures on Local Authorities in delivering the maintenance work that we carry out.

3. The complaints

- 3.1 The Council received complaints from three members of staff alleging that the Council was being overcharged by EPM for works and that work had been incorrectly tendered.
- 3.2 These complaints have been the subject of an investigation by the Monitoring Officer, on behalf of the Chief Executive. The recent restructure has meant that the Monitoring Officer now has responsibility for housing, but her investigation was commenced prior to this.
- 3.3 The scope of the overcharging complaints is for the following: -
- Roofing
 - Kitchens
 - Windows at St. Marks House.

In addition and for the sake of completeness, the Monitoring Officer also considered the boiler programme, as this is also a large area of capital works.

4. Roofing works

4.1 Background

- 4.1.1 The council embarked on a programme of roof renewals from 1 April 2007. A list of the properties to be re-roofed was given to EPM, together with the budget amount, and they were instructed to commence work. No formal order was raised in accordance with the contract.

4.1.2 Concerns were raised by whistleblowers that the Council was being overcharged for roofing services. These concerns were based around the fact that the sub-contractors, when employed direct by the Council, were charging less.

4.2 Overpayments

4.2.1 The Monitoring Officer has examined all roofing invoices both submitted, and those passed for payment. Attached is a spreadsheet showing these invoices as Appendix 1. In her view, overpayments have been made as a result of two different issues:-

- Failure to use composite codes and an application of an incorrect percentage uplift
- Payments being made for scaffolding costs

4.3 Composite Codes

4.3.1 Depending on the nature of the work involved, work on roofing should be invoiced under a composite code in the contract. A composite code is a rate that covers all items necessary in roofing, for example, tiles, felt, flashing timber etc. The contract contains a composite code for roofing. The contract also contains individual rates for various elements of roofing, against a composite code of £38.09 per square metre (including the capital uplift of 5%).

4.3.2 As can be seen from Appendix 1, the roofs have been ordered and invoiced in various different ways.

4.3.3 The original roofing works were invoiced using the individual schedule of rates (SOR), for various elements of work used to replace a roof.

4.3.4 Ordering roofs under the individual schedule of rates codes is significantly more expensive than ordering under the composite code. For example, a roof ordered under the composite code would come to approximately £2,761, whereas the same work ordered under the schedule of rates would be £3,800.

4.3.5 With regard to the composite codes, it appears that not all the council's surveyors were aware that there was a composite code for roof works, until October 2007. Therefore a number of the orders placed and paid for prior to this date were under the individual prices in the schedule of rates, where composite codes were applicable.

4.3.6 The surveyors used a computer system called "Locator" which allowed them to cost orders for the roofing works. Different versions were in use as they were not networked and did not contain the composite codes. Therefore when roof orders were placed, the individual SOR codes were used rather than the composite code. Rand Associates, the Council's contracts advisor, did advise the Housing Manager that this part of the package should be loaded but this did not happen until recently. In addition, whilst the surveyors had the

Academy computer system on their PCs, they did not have any training in this system, and this would have also alerted them to the existence of composite codes. The Monitoring Officer considers that this contributed to work being ordered incorrectly.

- 4.3.7 Rand Associates advised when asked in September 2007 that the composite code should be used for roofing, but that an allowance should be made for scaffolding (see 4.4 below). The Monitoring Officer did discuss this with a senior manager, and asked them why they were not aware of the existence of the composite code. The Monitoring Officer was told that the only copy of the contract was kept in the office by one officer, and that the then senior manager did not have a copy. She has not been able to verify the accuracy of this reason.

4.4 Scaffolding

- 4.4.1 The invoices shown in Appendix 1 contain an element of charges for scaffolding. As set out below, the contract provides that scaffolding should not be charged for properties of two stories or under.

“The tenderer’s attention is drawn towards the Scaffolding provisions under the Contract and particularly Preliminaries and General Matters Clause 28.00 which provides clarification on when the cost of scaffolding is deemed to be included in the Contractor’s tender of reimbursable under the Contract.

6.3 Where the cost of scaffolding is additionally reimbursable to the Contractor under the Contract, payment shall be evaluated strictly using the Schedule of Rates items together with the applicable tendered percentage adjustment. The Tenderer unequivocally accepts this as a condition of tendering and contract award should their tender be successful. Tenderers are to note that the Employer expressly will not consider or make payment on the basis of (sub-contract) estimates, quotations, invoices or other special rates in lieu of Schedule of Rates scaffolding and access items.

6.4.1 Tenderers must therefore ensure that their tendered percentage adjustments to be stated on the Form of Tender, when applied to the entire scope of Works over all Schedule of Rates items, will adequately and fully cover all obligations/costs of scaffolding inclusive of any financial deficiencies or shortfalls that might be incurred due to the requirement for scaffolding on an individual job by job basis.....”.

Clause 28.1 of Preliminaries:

“Scaffolding for structures not exceeding two storey - the Contractor shall, for the proper execution of the Works, provide and bear the expense of (provides an exhaustive list of the matters that qualify under this head)... The decision as to the amount of any extra payment that may be allowed in such circumstances shall rest solely with the Contract Administrator.”

- 4.4.2 The Council Housing Manager and Contract Administrator at 1 April 2007 agreed with EPM that he would pay them an allowance of £500 towards scaffolding. This officer subsequently left and the agreement changed when the Assistant Director agreed in a meeting on 13.10.07 that all roofs completed on or before 19.09.07 should have payments capped at £4500 and all roofs completed after 19.09.07 should be priced as per the composite code. By email on 12 October 2007, EPM were instructed by officers that the Council would make a payment of £589.16 towards scaffolding and £156.61 for each tower used (a tower would be used to load the roof tiles to a group of properties depending on the layout)
- 4.4.3 The Monitoring Officer has discussed the issue of scaffolding charges with Rand Associates. They have advised that the schedule of rates set out in the contract is for reactive repairs and voids. The clauses in the contract that relate to scaffolding not being charged for were meant for the reactive repairs part of the contract, and not the capital works part of the contract. When the contract was drawn up it was adapted to include capital works and the envisaged scope of these was not quantified. Whilst the standard clauses say scaffolding is deemed to be included, they advise that this clause should not have been included in a capital works contract on a fair and reasonable basis.
- 4.4.4 Rand Associates has advised that if we had quantified the scope of works at the tender stage then EPM should have realised that they would not be able to claim for scaffolding, but we did not do this. They are therefore of the view that if this matter went to arbitration, the Arbitrator would think it would be fair and reasonable to pay towards scaffolding and that the Council would lose on this point. Their view is that a charge of £500-£600 is reasonable.

4.5 Legal Advice

- 4.5.1 There is nothing to suggest that the works were not carried out to the correct standard by EPM, or that the Council was charged for work not carried out. Each time a roof was invoiced, a surveyor visited the property to measure and sign off the roof before payment of the invoice. The roofs were signed off by a number of different surveyors.
- 4.5.2 With regard to the scaffolding costs on the paid invoices, the Monitoring Officer does not consider that the Council is entitled to recover any of these costs. The Council clearly varied its agreement with EPM by agreement from officers to meet the costs of scaffolding.
- 4.5.3 With regard to the unpaid invoices, I am of the view that the Council must make a payment of £589.16 towards scaffolding based on the agreement made by the Assistant Director on 12 October 2007, as this was in writing and varied the contract terms. In addition, it should make payment of any towers used in the sum of £156.61 per tower.
- 4.5.4 The Monitoring Officer therefore considers that the Council should only pay for the roof costs on a composite code basis for those roofs completed after

13 October 2007 together with the allowance of £589.16 towards scaffolding or £156.61 for towers.

4.6 Settlement

4.6.1 The effect of this is that the Council was invoiced for a total of £194,049.69 but due to the cap of £4,500 payable to the 19 September 2007, has only paid £178,362.80 giving a saving of £15,686.89. However if the works had been ordered using the composite code the cost to the council would have only been £143,335.24. This has resulted in an additional payment being made to EPM of £35,027.56, which is not recoverable. This is shown in appendix one.

4.6.2 The invoices that remain unpaid are for those works completed after 12 October 2007 and these total £327,891.99. If these were ordered under the composite code with scaffold/tower allowance or subject to the £4,500 cap if carried out before 19 September 2007 there would have been a cost the council of £275,046.57. This would result in an additional payment of £52,845.42, which is recoverable. This is shown in appendix two.

4.6.3 Payment will therefore be made to 3C, but the sum of £52,845.42 will be deducted from such payment in order that the roofs completed after 12 October 2007 are invoiced on the composite code with the scaffolding allowance.

4.7 Way forward

4.7.1 The Monitoring Officer recommends that the following measures be put in place.

4.7.2 That the computer system is checked to ensure that it is the same version that is being used by 3C and that the contract is varied to ensure that both parties must give to the other notice if the codes or costings or any other material part of the system is upgraded in order that both systems are the same.

4.7.3 That all surveyors in the housing department receive training on both Locator and Academy, and that no new member of staff be allowed to order works until they have received this training.

4.7.4 That a process manual be put in place for the contract in order that all surveyors have a handy guide to show them how to manage the contract, and that they each have a copy of the contract available electronically.

4.7.5 That all work be ordered in writing or electronically, and that no verbal orders be given for work.

4.7.6 That the contract be formally varied to agree an amount for scaffolding as recommended by Rand Associates.

4.7.7 That any variations to the contract which would result in either expenditure/saving to the Council in excess of £100,000 be reported to the Business Support Overview & Scrutiny Committee.

5. Kitchens

5.1 Background

5.1.1 As part of the 2007 capital works programme, the Council embarked on a programme of renewing its kitchens. Approximately 300 kitchens were due to be refitted.

5.1.2 The Contract contains provisions for kitchens to be fitted using composite codes, which includes flooring covering, wall tiling, electrical works and decorating. The Contract itself sets out the size of kitchen that should be fitted in each property, for example a three bedroom property/five person property would have a set amount of units to be included, and have a fixed price of £2,037.23.

5.1.3 It appears that when kitchens were ordered for properties, the kitchen supplier visited the property and agreed the specification with the tenant. EPM then carried out the work to the kitchen, and a council surveyor visited and signed off the invoice to confirm that the work had been completed.

5.1.4 The number of properties identified in the capital programme for kitchen refits was predicated on a cost of £2,500. The composite code gives a certain number of units per property type. However, this does not seem a realistic way of programming, as tenants do not necessarily have the standard kitchen and for example, to replace their existing ten unit kitchen with one of only six units would clearly disadvantage a tenant.

5.1.5 The kitchens were costed using the individual SOR codes for the works completed in each property rather than use the composite code for the kitchens (referred to in paragraph 4.3.6 of the report).

5.2 Overpayment

5.2.1 The Monitoring Officer has examined the kitchen invoices, and an exercise has been carried out by an independent quantity surveyor (Huntley Cartwright) in respect of four specimen kitchens. Approximately 198 kitchens were completed in 2007. It appears that overpayments have arisen as a result of: -

- Variations to the contract
- Variations to the specification
- A different interpretation as to what is included within the composite codes.

5.3 Variations to the contract/specification

- 5.3.1 When the kitchen supplier visited the tenants and agreed the specifications, it appears that some kitchens contained more than the benchmark level of units. For example, where there are 4 double units and 3 single units to be put into a 2-bedroom house, the tenant already had an existing 5 double and 6 single unit kitchens. Therefore the specification was agreed with the tenant for example, to include replacement of the extra units, or plumbing for additional appliances. EPM have advised that they were asked to fit kitchens to the Decent Homes Standard, and replace like for like. There is no evidence to support this on the Council's file, but the Monitoring Officer is advised that this is usual practice.
- 5.3.2 In addition, the Council appears to have requested a different electrical specification from that within the composite code which has resulted in increased cost of approximately £700-£1,000 per kitchen. The specification set out was of a higher standard than that specified in the composite code
- 5.3.3 The worktops specified in the contract are not available and therefore were replaced using a higher specification of worktop.
- 5.3.4 The sinks have also been replaced to a higher specification than that set out in the contract, as the contract specification sinks are less hygienic than the inset sinks that were fitted.
- 5.3.5 There is a lack of evidence in the Housing Department to support whether the variations were agreed in accordance with the Contract, but a council surveyor visited each kitchen and the work was signed off against the invoice, rather than being queried at the time.

5.4 Composite Codes

- 5.4.1 The quantity surveyor has checked the items included on the invoice against the composite code in the contract for kitchens. He has advised that there are a number of items invoiced separately that he considers should be included in the composite code. These total £1,080.46 on a three bedroom property.
- 5.4.2 A desktop exercise has been undertaken to show the cost of the extras included, which we consider should be in the composite code. The exercise was undertaken by using a random sample of twelve properties of mixed sizes, and this gave an average figure of £853.18 overpayment. Further invoices will be analysed to ensure that this calculation is accurate

5.5 Legal Advice

- 5.5.1 The Monitoring Officer considers that the Council is not able to recover any costs of the variations and alteration of the specification. There is no evidence on the Housing Department files to show whether the variations were agreed but a significant amount of work appears to have been commissioned verbally by the surveyors. In addition, the council's surveyors

have visited each property and signed to confirm the work is agreed, rather than query the extra work. Again, kitchens were signed off by a number of different surveyors.

5.6 Settlement

5.6.1 The Monitoring Officer will be withholding payment in respect of the work that should be included within the composite code pending further analysis of work and costs to validate the average calculated overpayment of £853.18 per kitchen identified at 5.4.1. If confirmed this would total £168,929.64 for 198 kitchens.

5.7 Way forward

5.7.1 The Monitoring Officer recommends that the following measures be put in place.

5.7.2 That the composite code in the contract be varied to ensure that it sets out the type of worktop and sink to be provided.

5.7.3 That the composite code sets out a correct up to date electrical specification to be provided.

5.7.4 That either 3C surveyors or Council surveyors visit each property to agree the specification with the tenant. If kitchens of a higher value than the benchmark kitchen are to be installed, then a written variation will be sent to 3C and will be authorised by the Contract Administrator.

5.7.5 If any additional work is to be carried out to a kitchen, then 3C will obtain a written instruction from the Council for the work and no verbal instructions are to be relied on.

5.7.6 That when the capital programme is drawn up, regard is had to the existing kitchens and the degree to which variations to each kitchen will be necessary and that the amount of kitchens to be completed will be set accordingly.

6. Boilers

6.1 Background

6.1.1 As part of the 2007 capital works programme, approximately 343 central heating boilers were due to be renewed.

6.1.2 The contract contains a composite code for boiler replacements, which contains a cost of £1,053.92 in addition to this sum other works are required for the replacement of a boiler giving an average price of £2,650 per replacement boiler. The average invoice received for boiler replacements is approximately £3,000.

6.1.3 Overpayments appear to have arisen as a result of:-

- Variations to the specification

6.2 Variations

6.2.1 The Contract specification was varied by a surveyor, who requested that a different specification be used for boilers. Backboilers were removed from behind gas fires, and replaced with combination boilers. The easiest and cheapest means of replacement is to put them into kitchens, with the flue coming out at ground floor level. The Monitoring Officer is however advised that this is not necessarily the best way of carrying out the work.

6.2.2 The surveyor requested that boilers be installed in airing cupboards and that the flues be put out through the roof. The Monitoring Officer has spoken with the Erinaceous area manager for boilers, and he has provided a copy of the signed specification requesting that the work be carried out in this way. He has also advised that this is a better way of replacing boilers, but it is more expensive.

6.2.3 The specification that was provided to EPM totals £3,205.35 per property instead of the average price of £2,650 based on a limited analysis of the original invoices compared to the composite code plus variations

6.3 Additional Payment

6.3.1 The use of a different specification from the composite code contained in the contract has resulted in an additional amount due of £120,050.

6.4 Legal Advice

6.4.1 The Council provided a variation in the specification it required, and therefore this has resulted in an increased cost to the Council of £120,050. This amount is clearly payable to EPM.

6.4.2 Officers are only authorised to agree variations to the contract up to £2,000 in value. Whilst the boiler variation was less than this on one property, when the sum is aggregated the variation is substantial. The variation authorised by the officer is clearly in excess of his authorisation, but notwithstanding this the Council is still liable for his act. The Monitoring Officer is told that the increased specification was not agreed by the Assistant Director who had the necessary authority. (The contract wasn't varied and additional works are required to replace the back boilers, which has increased the cost given for the composite code).

6.5 Way forward

6.5.1 The Monitoring Officer recommends that the following measures be put in place.

6.5.2 That only the Contract Administrator be authorised to agree any variation to the overall contract specification.

6.5.3 That the specification for boilers be considered to see whether it is the most suitable, and if so that a variation to the composite code be agreed in order that accurate financial forecasting can take place.

7. Windows at St. Marks House

7.1 Background

7.1.1 St. Mark's House, Gillingham is a primarily two-storey sheltered housing block in Gillingham. A programme of window replacement was needed on the housing block and this work was requested as part of our contract with Erinaceous Property Maintenance. It is alleged that Erinaceous overcharged the Council for this piece of work.

7.1.2 Under the contract, capital works should be carried out under the costs quoted in the schedule of rates, plus the agreed uplift of 5%. Condition 4.03.4 of the preliminaries reads:-

“4.03.4 Maximum value of works orders issued under the contract is likely to be for works valued as follows:-

Day to Day responsive repairs	£5,000
Void Property Works	£5,000
Capital Works	£30,000

Works required in excess of these values may on occasions be required to be carried out under the issue of works orders and/or may be the subject of separate competitive quotations from two or more contractors.”

7.1.3 The Monitoring Officer therefore considers that either:-

- (1) The work should have carried out under a works order or,
- (2) The work should have been priced under a works order together with 2+ competitive quotes, or
- (3) The work should have been tendered outside the contract.

7.1.4 Window replacement falls within ‘capital works’ in the contract (Appendix D of the EPM Contract). The contract rates should have applied to this piece of work as window replacement is identified in the Schedule of Rates and is not works of a “specialist nature” which would allow EPM to charge outside of the contract.

7.2 Placement of the Order

7.2.1 At a meeting with Erinaceous (EPM) on 7 June it was agreed by all present (two surveyors for the council) and is set out in the minutes that the window replacement works (the works) would be outside the schedule of rates as they

were “out of scope” for the works. The Monitoring Officer is unclear as to what this means, as the works do clearly fall within the works to be provided under the contract as set out above.

- 7.2.2 The works were raised by a building surveyor under a works order on the contract on 17 July. There are two orders with figures against them, totalling £95,382.50.
- 7.2.3 Surveyor 1 has advised that he measured and priced the windows, as per the Schedule of Rates contained in the Contract. This pricing came to approximately £56,000. This includes the 5% uplift allowed to EPM under the contract. Surveyor 1 then says that he instructed EPM to carry out the work.
- 7.2.4 Surveyor 1 received a telephone call from EPM on 23 May and was told that the price for the windows would be £81,000. He says he questioned this figure with them, as the Schedule of Rates price was £56,000. The following morning they faxed through a quotation for the work, at £95,000. The MO is unable to find an explanation as to why this figure was increased.
- 7.2.5 Separately to Surveyor 1 ordering the work, it appears that Surveyor 2 had asked EPM to provide three quotes for the works. Surveyor 2 advised me that Surveyor 1 had provided a specification of the windows but they did not recall seeing a price worked out under the schedule of rates.

7.3 **Overpayment**

- 7.3.1 A whistleblower raised the possible overcharge with the Housing Manager at that time by email on 2 August. That manager responded, quoting the advice set out in paragraph below given by the Procurement section. In addition, he quotes part of the procurement rules in relation to EU regs. I am unclear as to why he has done this, as they have no application or relevance in this regard. His email then tells the whistleblower to contact his direct line manager or principal property surveyor if he is unhappy.
- 7.3.2 The whistleblower advised me that he also telephoned the Assistant Director to make him aware that EPM were trying to overcharge the Council, and he agreed to check the position. The Assistant Director then appears to have discussed this with Surveyor 2, and then agreed to pay the invoice.
- 7.3.3 It appears that Surveyor 2 asked EPM to obtain three quotations for the windows work. EPM showed the two quotes they had received, from Contractor A and Contractor B. Surveyor 2 then asked EPM to get a third quote. This resulted in the contractor’s quotation. The Monitoring Officer has seen copies of these quotations. No company other than EPM was asked to tender. The MO asked Surveyor 2 why they did not use the Schedule of Rates for this work, or tender the work in accordance with the contract. They say that the Housing Manager had told all staff that they must only work through EPM. They say that this was supported by email, but does not have a copy. This has been confirmed by the whistleblower. They therefore

thought that the windows needed to be procured through EPM as well, and did not ask any other company to tender.

- 7.3.4 Surveyor 2 appeared not to know what the cost of the works should be if they were carried out under the Schedule of Rates in the contract. In addition, there is no evidence to show that we received a breakdown from EPM.

7.4 The quotations

- 7.4.1 The quotations for the windows work were as follows:-

Contractor A	£59,806.00
Contractor B	£55,528.53
Contractor C	£63,656.00

In addition, EPM obtained quotations for scaffolding as follows:

Contractor D	£15,000
Contractor E	£17,500
Contractor F	£18,950

The Monitoring Officer has been told that the cheapest quotation for scaffolding was used, but that Contractor A were used by EPM to carry out the window replacement.

- 7.4.2 The Monitoring Officer has asked why the Council did not accept the cheapest quote, from Contractor B. She was told by officers that EPM expressed concerns that Contractor B was too small, and Contractor A (the next tenderer) had satisfactorily carried out work for us in the past. The surveyor responsible advised the senior officer that Contractor B were the better option and the senior officer agreed with this position. EPM have advised the Monitoring Officer that officers asked them to go with Contractor A, rather than Contractor B.

7.5 Procurement advice

- 7.5.1 The Monitoring Officer has seen copy correspondence from Surveyor 2 to Procurement on 5 July, explaining that they had asked EPM to price the job and that they had received quotes. They were advised by Procurement that there was a clear intention through the contract that EPM should do the work, and that they should tender outside the contract if they thought their rate was incorrect.
- 7.5.2 The email from Surveyor 2 to Procurement suggests that the officer checked the schedule of rates as stated: "I checked on the schedule of rates contract yesterday and there is an explicit item in the contract for capital works – window replacements. In addition, EPM tell me that they in fact did obtain 3 or 4 quotes....." The advice from Procurement was correct in line with the information supplied.

7.5.3 As Surveyor 2 had not followed the contract processes, it incorrectly stated the position to Procurement, and wrongly believed that the advice from Procurement supported their position.

7.6 Legal Advice

7.6.1 Erinaceous have been paid the sum of £95,382.50 for the work at St Marks House.

7.6.2 An independent inspection was carried out on behalf of the Council by Harland Masters, Quantity Surveyors. Their report indicates that the Council did obtain value for money in respect of the works carried out, as on the breakdown they have made, they have reached a conclusion that the work would have totalled £93,503.20, which is 1.58% below the price paid, and they advise that this is within tolerable margins.

7.6.3 Harland Masters did however base their report on the assumption that the works were those of a specialist nature and that the schedule of rates could not be used. They made this assumption based on the way the works were ordered, but the Monitoring Officer is of the view that these are not specialist works under the contract.

7.6.4 She has had independent Quantity Surveyors, Huntley Cartwright, carry out a report and their conclusions support her view that the works are not those of a specialist nature. They could therefore have been procured under the schedule of rates, which would have been significantly cheaper.

7.6.5 Huntley Cartwright advise that it is normal practice for a Contract Administrator to seek quotations and obtain the SoR price, to enable him/her to be suitably informed when deciding which route of procurement to adopt.

7.6.6 The Monitoring Officer's advice is therefore that Medway Council incorrectly procured the windows. They should have been ordered under the schedule of rates, rather than by tender.

7.6.7 If quotations were to be obtained, then these should have been obtained by the Housing Department themselves, rather than by asking EPM to get them. They should then have been compared against the schedule of rates to ensure that the windows were procured in the cheapest way.

7.6.8 There was no attempt by officers to obtain evidence from EPM as to how the windows represented better value for the council by procuring in this way.

7.6.9 In addition, advice was obtained from the Corporate Procurement Unit. Because incorrect information was provided, it led to advice being given that was not correct in the circumstances. The advice was then used to support the decision to allow EPM to get quotes, rather than going to third parties.

7.6.10 In addition, the Council should have accepted the cheapest quotation unless there was some documented reason for not doing this.

7.6.11 Although the Council could have obtained the windows for less value under the Schedule of Rates, as the Council procured through acceptance of quotations then the Monitoring Officer's view is that this amount would be unrecoverable.

7.6.12 EPM could argue that we have waived our rights to claim this amount as we accepted and paid for works on a different basis to the contract. In particular, at least one officer knew the SoR price and there could be an assumption that senior colleagues also knew or could find out this price.

7.7 Way forward

7.7.1 The Monitoring Officer recommends that the following measures be put in place.

7.7.2 That all capital works i.e. those over £30,000 be priced under the schedule of rates, prior to any quotations being obtained, to ensure that there can be an accurate comparison.

7.7.3 That if quotations are obtained, then these must be procured by the Council and not 3C.

7.7.4 That all surveyors who procure capital works are trained in this area in order that they understand how to obtain value for money.

7.7.5 That a system of auditing/spot checking of capital works is put in place, to ensure that documentation is being kept on files.

7.7.6 That only the most economically advantageous tenders are accepted for capital works.

8. Conclusion

8.1 There is no evidence of fraud or dishonesty on the part of either the Council and its staff, or EPM. The circumstances set out in this report have arisen as a result of lack of sufficient management controls as identified throughout this report.

8.2 The above failures to adhere to the contract have led to the Council being unable to recover overpayments to the value of £155,077.56 (£35,027.56 roofing; £120,050 boilers). In addition, changes to the specifications made by officers, without relevant authority has also contributed to less work being able to be done.

8.3 The capital programme for 2007/8 commenced with the start of the contract to EPM. Insufficient thought was given at the start of the contract as to whether the amounts allocated to each area were sufficient, and no provisions for variations were made. This has led to a reduction in the amount of capital works that could be completed, as specifications have needed to be altered.

No sufficient reporting mechanism has been in place in order that during the year the amount of works can be profiled against the budget, taking into account the variations changes to specification and additional work necessary.

- 8.4 The changes in specification have in fact meant that tenants have received better quality work than set out in the contract, but the converse side to this is that less homes can be dealt with out of the money. This is supported by high rates of tenant satisfaction i.e. 89% of tenants satisfied with the work, as they are receiving a higher specification of works.
- 8.5 The Monitoring Officer therefore recommends that there be regular reporting to the Business Support Overview and Scrutiny Committee.
- 8.6 Failings by senior officers have contributed to some of the above. Due to structural changes in the last six months, a number of the officers are no longer employed by the Council.

9. Financial and legal implications

9.1 The approved capital budget relating to Housing Revenue Account planned maintenance for 2007/2008 was £4,083,000. The final outturn was £4,433,385.20, a spend in excess of the original budget of £350,358.20. The expenditure has been funded as follows:

○ Supported Borrowing	£ 735,000.00
○ Capital Expenditure funded from Revenue	£1,278,000.00
○ Major Repairs Allowance/Major Repairs Reserve	£2,420,358.20

- 9.2 The additional costs have been funded by way of increased contributions from both the major repairs reserve and revenue balances.
- 9.3 Whilst the Council is expecting some form of financial recompense from the Contractor, as detailed in various paragraphs above, no debtor has been created in the 2007/2008 financial accounts as a prudent measure. Therefore, any monies that are recovered through this process will be used to replenish the Major Repairs Reserve, which can then be used to assist to fund future Housing Revenue Account capital programmes.

10. Recommendation

- 10.1 The Audit Committee is asked to agree the recommendations as highlighted in bold throughout the report.

Lead officer contact

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Background papers

Exempt

Original Invoice Amount	Paid	Payment Date	Payment Saved as a result of the £4500 cap	Scaffolding Cost	Completion Date	Scaffolding Allowance of	Composite Cost Including Scaffolding	Payment Saved as a result of the difference between actual paid and the composite cost
								0
4303.31	4303.31	sept		£500.00	22-Jun-07	£500.00	£3,261.69	£1,041.62
4284.09	4284.09	sept		£500.00	22-Jun-07	£500.00	£3,261.69	£1,022.40
4175.64	4175.64	sept		£500.00	15-Jun-07	£500.00	£3,091.13	£1,084.51
4175.63	4175.63	sept		£500.00	15-Jun-07	£500.00	£3,091.12	£1,084.51
4320.58	4320.58	aug		£500.00	15-Jun-07	£500.00	£3,274.40	£1,046.18
4101.11	4101.11	aug		£500.00	22-Jun-07	£500.00	£2,947.71	£1,153.40
4314.93	4314.93	aug		£500.00	22-Jun-07	£500.00	£3,120.27	£1,194.66
4164.76	4164.76	aug		£500.00	22-Jun-07	£500.00	£3,066.43	£1,098.33
4155.37	4155.37	sept		£500.00	22-Jun-07	£500.00	£3,208.08	£947.29
4155.38	4155.38	sept		£500.00	22-Jun-07	£500.00	£3,208.07	£947.31
4300.29	4300.29	aug		£500.00	15-Jun-07	£500.00	£3,354.50	£945.79
3877.83	3877.83	sept		£500.00	22-Jun-07	£500.00	£3,155.58	£722.25
4453.33	4453.33	aug		£500.00	15-Jun-07	£500.00	£3,354.50	£1,098.83
3877.82	3877.82	sept		£500.00	22-Jun-07	£500.00	£3,155.57	£722.25
4314.93	4314.93	aug		£500.00	22-Jun-07	£500.00	£3,120.27	£1,194.66
4161.89	4161.89	aug		£500.00	22-Jun-07	£500.00	£3,120.27	£1,041.62
4032.02	4032.02	sept		£500.00	22-Jun-07	£500.00	£3,244.84	£787.18
4032	4032	sept		£500.00	22-Jun-07	£500.00	£3,244.83	£787.17
4161.89	4161.89	aug		£500.00	13-Jul-07	£500.00	£3,120.27	£1,041.62
4942.45	£4,500.00	nov	£442.45	£969.17	31-Jul-07	£589.16	£3,970.54	£529.46
4818.09	£4,500.00	nov	£318.09	£812.56	13-Jul-07	£589.16	£3,856.21	£643.79
4942.45	£4,500.00	nov	£442.45	£969.17	31-Jul-07	£589.16	£3,970.54	£529.46
4925.62	£4,500.00	nov	£425.62	£1,050.87	13-Jul-07	£589.16	£3,577.85	£922.15
5425.81	£4,500.00	nov	£925.81	£1,057.66	31-Jul-07	£589.16	£4,086.38	£413.62
5262.42	£4,500.00	nov	£762.42	£1,551.07	24-Aug-07	£589.16	£3,577.85	£922.15
5628.96	£4,500.00	nov	£1,128.96	£1,413.10	24-Aug-07	£589.16	£3,713.79	£786.21
5303.85	£4,500.00	nov	£803.85	£1,214.27	31-Jul-07	£589.16	£3,713.79	£786.21
4868.45	£4,500.00	nov	£368.45	£1,057.66	31-Jul-07	£589.16	£3,713.79	£786.21
5292.76	£4,500.00	nov	£792.76	£1,214.27	31-Jul-07	£589.16	£3,931.39	£568.61
4921.77	£4,500.00	nov	£421.77	£1,057.66	24-Aug-07	£589.16	£3,713.79	£786.21
5713.21	£4,500.00	nov	£1,213.21	£1,707.68	24-Aug-07	£589.16	£3,855.21	£644.79
5429.8	£4,500.00	nov	£929.80	£1,214.27	24-Aug-07	£589.16	£3,855.21	£644.79
5487.74	£4,500.00	nov	£987.74	£1,707.68	03-Sep-07	£589.16	£3,855.21	£644.79
4921.77	£4,500.00	nov	£421.77	£1,057.66	03-Sep-07	£589.16	£3,713.79	£786.21
5992.4	£4,500.00	nov	£1,492.40	£1,551.07	24-Aug-07	£589.16	£3,713.79	£786.21
5288.66	£4,500.00	nov	£788.66	£1,057.66	03-Sep-07	£589.16	£3,855.21	£644.79
5425.6	£4,500.00	nov	£925.60	£1,214.27	24-Aug-07	£589.16	£4,105.42	£394.58
5241.78	£4,500.00	nov	£741.78	£1,377.67	03-Sep-07	£589.16	£3,713.79	£786.21
5147.24	£4,500.00	nov	£647.24	£1,057.66	24-Aug-07	£589.16	£3,713.79	£786.21
4670.98	£4,500.00	nov	£170.98	£812.56	13-Jul-07	£589.16	£3,433.55	£1,066.45
5035.08	£4,500.00	nov	£535.08	£1,462.58	13-Jul-07	£589.16	£3,293.13	£1,206.87
194049.69	£178,362.80		£15,686.89	£36,088.22		£22,461.52	£143,335.24	£35,027.56

Paid	Date	Original Invoice Amount	Composite Code used Yes or No	Completion Date	Total Cost plus scaffolding if Composite used or £4500 cap before 19.09.07	Payment Saved as a result of the difference between invoiced amount and the composite cost
		5556.60	No	13/07/2007	4500.00	1056.60
		3891.75	Yes	13/07/2007	3891.75	0.00
		5404.48	No	31/07/2007	4500.00	904.48
		5678.44	No	31/07/2007	4500.00	1178.44
		5734.22	No	29/09/2007	3893.30	1840.92
		5650.26	No	29/09/2007	3855.21	1795.05
		5654.41	No	29/09/2007	3964.00	1690.41
		5539.17	No	29/09/2007	3713.79	1825.38
		5352.47	No	29/09/2007	3751.88	1600.59
		5331.13	No	29/09/2007	3855.21	1475.92
		5145.20	No	29/09/2007	3925.91	1219.29
		4779.39	No	29/09/2007	3640.27	1139.12
		4874.20	No	29/09/2007	3893.30	980.90
		3759.58	Yes	01/10/2007	3238.83	520.75
		4409.60	Yes	01/10/2007	3238.83	1170.77
		5660.98	No	15/10/2007	3818.45	1842.53
		5343.27	No	15/10/2007	3818.45	1524.82
		4506.78	No	15/10/2007	3541.09	965.69
		5710.40	No	15/10/2007	3818.45	1891.95
		5227.86	No	15/10/2007	3677.03	1550.83
		5152.95	No	15/10/2007	3677.03	1475.92
		4711.44	No	15/10/2007	3855.21	856.23
		5176.83	No	24/10/2007	3459.89	1716.94
		4563.58	No	24/10/2007	3281.71	1281.87
		4348.91	No	24/10/2007	3280.38	1068.53
		5129.48	No	24/10/2007	3713.79	1415.69
		4714.31	No	24/10/2007	3677.03	1037.28
		5060.38	No	24/10/2007	3818.45	1241.93
		4593.90	Yes	24/10/2007	3423.13	1170.77
		4320.56	Yes	14/11/2007	3781.69	538.87
		3852.71	Yes	14/11/2007	3645.75	206.96
		3711.29	Yes	14/11/2007	3504.33	206.96
		3865.80	Yes	21/11/2007	3346.95	518.85
		3724.38	Yes	21/11/2007	3205.53	518.85
		4515.82	Yes	21/11/2007	3346.95	1168.87
		4026.01	Yes	21/11/2007	3814.30	211.71
		4163.95	Yes	21/11/2007	3781.69	382.26
		3849.13	Yes	21/11/2007	3640.27	208.86
		4320.56	Yes	21/11/2007	3781.69	538.87
		4320.56	Yes	21/11/2007	3781.69	538.87
		3849.13	Yes	21/11/2007	3640.27	208.86
		4957.57	No	05/12/2007	3818.45	1139.12
		4167.43	Yes	05/12/2007	3955.72	211.71
		3781.54	Yes	07/12/2007	3243.62	537.92
		3922.96	Yes	07/12/2007	3385.04	537.92
		3781.54	Yes	07/12/2007	3243.62	537.92
		3922.96	Yes	07/12/2007	3385.04	537.92
		3451.53	Yes	07/12/2007	3243.62	207.91
		3451.53	Yes	07/12/2007	3243.62	207.91
		3592.95	Yes	07/12/2007	3385.04	207.91
		3589.95	Yes	07/12/2007	3382.04	207.91
		3451.53	Yes	07/12/2007	3243.64	207.89
		3451.53	Yes	07/12/2007	3243.62	207.91
		3592.95	Yes	13/12/2007	3385.04	207.91
		3451.53	Yes	13/12/2007	3243.62	207.91
		3592.95	Yes	13/12/2007	3385.04	207.91
		3451.53	Yes	13/12/2007	3243.62	207.91
		3451.53	Yes	13/12/2007	3243.62	207.91
		3592.95	Yes	13/12/2007	3385.04	207.91
		3451.53	Yes	13/12/2007	3243.62	207.91
		3592.95	Yes	13/12/2007	3385.04	207.91
		3451.53	Yes	13/12/2007	3243.62	207.91
		3592.95	Yes	13/12/2007	3385.04	207.91
		3922.96	Yes	13/12/2007	3385.04	537.92
		3781.54	Yes	14/12/2007	3243.62	537.92
		3592.95	Yes	14/12/2007	3385.04	207.91
		3922.96	Yes	10/01/2008	3385.04	537.92
		3592.95	Yes	10/01/2008	3385.04	207.91
		3373.45	Yes	10/01/2008	3167.44	206.01
		3592.95	Yes	10/01/2008	3385.04	207.91
		3781.54	Yes	10/01/2008	3243.62	537.92
		5831.32	Yes	18/01/2008	5744.68	86.64
		5370.38	Yes	18/01/2008	5283.74	86.64
		5370.38	Yes	18/01/2008	5283.74	86.64
		5831.32	Yes	18/01/2008	5744.68	86.64
		£327,891.99			£275,046.57	£52,845.42