

Report to the Cabinet

Report reference: C-104-2008/09

Date of meeting: 9 March 2009



**Epping Forest
District Council**

Portfolio: Housing.

Subject: Gas Metering at Ninefields, Waltham Abbey.

Responsible Officer: Paul Pledger (01992 564248).

Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations:

- (1) That the Council pays compensation to secure tenants at Ninefields, Waltham Abbey for any sums in relation to gas used for cooking that they have paid in their heating charges for but not consumed between 1 January 2001 and 5 April 2009 (the last day of the current rent account year);**
- (2) That leaseholders be treated in the same way as secure tenants, in that a payment of compensation be made for any sums in relation to gas used for cooking that they have paid for but not consumed;**
- (3) That compensation payments be based on average cooking consumptions of a typical small family, as advised by British Gas;**
- (4) That a budget of £50,000 be vired from the contribution to the Housing Repairs Fund of £30,000 and Heating Expenses of £20,000 within the HRA to fund the compensation payments;**
- (5) That in future, a credit be applied to those tenants that cook by electric in the same way a credit is applied to those that heat their hot water by electricity;**
- (6) That compensation only be paid to current tenants and leaseholders, however, if a claim is received from a previous tenant, then the Council will consider that claim based on evidence supplied by the claimant;**
- (7) That the Director of Housing approaches National Grid Gas, inviting them to remove the communal bulk gas meters and replace them with individual gas meters in each property, and any costs associated with the work be met from the existing Housing Capital Programme; and**
- (8) That all future leases attributed to any Right To Buy sales incorporate a clause that clarifies the basis of any charges for gas consumption.**
- (9) That any compensation payable to tenants who are in rent arrears be set off against that debt.**

Executive Summary:

The Council became aware in January 2007 that 25 blocks of flats, consisting of 288 individual properties at Ninefields, Waltham Abbey, each served with individual heating, were being charged a heating charge by the Council for gas consumed through a communal bulk gas

meter, and in some cases are being separately charged by individual gas suppliers for the same gas via a secondary gas meter in their property.

All residents are being charged an equal amount of money to cover the cost of the gas consumed through the communal bulk gas meter. However, in around 150 dwellings Residents are using electricity for cooking as opposed to gas, and are paying for gas that they have not used.

Reasons for Proposed Decision:

Since the Council is now aware of the mistake in the way it is recovering the cost of the gas consumed through the communal bulk gas meter, it is necessary to correct that mistake and make a payment in compensation to those Residents that have paid for gas that they have not used.

Other Options for Action:

- Not to pay any compensation to either tenants or leaseholders.
- To pay compensation to tenants but not leaseholders.
- To pay a higher rate of compensation to that included in the report.
- To actively seek former tenants and leaseholders and make an offer to pay them compensation.
- To make a compensation payment to residents without them having to make a claim.
- To pay compensation over a greater or less period than the legal liability period.
- To repay those residents the sums that they have paid to a separate gas supplier.
- To adjust the debts for those Residents that use gas to cook and claim payment for any under-recovery, going back over a similar period.
- Not to pursue National Grid Gas to alter the gas meter and pipework to the blocks, and maintain the current method for paying the gas bills and then recovering the cost from residents.

Report:

Background

1. Built by the former Greater London Council (GLC), a number of Council properties making up the Ninefields estate in Waltham Abbey were transferred to Epping Forest District Council during the 1970's.

2. At the time of construction, the flat blocks were provided with a communal gas mains supply, which is metered centrally on a block-by-block basis and then distributed to the individual properties. The individual properties were then fitted with a sub-deduct meter to measure individual consumption. Where a sub-deduct meter is fitted, the gas supplier would normally read the main communal bulk gas meter and then deduct the gas consumption measured through the sub-deduct meter and bill the Council for the net consumption and issue a bill to the individual Residents for their personal consumption.

3. In total, there are 25 blocks of flats on the Ninefields estate with this gas main arrangement, made up of 290 individual properties. Each of the flats in the blocks have individual heating.

4. Until 1986, British Gas were the sole public utility for the provision of gas supplies. As there are no records of any gas bills going back that far, based on the recollection of Officers that worked for the Council then, it is understood that British Gas would read (or estimate) the main bulk primary meter and issue a gas statement to the Council. At that time, Officers had no

knowledge of individual sub-deduct meters in the properties.

5. British Gas continued to supply gas to the Council after deregulation, but in its new commercial form, and the service was let by way of a supply contract.

6. In around November 1994, according to a former Management Team Report (a predecessor to CEF), the Council terminated the contract with British Gas for the purchase of metered gas, as the deregulation of the supply industries offered opportunities for significant savings to the Council.

7. Deregulation of the supply industries not only meant that the Council was able to procure gas at more competitive rates, it also meant that the market was open for organisations and individuals to buy their gas from whichever supplier they chose. Since the meters at the properties are not owned by the Council, residents are free to change supplier and meter type, meaning they could have either the original sub-deduct meter, have been changed to a quantum (pre-pay) meter, a credit meter or have no meter at all.

8. The Council's Environmental Services entered into a contract for the supply of gas through Kent County Council, who contracted with LASER (a Local Authority Buying Consortium), who in turn sub-contracted to Mobil as gas suppliers. The contract initially only included some of the Council's larger corporate sites, such as the Civic Offices, Leisure Centres etc. However, in around 1995 the contract was renegotiated and many of the Council's housing sites where there was a primary gas meter were added to the contract. This included sheltered housing complexes as well as 92 other blocks of flats across the district (many of the blocks on the Ninefields Estate in Waltham Abbey were amongst them).

9. From what records there are, it appears that the renegotiations by Environmental Services took some considerable time to finalise, which resulted in not all of the blocks of flats being added to the contract. The main problem appeared to be a reluctance of the gas supplier to take over the blocks of flats with grouped meters.

10. After the contract was let, the billing arrangements changed from quarterly billing to monthly billing, which created a considerable amount of confusion and additional administration. As an example, according to correspondence, in some cases the Council were receiving two bills for the same site from two different suppliers, some bills were incorrectly addressed and for some sites the Council did not receive any bills at all. Often the bills were estimated and not based on actual readings.

11. It was not until November 1995 that staff in Housing Services, whilst trying to unravel the problems they were experiencing through the changeover, learnt from British Gas that some blocks of flats, in fact, had sub-deduct meters. This was not previously known by Housing staff, nor was it indicated on any billing information. In fact it was the discovery of sub-deduct metering that led to just some of the Housing sites being included in the contract and others being left off, which in itself led to further confusion.

12. It is also worth pointing out at this stage that since 1995 when the original contract was agreed, the gas supplier used by Kent County Council has changed 6 times, and with every changeover confusion has set in. The Gas suppliers named in the previous correspondence and contracts are Mobil, Kinetica, Egas, Exxon Mobil, Total Fina Elf and British Gas Business. These changes were as a result of either market testing through tendering procedures by KCC or as a result of company buy-outs. The Council's contract has remained with Kent County Council throughout.

13. Over time, Housing Officers noticed that more and more bills were being presented based on "estimated" meter readings rather than "actual" readings.

Collection of Gas Debts

14. Gas bills are issued to and paid for by the Council, based on consumption measured through the primary meter. However, as the Council collects gas charges in arrears through its rent accounts, the debts are estimated in advance, taking into account a forecast of expected price increases and divided equally amongst the individual properties in each block. When the actual consumption is known at the end of the year, any difference is added to or subtracted from the future year's estimates.

15. Leaseholders are charged based on actual accounts for each year in line with Leasehold Legislation.

16. The table below shows the cumulative actual billing totals, income totals or estimates (where the actual is not yet known) for all 25 blocks of flats at Ninefields, Waltham Abbey since 2004.

Year	Total
2004/5 Actual Bills	£54,584.27
2004/5 Income (Exc Voids)	£54,213.12
2005/6 Actual Bills	£73,905.67
2005/6 Income (Exc Voids)	£61,428.64
2006/7 Actual Bills	£61,727.04
2006/7 Income (Exc Voids)	£76,011.00
2007/8 Actual Bills	£66,220.85
2007/8 Income (Exc Voids)	£144,267.66
2008/9 Estimates	£93,012.41

17. Not being aware that sub-deduct or secondary meters were installed in individual properties, it would have been expected that the Supplier would have deducted personal gas consumption measured through the sub-deduct meters before billing the Council. However, it is now clear that this has not been the case.

18. Where residents use electricity to provide their hot water, an adjustment is made to their heating charges to reflect this reduced gas usage.

The Current Problems

19. In November 2006, Officers within Housing Services suspected that the Council's gas supplier was not only estimating the communal gas consumption, but was also not reading the sub-deduct meters in individual properties, and deducting the gas usage from the Council's usage measured at the main bulk primary meter. They were simply issuing bills to the Council for the whole gas consumption measured through the main bulk primary gas meter. This was investigated, and in January 2007, the former Management Board were alerted to a potential problem, which needed further investigation.

20. The Council also established that some tenants had been receiving gas bills directly from other gas suppliers, which meant that, from some time in the past, and it is not clear when, some individual residents in the blocks may not have been separately billed for their personal gas consumption, and some have potentially been paying twice for their gas usage, and again, in some cases, the gas usage of others in the block(s) through their heating charges.

Survey

21. Having identified this problem, it was then necessary to undertake the extensive task of surveying each of the properties to ascertain the position in each one. Therefore, the Council's gas servicing contractor Gracelands (CMS) Ltd have, as part of their annual gas pipework testing programme, undertaken a detailed survey of each of the properties in the affected blocks to establish how many properties may be affected. The survey recorded:

- the gas pipework layout in each property,
- the type of fuel used for heating, hot water and cooking
- the position of the gas meter(s) in relation to the pipework layout; and
- the type of gas meter, serial numbers and readings

22. Since the problem was first thought to affect 79 blocks of flats, the survey involved making appointments and gaining access to 506 properties in all 79 blocks of flats across the Ninefields Estate. The survey was completed in November 2008. However, 16 properties have failed to allow access to date.

23. A number of important findings came out of the survey, which are summarised below:

(i) 54 blocks (216 individual dwellings) with a communal heating system were found to have a communal bulk / primary gas meter, which measures gas consumption to the communal boiler room only. All 216 individual dwellings were found to have their own separate gas supply with a separate primary gas meter. Therefore they each receive a bill from their own utility supplier for the gas they consume for personal use. The Council only charges for the gas associated with the heating and hot water as measured by the communal bulk / primary gas meter. Therefore, no problem arises in these dwellings.

(ii) Of the remaining 25 blocks (288 individual dwellings), each dwelling has been inspected and categorised, based on the diagram at Appendix 1. This diagram illustrates thirteen permutations that exist across the 288 dwellings (all 1-bed flats), with variations on pipe work layout, meter types and positioning as well as heating, hot water and cooking appliances by fuel type.

24. Within these 288 dwellings:

(a) There are 151 dwellings that use electricity to cook, 95 dwellings that use gas to cook, 3 dwellings that use both gas and electricity (gas hob and electric oven) to cook and 20 dwellings that do not have a cooker or may use a microwave oven;

(b) There are 100 dwellings that have a secondary gas meter installed that is positioned *after* the gas has flowed through the Council's primary bulk gas meter. The secondary gas meter is therefore measuring gas used for personal use, with the residents paying a separate gas supplier *as well* as a contribution to the Council for the gas consumed through the communal gas meter. Of these, 3 dwellings are paying a separate gas supplier for heating, hot water and cooking, 4 dwellings are paying a separate gas supplier for heating and hot water, and 93 dwellings are paying a separate gas supplier for cooking only. Therefore, these residents will, effectively, have paid twice for the same gas;

(c) There is 1 dwelling that has had the gas supply removed, and therefore does not use any gas; and

(d) 17 dwellings were not inspected due to no access being given when the survey was carried out.

Void Properties – Transfer of Utilities to Scottish & Southern

25. Following the Housing Services Best Value Review in 2004, the Cabinet agreed a

scheme to transfer the gas and electric accounts for each void property to Scottish and Southern, thereby making a single point of contact for new tenants when signing up for mains supplies. In return, Scottish and Southern pay the Council £25 per supply that is transferred. Since its introduction in June 2005, the Council has transferred 1,514 void properties, making up 1,992 gas and electricity supplies in total. This generated an income to the Council of £39,840.

26. Once tenants have moved in, they are under no obligation to remain with Scottish and Southern, and could change to whichever supplier they choose once they have taken up the tenancy.

27. This procedure has been applied to all Council properties throughout the district, including properties in those 79 blocks on the Ninefields estate, where it is known that 107 properties have become void since its introduction. A number of these will be properties where secondary meters are positioned after the Council's primary bulk gas meter.

Counsel Advice

28. In view of the problem identified, that tenants and leaseholders may have overpaid for gas consumption, the Council has taken specialist legal advice, particularly looking at any liabilities the Council may have towards the tenants and leaseholders, and if the Council is liable to repay any monies. Set out below is a summary of the main points contained in that advice:

- For both tenures (tenants and leaseholders), where a tenant has been charged twice because a gas supplier has used the reading from a sub deduct meter to provide a separate bill to the tenant, then the gas supplier should not have set up an account and is liable to return that money. This is because the Council has effectively, already bought the gas.
- Under the terms of the lease, long leaseholders have to pay whether they use the gas or not. Whilst there is some confusion as to the whether the billing calculation should be by reference to the Estate or the Building, this does not diminish the effect of the wording of the lease, which is that they must pay by reference to the amount the Council uses not to their actual usage. On that basis, it is unlikely the Council will be liable to repay the long leaseholders any sums in relation to gas that they have paid for but not consumed.
- The only tenants who may have a claim against the Council are those secure tenants who have not used as much gas as they have been charged for (whether because they are particularly frugal, or use electricity for heating, hot water and/or cooking). Such claims would be on a restitutionary basis; i.e. that they had overpaid sums (through their heating charges) under a mistake of fact.
- Since the date Scottish and Southern were engaged to take over the gas and electrical supply for void properties, the Council has sent out an introductory letter to new tenants stating that they could use Scottish and Southern to supply gas or arrange for another supplier. There is a clear inference from this that the Council would not be charging their tenants for any gas supplied by Scottish and Southern. This could lead to claims of misrepresentation on the basis that the tenants entered into contracts with gas suppliers because the Council misrepresented that they would not be double charged for gas if they did so. However, such an action is likely to fail, on the basis that the Council did not know that the meter reading would not be carried out properly by the suppliers. In other words, the Council may have made the misrepresentation, but did so with a reasonable belief that the facts represented were true.
- It would not be advisable for the Council to advise the tenants on how to take action

against their own gas companies. Whilst the Council are perfectly entitled to state their own position and view on the matter, it is another thing to positively encourage their tenants to take action against a third party.

Compensation

29. Based on the specialist legal advice, the Council does not have any liability towards those residents that are paying their own separate gas supplier for any gas measured through the sub-deduct or secondary meters, no matter how much or for whatever purpose it is consumed. In these cases, the residents will be advised to terminate their contract with their own supplier and seek a refund for any payments they have made to their supplier, and not the Council.

30. There are 151 dwellings where residents cook via electricity, 3 dwellings where residents cook using a combination of gas and electricity (gas hob and electric oven or vice versa) and 20 dwellings where residents do not have a cooker. In all of these cases, the residents will have been charged an equal sum for the gas consumed in the block as measured through the communal bulk meter, as other residents that cook by gas (unless the gas supply has been removed and no gas is consumed, therefore the resident does not pay anything).

31. However, those residents that either do not cook or use electricity for cooking will have consumed less gas. In fact, in those cases where residents cook by electricity, they will have paid their own separate utility provider for the electricity to cook. In these cases, based on the specialist legal advice, the Council may have a duty to repay the residents for the gas that they have paid for, but not used, on a restitutionary basis; i.e. that they had overpaid sums under a mistake of fact.

32. It is therefore recommended that the Council makes a one off payment of compensation to those secure tenants that either cook by electricity or do not have a cooker, for the gas they have not consumed yet paid for in their heating charges.

33. It is quite feasible that some residents may have changed their mode of cooking over the last 6 years. Since this is impossible for the Council to know, or for residents to prove, it is recommended that any compensation payments made are based on the current cooking appliances used by residents (and recorded by the Council as part of the recent survey) unless evidence can be provided to the contrary.

34. There are 17 dwellings where the Council's Gas Servicing Contractor has been unable to gain access to establish the layout of the gas pipework and the appliances in use.

35. Since the legal liability period for any claims is 6 years, a calculation has been made for each individual property, taking into account their tenancy commencement date, the type of fuel they use for cooking, the unit Kwh rate that was applicable on the gas contract in each of the previous years, and a liability period between 1 January 2001 (6 years back from the time the issue was first reported to the former Management Board) and 5 April 2009 (the last day of the current rent account year).

36. Based on the specialist legal advice, although it is unlikely the Council will be legally liable to repay the long leaseholders any sums in relation to gas that they have paid for but not consumed, it is recommended that the leaseholders be treated in the same way as tenants for the purpose of any compensation.

37. The table below reflects the amount of compensation that would be payable, taking into account the average gas cooking consumption for a typical small family (being the closest comparable rates available), as provided by British Gas, the rates paid by the Council through the contracts, and the current tenancy period (between 1 January 2001 and 4 April 2009) for

both tenants and leaseholders. The table also includes a contingency for dwellings where it has not been possible to gain access and for former tenants.

Description of Circumstance	Compensation Totals
3 dwellings will need to reclaim from their own gas supplier double-payment for gas consumed for heating, hot water and cooking	nil
4 dwellings will need to reclaim from their own gas supplier double-payment for gas consumed for heating and hot water	nil
93 dwellings will need to reclaim from their own gas supplier double-payment for gas consumed for cooking only	nil
151 dwellings that cook via electricity, but pay an equal contribution for gas as those cooking with gas. Therefore, it is recommended that these properties are to be compensated for the proportion of gas for cooking that they have been charged for but not used.	£39,210.45
3 dwellings that use dual fuel for cooking (gas hob and electric oven, or vice versa). Therefore, it is recommended that these properties are to be compensated for the proportion of gas for cooking that they have been charged for but not used, i.e. a reduction of 50%.	£287.12
20 properties do not have a cooker, or use a microwave, but pay an equal contribution for gas as those cooking with gas. Therefore, it is recommended that these properties are to be compensated for the proportion of gas for cooking that they have been charged for but not used.	£4,333.29
17 properties have not allowed access to conduct a survey of their gas installation. It is assumed 50% will cook by electric. Therefore a contingency sum is included to reflect this.	£1,492.76
Contingency for former tenant claims.	£3,000.00
Total liability for compensation payment	£48,323.65

38. There is currently no budget provision to make any payments for compensation. Therefore it is recommended that £50,000 be vired from the contribution to the Housing Repairs Fund of £30,000 and £20,000 from Heating Expenses.

39. Some tenancies have changed over the last 6 years, and in most cases it will be impossible to trace those that have moved during that time. It is therefore recommended that compensation is paid only to current tenants and leaseholders. However, if a claim is received from a previous tenant, then the Council will consider the claim based on evidence supplied by the claimant.

40. It should be noted that those tenants who cook by gas will, over the years, have paid less for their cooking, since part of the overall gas consumption will have been erroneously paid for by the electricity users. However, it is not proposed to recover any charges from them.

Notifying Ward Members and Residents

41. Counsel, in his advice, suggested that it would not be advisable for the Council to advise the residents as to how to take action against the gas companies. Therefore Officers will brief the Citizens Advice Bureau so that they may assist residents with any claims.

42. All 25 blocks of flats fall in Paternoster Ward and Honey Lane Ward. Therefore, in order to further assist residents, the circumstances have been explained to each of the Ward Members.

43. Residents have been notified of the position. However, in order to assist residents, a

leaflet incorporating a list of frequently asked questions (FAQ) will be sent to all residents that are affected, along with a letter explaining how the situation came about, what they need to do in order to make a claim and giving them a hotline number at the Council to discuss any claims, after the Cabinet's decision on the matter. The letters will vary according to what category residents fall, based on the results of the survey.

Options for future action

44. Since it is now known that the gas consumption measured through the communal gas bulk meter is used for a combination of heating, hot water and cooking, it is necessary to change tenancy offer letters and the rent increase letters to say "Gas Consumption" rather than "Heating Charges". It will also be necessary to make an adjustment to individual residents accounts to reflect their usage, giving a credit for those cooking by electric. It is quite feasible that residents may change their mode of cooking from time to time. Therefore it is recommended that residents are required to notify the Council of any changes so that an adjustment can be made to their rent account. Future annual gas pipework inspections can confirm any changes.

45. It is also recommended that all future leases attributed to any Right To Buy sales incorporate a clause that clarifies the basis of any charges for gas consumption.

46. In each of the 25 blocks of flats that have a communal bulk gas meter and the flats are individually heated, the gas pipework and meter arrangements puts the onus on the Council to act as debt collector to recover the cost of the gas supplied and to pay the gas supplier for the gas consumed. This is a favourable position for the gas supplier, but puts undue expectations to undertake a service that is of no benefit to the Council. It is therefore recommended that the Director of Housing approaches National Grid Gas, inviting them to remove the communal bulk gas meters and replace them with individual gas meters in each property.

47. If National Grid Gas do consider such a request, it will almost certainly be subject to conditions such as:

(a) The Council paying for any work necessary to upgrade the pipework that is currently in the Council's ownership to bring it up to a standard that will be acceptable to National Grid Gas;

(b) The Council paying for new meters being installed in each individual property, in a location to suit the Gas suppliers; and

(c) The Council paying to remove the existing individual secondary and check meters where they exist, and to adjust the gas pipework in each property to feed the individual appliances.

48. Whilst there is likely to be a significant capital cost to this last change, it will ultimately be more cost effective in the future, since the Council will not have to pay out significant sums of money to a supplier in advance (between £54,000 and £76,000 each year for the last 6 years) and then recover the costs from residents in arrears. It would also be much fairer to residents, who can shop around to get the best deal they can for their gas, and then only pay for the gas they have used personally, rather than collectively in the block.

Resource Implications:

£50,000 to be vired from the contribution to the Housing Repairs Fund of £30,000 and £20,000 from the Heating Expenses.

Legal and Governance Implications:

Leasehold legislation, Housing Act.

Safer, Cleaner and Greener Implications:

None.

Consultation Undertaken:

Local Ward Members for Paternoster Ward and Honey Lane Ward.

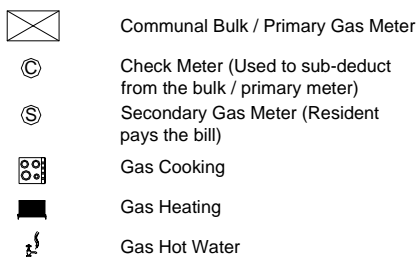
Background Papers:

Counsel advice, records obtained as part of a detailed survey of each property (subject to access).

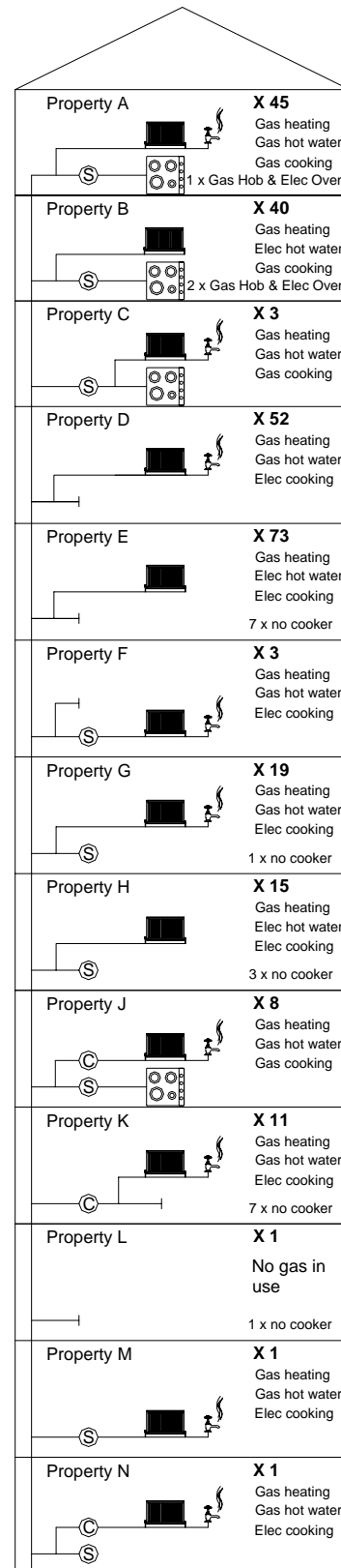
Impact Assessments:

Possible additional claims from Scottish and Southern for payments made to the Council for transferring accounts during the void periods.

APPENDIX 1



3 properties to reclaim double-payment for gas heating, hot water and cooking from their own separate supplier.	
4 properties to reclaim double-payment for gas heating and hot water from their own separate supplier.	
93 properties to reclaim double-payment for gas cooking only from their own separate supplier.	
151 properties cook via electricity, but pay an equal contribution for gas as those cooking with gas. Therefore, these properties are to be compensated for the proportion of gas for cooking that they have been charged for but not used.	£39,210.45
3 properties use dual fuel for cooking. Therefore any compensation payment would be reduced by 50% for these properties.	£287.12
20 properties do not have a cooker, or use a microwave, but pay an equal contribution for gas as those cooking with gas. Therefore, these properties are to be compensated for the proportion of gas for cooking that they have been charged for but not used.	£4,333.29
17 properties have not allowed access to conduct a survey of their gas installation. It is assumed 50% will cook by electric. Therefore a contingency sum is included to reflect this.	£1,492.76
Contingency for former tenant claims.	£3,000
	Total = £48,323.65



 Blocks With Individual Heating