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| Report subject | Housing and Property Compliance Update (Housing Revenue Account) |
| Meeting date | 16 December 2020 |
| Status | Public Report |
| Executive summary | <p>This annual report provides information on how the Council meets its responsibilities in ensuring that all Council Housing within the Housing Revenue Account is managed in a way that meets compliance with current health and safety legislation, best practice and regulatory standards to ensure the health and safety of residents.</p> <p>It highlights any challenges there are in achieving compliance and what remedial action is being taken. This year, there have been some serious challenges in achieving compliance.</p> <p>Social distancing measures introduced because of the Covid-19 pandemic have made it more difficult to carry out gas and electrical safety tests in tenants' homes.</p> <p>There are some risks identified in the detail of the report across both neighbourhoods along with details of how the teams are working to mitigate and address these.</p> <p>Despite the challenges presented by Covid-19, compliance within both the Bournemouth and Poole neighbourhoods has been successfully maintained overall and continues to be a high priority.</p> |
| Recommendations | <p>It is RECOMMENDED that:</p> <ol style="list-style-type: none"> 1. Cabinet notes the compliance information provided which details how the Council is performing against statutory building compliance relating to its Council Housing. 2. Future performance be reported annually to Overview and Scrutiny Committee and Cabinet. |
| Reason for recommendations | <p>The Council, as a landlord, has many legal obligations it must satisfy to ensure the health, safety and welfare of its tenants. It must also adhere to the regulatory standards as set out by the Regulator of Social Housing, particularly the Home Standard.</p> <p>Councillors should also have oversight and assurance of compliance against the legal and regulatory requirements that are</p> |

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| | placed upon it through this annual report to Cabinet. |
| Portfolio Holder(s): | Councillor Robert Lawton – Homes |
| Corporate Director | Kate Ryan – Corporate Director of Environment and Community |
| Report Author | Seamus Doran – Head of Neighbourhood Management (BCP) |
| Wards | Council-wide |
| Classification | For Recommendation |

Background

1. This report demonstrates how compliance within the Housing Revenue Account (HRA) housing stock for the Bournemouth and Poole neighbourhoods is managed. There is no HRA housing stock in the Christchurch neighbourhood of BCP Council because it was previously transferred across to Sovereign Housing Association several years ago.
2. The HRA is the ring-fenced account within BCP Council relating to the income and expenditure for its rented Council homes.
3. The ring-fenced HRA includes two neighbourhoods. The Bournemouth neighbourhood housing stock is owned and managed directly in-house by BCP Council. The Poole neighbourhood is owned by BCP Council but managed by Poole Housing Partnership (PHP), an Arm's Length Management Organisation (ALMO). PHP is wholly owned by the Council and a Commissioning and Performance Management framework is in place between the Council and PHP to monitor performance. The total rented stock as at 31 March 2020 for the Bournemouth Neighbourhood was 5,071 homes and the Poole neighbourhood had 4,545 homes, giving BCP a total of 9,616 rented homes.
4. There are also 1,137 leasehold properties managed across both neighbourhoods. The Council is not responsible for gas safety or electrical checks to leasehold properties, but we are responsible for compliance issues relating to communal areas and services that impact on these properties.
5. The report excludes the following properties; BCP General Fund Hostels, leased temporary accommodation, Seascope Homes and Property Limited stock and corporate non-residential properties across BCP. Statutory compliance in respect of these properties is monitored separately on a monthly, quarterly and annual basis, depending on the relevant legislation and is not the subject of this report.
6. The Council, as a housing landlord, has many legal obligations it must satisfy to ensure the health, safety and welfare of its tenants. These obligations form part of an ongoing cyclical inspection and maintenance regime to ensure key elements in the home do not pose undue risk.
7. These obligations are well represented through statute. Statutory instruments set out the minimum standard which must be met. There are also regulatory requirements as set out within the Regulator of Social Housing's (The Regulator)

Home Standard. There are procedures and policies for both the BCP Bournemouth Neighbourhood Property Maintenance Team and the PHP Poole Neighbourhood Property Team. These have been developed from the legislation governing health, safety and welfare of tenants.

8. The statutory instruments that cover general topics around the requirement of a landlord, include The Health and Safety at Work Act 1974 (HSWA), The Landlord and Tenant Act 1985 and The Housing Act 2004. There is more specific guidance around fire safety, electrical safety, gas safety, water hygiene, gas safety and lift safety.
9. The following areas of compliance are of the highest risk and therefore the ones that are high priority and are measured and monitored on an ongoing basis.
 - Water Quality
 - Gas Safety
 - Asbestos
 - Electrical Safety
 - Fire Safety
 - Lift Safety
10. There are many more repairs that happen on a day to day basis, as and when they arise, that are undertaken to ensure the safety of our tenants.
11. In May 2019 the Regulator wrote to all Chief Executives of local authorities who manage social housing and reminded them of their obligations towards tenant's safety.
12. It drew attention to part 1.2 (b) of the Home Standard, which requires that registered providers shall:

“meet all applicable statutory requirements that provide for the health and safety of occupants in their homes”
13. The obligation remains with the local authority where it is the stock-owning body, even if the management has been contracted to other bodies including ALMO's such as PHP. The suggestion is that the Regulator will take a more proactive monitoring role for housing stock which is owned by local authorities in the future, whether it is managed in-house or not. It is important that we ensure robust monitoring across all our housing stock in order to provide assurance.
14. Following the Grenfell Tower Fire in 2017, the government commissioned an independent review of building regulations and fire safety to understand the causes of the fire. The review concluded that the whole system needed major reform and that residents' safety needed to be a greater priority through the entire life cycle of a building – from design and construction, through to when people are living in their homes. The government accepted the review's recommendations and the draft Bill, which, alongside the existing Fire Safety Bill and fire safety consultation will set out how they are bringing forward those proposals to provide improvements to building safety. The draft bill was published by the government on 20 July 2020. It is waiting for further comments before introducing to Parliament and as yet there is no timescale regarding implementation.

15. The draft bill will impose more stringent requirements in relation to higher risk buildings. This will include buildings of more than 18 metres in height or over 6 storeys. A new Building Safety Regulator (BSR) will be responsible for overseeing the safety and performance of all buildings and enforcing the more stringent regime for higher risk ones. Those involved in the construction of new buildings will, as “dutyholders”, have additional responsibilities for demonstrating compliance with the new regulations. They will need to maintain information about the building so that it can be passed on to ensure safe management in the future when it is eventually occupied. The new regulator will get involved at different stages of development to ensure compliance before it can move to the next stage.
16. High risk buildings will need to be registered with the BSR to have a building assurance certificate (BAC) before occupation. New dutyholders will need to be appointed once a building is occupied. An Accountable Person will need to conduct and maintain a safety case risk assessment and appoint a Building Safety Manager to oversee this. A resident’s engagement strategy will need to be in place for residents to participate in decisions about safety risks. There will be a new complaints procedure for residents to raise concerns about the safety of their building or compliance with the engagement strategy. There will also be requirements placed on residents to keep gas and electrical appliances in good working order and not damage fire safety measures in place.
17. These requirements will also apply to existing buildings. However, there will be a staged transition period during which the BSR will take into account the information available to the Accountable Person at the time of the application for a BAC.
18. As well as its role to implement and enforce the new more stringent regulatory regime for higher-risk buildings, the BSR is tasked with stronger oversight of the safety and performance of all buildings. It is also tasked with assisting and encouraging competence among the built environment industry and registered building inspectors.
19. When any building is designed, constructed or refurbished, those involved will have formal responsibilities for compliance with building regulations and be held to account. The draft Bill will enable additional duties to be imposed on all people participating in building work to which building regulations already apply.
20. The Bill will also remove the democratic filter in raising a complaint with the Housing Ombudsman To increase the speed of redress, social housing residents will be able to escalate a complaint to the Housing Ombudsman directly, once they have completed their landlord’s complaints process. This will remove the current requirement for a social housing resident to raise their complaint via a ‘designated person’ (an MP, councillor or tenant panel) or wait eight weeks to raise the complaint directly with the Ombudsman themselves, with the intention speeding up redress.
21. As well as the draft Bill, a consultation on fire safety was also launched. The Government is seeking views on:
 - strengthening the Regulatory Reform (Fire Safety) Order 2005;

- implementing the Grenfell Tower Inquiry Phase 1 Report recommendations that require a change in the law to place new requirements on building owners or managers of multi-occupied residential buildings; and
 - strengthening the regulatory framework for how building control bodies consult with Fire and Rescue Authorities and the handover of fire safety information.
22. In addition to the need to consider high rise buildings the Council will also need to consider other complex buildings such as extra care schemes. The Building Safety Manager is a new role. There is likely to be competition for people who can undertake the role and it is unclear how many buildings one safety manager can be responsible for. There will be added complexity in ensuring that we have systems in place to manage the additional information and report on it. Both neighbourhoods will work together on this and ensure that sufficient resources are available.
23. It is timely to note the recent Social Housing White Paper published 17 November 2020 following the Green Paper published in 2018. This also sets out the national context around a greater focus on the tenants' voice, health and safety and regulation. This annual report sits well in that context.
24. The report provides the opportunity to provide assurance to Cabinet around the compliance issues across all the housing stock within the HRA.
25. The monitoring of compliance sits within the services of each of the Poole and Bournemouth neighbourhoods. There is regular quarterly performance monitoring in place with audit trails and staff training in place to ensure compliance.
26. The Covid-19 pandemic has had an impact on our ability to maintain compliance. The Regulator has been aware of this nationally for all providers and as a Registered Social Housing Provider, the Council has been required to submit a monthly "Coronavirus Operational Response survey" to the Regulator, covering both neighbourhoods. The purpose of the survey is to see how providers are coping with some of the challenges they face. The survey requested information on the following areas in order to measure the impact of Covid-19.
- Emergency repairs
 - Statutory gas compliance
 - Statutory fire compliance
 - Asbestos, electrical, legionella and lift safety checks.
27. Within both neighbourhoods all emergency repairs have continued to be carried out as well as all statutory fire checks in communal areas and most asbestos, legionella and lift safety checks. A backlog of electrical tests to tenanted properties has built up in both neighbourhoods and a number of gas safety tests missed their anniversary date primarily within the Bournemouth Neighbourhood over recent months. However, the guidance as set out by the Health and Safety Executive (HSE) for carrying out gas safety tests during the pandemic was followed and outstanding tests reduced substantially as lockdown measures were relaxed.
28. Within both neighbourhoods, steps have been taken to ensure that contractors and in-house teams have been able to work safely and flexibly to help maintain compliance levels and offer reassurance to tenants.

29. Regular joint working between the two neighbourhoods alongside facilitated discussions with local housing associations ensures a relatively consistent approach to these issues across BCP social housing providers during the Covid-19 pandemic.
30. Compliance continues to be managed separately within each neighbourhood although the future delivery model of the wider housing management service is being considered. For the purpose of this report, the reporting has been aligned as much as is possible. The compliance dashboard for quarter 2 2020/21, (July – September 2020), is provided in appendix 1.
31. Both neighbourhoods use the same health and safety legislation and best practice to ensure the housing in their neighbourhood is compliant with current regulation and standards. Despite the challenges recently experienced, there is overall satisfaction with compliance of the housing stock with regards to water quality, gas safety, asbestos, electrical safety and lift safety and these are at the levels expected.

Water Quality (Legionella Management)

32. While there is a legal duty under the Control of Substances Hazardous to Health Regulations 2002 (COSHH), for landlords to assess and control the risk of exposure to legionella bacteria, the law does not prescribe specific review periods. Health and safety law does not require landlords to produce or obtain, nor does the HSE recognise, a 'Legionnaires Testing Certificate'. The Approved Code of Practice: Legionnaires' disease: The control of Legionella bacteria in water systems (L8) outlines best practice guidance and this is followed by both neighbourhoods.
33. Risk assessments should be reviewed frequently as determined by the assessment to ensure that they are up to date. This means three to four years in Bournemouth and two in Poole. They should also be reviewed any time there is a significant change such as additions or modifications to water systems, changes to the use of the water system, where key personnel have changed, or legionella control measures are no longer working. Regular safety inspections measure temperature and ensure tanks are clean or covered. In some circumstances water samples may be taken. This work is carried out by external contractors.
34. The outstanding monthly checks at the end of the quarter in Bournemouth have been resolved following discussions with the contractor and have since been completed. Several of the outstanding risk assessments have also been completed.
35. The outstanding remedial actions in Poole relate to the need to replace large communal water tanks and this work has been planned.

Gas Safety

36. Regulation 36 of The Gas Safety (Installation and Use) Regulations 1998 deal with landlords' duties to make sure gas appliances, fittings and flues provided for residents are safe. It details the duties of landlords to 'ensure that each appliance and flue to which the duty extends; has been checked within a 12-month period, that proof of this is kept for two years and is available for the tenant(s) of the premises.

37. The gas safety programme was particularly impacted in the Bournemouth neighbourhood by the Covid-19 pandemic as access to tenants' home is required. The HSE advised landlords not to suspend gas safety programmes and provided guidance for them of what action is reasonable to follow where it has not been possible to carry out a gas safety test because of reasons relating to the virus, for example if someone was shielding. This advice was followed by both neighbourhoods where applicable.
38. Where tenants fail to provide access for gas safety tests there are legal remedies available to both neighbourhoods. Tests within the Bournemouth area are carried out in-house while in Poole the work is carried out by an external contractor.
39. The tests carried out late in Bournemouth was primarily due to the suspension of gas servicing at the start of lockdown and tenants refusing access due to concerns over Covid-19. There was one test outstanding in Bournemouth at the end of the quarter where legal action has commenced to gain access. The one outstanding in Poole has since been completed.

Asbestos

40. At present there is no directive within the regulations as to how frequently communal areas should be re-inspected, but they should be assessed periodically. Asbestos can be present as asbestos insulation board (AIB) or as asbestos containing material (ACM), e.g. floor tiles and aertex ceilings. All communal areas within both neighbourhoods have been surveyed.
41. The condition of any asbestos in communal areas is managed through regular annual visual inspections. These were suspended in Poole during lockdown resulting in a backlog which was dealt with by the end of the last quarter. Within Bournemouth the programme runs from September to December and so was unaffected.
42. Asbestos within domestic properties is removed before major refurbishment such as kitchen replacement.

Electrical Safety

43. Currently there is no regulation, standard or act that defines a frequency for electrical installation inspection and testing in social housing managed homes. However, The Code of Practice for the Management of Electrotechnical Care in Social Housing recommends the frequency for testing and inspection to be every five years which is the inspection interval used in both neighbourhoods. Inspections can be carried out sooner if deemed necessary by risk assessment. Within Bournemouth testing and servicing is carried out in-house as well as by contractors while in Poole it is solely contractors who carry out the work.
44. The electrical safety programme was particularly affected by coronavirus pandemic as the work requires access to the whole of a property for a considerable period of time. It was agreed across both neighbourhoods that because of the intrusive nature of the work that it would be suspended but it has since recommenced once the first lockdown restrictions eased.
45. Failure to carry out these tests can result in fires in homes and injury to residents. Within the Bournemouth neighbourhood changes have been made to the administration of the programme to assist with the backlog and to make the process more efficient. Within the Poole neighbourhood, PHP are working with

their contractor to deal with any backlog and gaining access to any properties where tests are outstanding.

Fire Safety

46. Three pieces of legislation govern the actions of landlords in relation to fire safety; the Housing Act 2004, the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 and the Regulatory Reform (Fire Safety) Act 2005 (RRO). While legislation specifies the frequency for carrying out fire risk assessments' (FRA's) as 'regularly'.
47. An effective fire safety programme incorporating a frequent FRA programme looking at a range of measures, including facades, compartmentalisation, doors and closers and clear communal areas is in place across both neighbourhoods. These are reviewed regularly within each neighbourhood.
48. The Fire Risk Assessment reports rate priorities as high, medium or low. A programme of work, based on these priorities, continues to be undertaken using the action priorities contained therein.
49. Where staff suspect or have evidence that a resident may pose a fire safety risk not only to themselves, but their neighbours, and we have done all that we can from a building safety perspective, the case is referred to the Dorset and Wiltshire Fire Service under the fire safety referral scheme. Concerns would range from; hoarding, repeated false alarm activations, actual minor fire, portable fires, dirty ovens / cooking appliances and chaotic lifestyles often due to addiction. Mitigating actions can be put in place to reduce the risk and we will work with other teams within the Council and other agencies to see if support can be provided to improve the situation. Where necessary legal action will be taken against the resident.
50. Smoke alarm tests are carried out at same time as the gas safety test in both neighbourhoods. Smoke and fire alarms within sheltered housing in both neighbourhoods are linked to the out of hours service through the emergency alarm systems. This provides information on activations and can help raise awareness of issues with individual tenants. Information can also be used to help the decision-making process regarding repairs.
51. Both Neighbourhoods have opportunities to raise awareness of fire safety with residents through newsletters, websites, general correspondence and residents' groups.
52. Fire safety issues have been identified regarding the tower blocks at Sterte Court, Poole. As set out in the compliance report to Cabinet in 2019, there were issues noted with workmanship when cladding was erected to these blocks and the panels were of limited combustibility. A subsequent review has been undertaken and the resulting recommendation has been made to remove and replace the whole cladding system using wholly non-combustible materials. At the time of writing, work to remove the existing cladding system and replace with wholly non-combustible material has been approved by Cabinet and is awaiting approval by Full Council. If approved it is anticipated that the initial work will commence early in 2021. Removal of the cladding will reduce the level of risk and the need for mitigating actions such as a waking watch.
53. The Council made a self-referral to the Regulator in August 2020 for a potential breach of the Home Standard because of the situation. The Regulator requested

further information and after receiving this has confirmed that it will take no regulatory action against the Council as the registered provider. This is because mitigating work is well underway, and the Council had arranged to carry out an audit investigation on matters which it intends to improve practices as recommended by the audit report.

54. There are no other blocks of flats with similar cladding to Sterte Court. There are four other tower blocks in the Poole neighbourhood where a programme of works has commenced to providing cladding to a Class A non-combustible standard.
55. There are two red-rated high priority actions within Bournemouth. One of these relates to a specific layout of a flat at Craven Court which makes travel distance to a place of ultimate safety (outside) excessive. There is no option of changing this layout and the stay put policy makes the travel distance acceptable. A redevelopment of Craven Court is currently being prepared for planning submission which includes its demolition and a new building being constructed. The other issue relates to a fire escape stair at Bethany House leading from the top floor of the rear wing exits through land the Council does not own and as a result does not lead to a place of safety if used without the emergency services being present. As the building operates a stay put policy this has been mitigated in liaison with the fire brigade who would only use the stairs if the stay put policy was no longer operationally safe and evacuation was necessary.
56. The 807 low risk remedial actions that are overdue in Bournemouth relate to routine testing, for example, fire alarm tests, which are carried out regularly but remain on the FRA as these are ongoing. This ensures visibility.
57. There are four red rated high priority remedial actions in Poole, two of which relate to the replacement of the cladding at Sterte Court. Mitigating actions are on-going until the removal. Other remedial actions include relocation of a bin store which was delayed due to Covid-19 and one fire door which will be fitted once delivered. The bin store has since been relocated.

Lift Safety

58. The Councils duties for managing lifts are contained within the LOLER (Lifting Operations Lifting Equipment Regulations 1998 and PUWER (Provision and Use of Work Equipment Regulations 1998). Both neighbourhoods have a shared contract with an external contractor to carry out any inspections or work.
59. Non-domestic (communal) lifts are subject to two thorough inspections each year alongside monthly servicing schedules. This work is carried out by contractors. Lifts are also subject to one annual inspection from our insurer. Domestic stairlifts are subject to two thorough inspections per year and one annual inspection by our insurer. Any unsatisfactory or worn items are reported alongside a quote for repair and undertaken. The outstanding inspections in the Bournemouth neighbourhood have since been completed.

Summary

60. Despite the challenges of Covid-19 compliance within both neighbourhoods has been successfully maintained in accordance with normal guidelines and those issued during the pandemic. Lockdown and social distancing made it difficult to gain access to complete work particularly periodic electrical testing and gas servicing. Guidance on working safely in residents' homes and communal areas has been followed as well as guidance from the HSE on dealing with access

issues for gas safety tests. Monthly returns have been made to the Regulator to demonstrate that both neighbourhoods have been completing all compliance work without any material backlog developing. Where there are high risk issues, there is mitigating action in place to reduce or remove these.

Links to the BCP Corporate Health and Safety team

61. The Corporate Health and Safety team's link to the Bournemouth Neighbourhood Housing Team is to provide health and safety advice and assistance to all staff who work on the Housing stock. This includes:
- working with relevant managers to review policies and procedures and appropriate implementation. All legacy Council policies and procedures will need to be reviewed and updated to reflect any changes that have occurred since the formation of BCP Council. This will include policies and procedures for asbestos, legionella, gas and electricity;
 - updating the relevant teams on any new or significant changes to Health and Safety legislation and codes of practice that are relevant to the management of the housing stock;
 - assisting management in monitoring health and safety standards in the housing stock;
 - assisting in the identification of Health and Safety training needs for relevant managers and staff;
 - investigating any serious accidents or ill health occurrences and work with management to prevent a reoccurrence.
62. The Corporate Health and Safety team includes qualified Health and Safety professionals who undertake continuing professional development to ensure they keep up to date with legislation and best practice.
63. The Housing Team will continue to work with Corporate Health and Safety to further develop policies and procedures and share this with the Poole Neighbourhood team.

Summary of financial implications

64. There is a cost associated with the delivery of inspection, remedial works and improvement programmes associated with these policies, however the duties are mandatory, and the cyclical programmes associated with such have been factored into the respective HRA Neighbourhood Business Plans. The following figures set out indicative costs by work types per year. Whilst more detailed budget analysis would be required to clarify exact costs for each, the figures below provide a helpful indication regarding levels of dedicated investment in the key compliance issues per year.
65. This report does not contain a request for a decision on spend as this is already within agreed budgets that are set out in the annual Housing Revenue Account Budget Report.

| Compliance area (approximate spend per annum) | Bournemouth Neighbourhood | Poole Neighbourhood |
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| Water quality | £19,000 | £24,000 |
| Gas safety | £287,000 | £540,000 |
| Asbestos | £50,000 | £50,000 |
| Electrical safety | £236,000 | £120,000 |
| Fire safety | £161,000 | £110,000 |
| Lift safety | £160,000 | £140,000 |
| Annual staff costs to manage the programmes | £210,000 | £85,000 |
| Total | £1,123,000 | £1,069,000 |

66. The approximate cost of compliance across both neighbourhoods is broadly similar. Much of the work is carried out in-house in the Bournemouth neighbourhood and more analysis needs to be made on how each neighbourhood accounts for its costs.

67. The teams in the Bournemouth and Poole neighbourhoods will continue to review the methodology that each uses to maintain statutory compliance. In doing so, best practice can be agreed, and any potential savings can be achieved.

Summary of legal implications

68. The policies and procedures assist the Council in discharging its statutory duties associated with landlord compliance. Failure to comply with these duties could result in formal prosecution being brought against the Council as a landlord e.g. potential of a corporate manslaughter case for the most serious of breaches.

Summary of human resources implications

69. None

Summary of sustainability impact

70. Adherence to appropriate and consistent standards for compliance protects both the interest of our tenants and the Council as a landlord. The correct functioning of gas and electrical systems reduce the impact of the systems on the environment through efficient operation. Having good knowledge of the condition of our systems allows planning for their replacement when appropriate times with more efficient upgrades that benefit the environment and our tenants.

Summary of public health implications

71. Complying with policies, procedures and statutory duties ensures the wellbeing of our tenants and provides safe and well-maintained homes. Our compliance work protects tenants from hazards that might otherwise exist.

Summary of equality implications

72. None

Summary of risk assessment

73. Failure to comply with duties to maintain the health and safety of residents could result in formal prosecution being brought against the Council as a landlord e.g. potential of a corporate manslaughter case for the most serious of breaches.
74. If there is breach of the Home Standard then the Regulator might serve a regulatory notice on the Council which have a detrimental impact on the Council's reputation. The Regulator expects councillors to ensure that they have proper oversight of all health and safety issues to ensure compliance with the Home Standard.

Background papers

Published works:

Home Standard – Regulator of Social Housing

<https://www.gov.uk/government/organisations/regulator-of-social-housing>

Letter to stock owning local authorities about the consumer standards – May 2019 – Housing Regulator

<https://www.gov.uk/government/publications/letter-to-stock-owning-local-authorities-about-the-consumer-standards-may-2019>

Building a Safer Future. Independent Review of Building Regulations and Fire Safety, Final Report.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/707785/Building_a_Safer_Future_-_web.pdf

Appendices

Appendix 1 - Health and safety reporting dashboard 2nd quarter 2020/21