

Internal Audit Report

Unlicensed Houses in Multiple Occupation (HMOs)

27 October 2025

PL2501

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This Internal Audit review is conducted for the City of Edinburgh Council under the auspices of the 2025/26 internal audit plan approved by the Governance, Risk and Best Value Committee in March 2025. The review is designed to help the City of Edinburgh Council assess and refine its internal control environment. It is not designed or intended to be suitable for any other purpose and should not be relied upon for any other purpose. The City of Edinburgh Council accepts no responsibility for any such reliance and disclaims all liability in relation thereto.

The internal audit work and reporting has been performed in line with the requirements of the Global Internal Audit Standards (UK Public Sector) and as a result is not designed or intended to comply with any other auditing standards.

Although there are specific recommendations included in this report to strengthen internal control, it is management's responsibility to design, implement and maintain an effective control framework, and for the prevention and detection of irregularities and fraud. This is an essential part of the efficient management of the City of Edinburgh Council. Communication of the issues and weaknesses arising from this audit does not absolve management of this responsibility. High and Critical risk findings will be raised with senior management and elected members as appropriate.

1. Background and scope

The following legislation and regulations place duties and obligations on Councils to support homelessness:

- [The Housing \(Scotland\) Act 2001](#)
- [Homelessness etc. \(Scotland\) Act 2003](#)
- [The Homelessness \(Abolition of Priority Need Test\) \(Scotland\) Order 2012](#)
- [Homeless Persons \(Unsuitable Accommodation\) \(Scotland\) Order 2014](#).

Edinburgh has the highest number of homeless households in Scotland. There is a low proportion of social housing, rising homeless presentations and demand significantly exceeds supply.

Due to rising demand and constrained supply, the Council relies partly on the use of Houses in Multiple Occupation (HMOs). An HMO is a property occupied by three or more unrelated people who share a bathroom or kitchen facilities. Part 5 of the [Housing \(Scotland\) Act 2006](#) requires owners of such properties to obtain a licence from the local authority where the property is located. This licensing ensures the property meets required physical standards and is well-managed, contributing to tenant safety and well-being.

During the Covid-19 pandemic, Councils were instructed to rapidly accommodate all rough sleepers including some who were ineligible for public support due to immigration status or intentionality. Further crises compounded pressures on demand for temporary homeless accommodation including:

- War in Ukraine (from February 2022) - the UK's Ukraine visa schemes brought over 200,000 displaced Ukrainians to the UK, approximately 10,000 of whom were supported via the Welcome Hub in Edinburgh
- Cost of living crisis (2022 onwards) – triggered by economic factors including high inflation which continues to result in financial hardship and associated impacts.

Pre-pandemic there were 3,570 households in temporary homeless accommodation across Edinburgh. As of 31 August 2024, there were 5,123

households accommodated, a 43% increase in 4 years. This can be attributed to rising homeless presentations in the city, exacerbated by disproportionately low housing supply.

In response to these pressures the Council declared a Housing Emergency in November 2023, with the [Housing Emergency Action Plan](#) agreed in December 2023.

On 26 September 2024, Full Council considered a [report by the Monitoring Officer on the Conflict of Legal Obligations](#) related to HMO licensing, specifically compliance with Part 5 of the Housing (Scotland) Act 2006. The report highlighted that the Council was using unlicensed HMOs as temporary homeless accommodation.

A report in response to the Monitoring Officer report was considered at the Housing, Homelessness and Fair Work Committee on [1 October 2024](#). Both reports were then referred to the Governance, Risk and Best Value Committee (GRBV).

The GRBV Committee considered the referral paper on [23 January 2025](#) and an [amendment](#) was agreed requesting an internal audit into the conflict of legal obligations (see Appendix 1).

Scope

The objective of this review was to respond to the specific points raised by the GRBV Committee on the conflict of legal obligations set out in the [amendment](#).

Reporting Date

Audit work commenced in July 2025 concluding in October 2025. Audit work included a review of supporting documentation including meeting papers, reports and emails covering the period December 2021 to September 2025.

2. Executive summary

Review of the Council's use of unlicensed Houses in Multiple Occupation (HMOs) and the associated breach of legal and regulatory standards acknowledges the public health crisis during the Covid-19 pandemic which required the Council to accommodate vulnerable homeless people quickly, and decisions to adopt emergency measures such as use of unlicensed HMOs were made under intense operational pressure and limited options.

Subsequent factors, including the war in Ukraine and cost of living pressures, further strained housing supply and created additional demand for temporary accommodation. While emergency measures were initially justified, the prolonged use of unlicensed HMOs and a lack of addressing the conflict of legal obligations faced by the Council highlights a failure to transition quickly from crisis response to compliant operations. Public disclosure was reactive, triggered by the Monitoring Officer, which highlights weaknesses in internal escalation and governance.

Audit findings in relation to the Elected Member questions posed in the amendment are set out in [Section 3](#) of this report. Key factors include:

- legal non-compliance with known use of unlicensed HMOs over a prolonged period, with internal advice not consistently escalated or promptly acted upon
- engagement with stakeholders was reactive, delayed, and lacked transparency. A lack of formal reporting or follow-up means there is limited assurance in the effectiveness of this engagement in mitigating risks
- inconsistent risk reporting and ambiguity in the Corporate Leadership Team's (CLT) authority to tolerate legal risk
- lack of clear escalation protocols for legal risks and delayed disclosure of legal concerns to Elected Members
- leadership transitions during the period with changes to key senior officer roles and political leadership which contributed to gaps in governance

- absence of structured tracking and accountability for decisions and actions at CLT and at a service level
- reactive mitigation measures to reduce legal non-compliance placed significant pressure to expand the supply of alternative accommodation.

Recommendations to ensure corrective actions and prevent reoccurrence of similar issues are provided in [Section 4](#) of this report. These include:

- ensuring early and structured consultation with external stakeholders
- strengthening escalation and ensuring timely reporting of material legal breaches to senior management and Elected Members
- establishing clear ownership, tracking and follow-up of CLT and service level actions
- standardising reporting of material legal/regulatory breaches to committees within defined timescales
- clarifying whether CLT can tolerate certain risks of non-compliance, with transparent reporting and a clear plan to remediate
- improving the documenting of decisions, timelines and responsibilities to provide transparency and a clear audit trail.

3. Audit findings

This section sets out Internal Audit's findings in relation to the specific questions set out in the GRBV Committee amendment from 23 January 2025:

1. When it became clear that the Council was acting illegally and the timeline for when the Chief Executive, Corporate Leadership Team (CLT), the Council Leader and relevant convener were alerted

Council officers would have been aware in 2020 that some HMOs being used as temporary homeless accommodation were unlicensed. This would have been viewed as a necessary Covid-19 pandemic response and the need to secure accommodation rapidly to accommodate all rough sleepers.

The first formal record of the conflict of statutory obligations and illegality of the use of unlicensed HMOs being considered by the then Chief Executive and CLT was on 1 December 2021, in a report titled 'Temporary Accommodation and HMOs.' The report recognised that the pandemic and the instruction to meet public health requirements and accommodate homeless people had required a degree of flexibility, but that the need for additional temporary accommodation needed to be balanced against the statutory duty to ensure the HMO licence system functions and that properties requiring a licence obtain one. The report set out action being taken to inspect properties and to inform landlords to apply within a specific timeframe. CLT agreed the recommendation to accept the risks and proceed as set out in the report.

The CLT risk profile in Quarter 1 2022 included an issue with compliance with laws and regulations; specifically, non-compliance with the Unsuitable Accommodation Order re temporary accommodation exacerbated by Ukraine.

A report titled 'No recourse to public funds' was presented to the Housing, Homelessness and Fair Work (HHFW) Committee 29 September 2022 under B agenda. The 'Other risks considered' section referenced the expanded use of HMOs to meet accommodation needs, that all properties had been checked to ensure they were safe, and a number had sought an HMO licence. The report advised that some properties had not applied for an HMO licence or engaged on this issue, and that enforcement options were limited whilst the Council continued to place households in those properties. The report advised

that if the current service provision was to continue and required the use of unlicensed HMOs, there was a risk of undermining the HMO licence system.

A further paper titled 'Temporary Accommodation and HMOs' was presented to CLT on 23 November 2022 providing an update on progress since the report in December 2021, including ongoing pressures and demand for temporary accommodation such as providing accommodation for Ukrainian Displaced Persons and other resettlement schemes. The report included a recommendation for CLT to note that the Council was in breach of its statutory duty to ensure that these House in Multiple Occupation are licensed and included information on HMO licensing, offences and enforcement. The report set out significant risks including that if a decision was taken to cease using properties which are unlicensed this could result in around 760 households, which could include children, having no accommodation and at risk of sleeping rough, as well as resulting in the Council failing in its statutory duty to provide temporary accommodation to people who are homeless or at risk of homelessness. The human impact of the position was also discussed in detail, as well as a discussion on the need to regularise the position as quickly as possible, by encouraging those establishments to register.

The CLT decision note included 11 actions agreed in relation to the report, including an action to prepare a briefing for sharing with Group Leaders. A Group Leaders' briefing paper was drafted by officers in the Homelessness Service in January 2023; however, this was not presented to members. Officers were unable to provide a rationale for why the draft briefing was not shared.

Homelessness Services officers advised that they meet regularly with the HHFW Convener and that since 2021, these meetings have included discussion on the situation with temporary accommodation and use of HMOs, however these meetings do not have formal agendas or meeting notes. In March 2023, the new Service Director, Housing and Homelessness verbally briefed the HHFW Convener.

Reports indicate that the then Council Leader was not formally briefed until August 2024. Officers advised that this was as result of an enquiry the Leader had received regarding a specific HMO property, and the briefing made the Leader aware of the extent of the wider issues.

Conclusion

There was knowledge and understanding at Chief Executive and CLT level that unlicensed HMOs were in use by late 2021.

The HHFW Convenor would have been aware of some issues, however, due to the lack of documentation, the extent to which they were aware of the full risks of the legal issues is not clear. The HHFW Convener was verbally briefed by the Service Director, Housing and Homelessness in March 2023.

The HHFW Committee received partial and indirect references to the use of unlicensed HMOs in September 2022 in the 'No recourse to public funds report', however reporting was not explicit. The Council Leader was not formally briefed until August 2024.

Following the Monitoring Officer report, further analysis indicated the possibility of the Council being party to criminal activity (running of an unlicensed HMO). This had to be factored into the Council's ability to continue operating in this way.

2. What advice was sought by the responsible officers

The Council's Legal Services provided advice to services as well as input to CLT and Committee reports throughout the period November 2021 to date.

The advice stressed the conflict of legal obligations and that the Council could not continue to use unlicensed HMOs as temporary accommodation.

The November 2022 CLT decision note included the following actions to engage with a range of external stakeholders. An action tracker is not used for CLT meetings; therefore, Internal Audit sought an update on the outcome of these actions as below:

Action	Outcome
That further advice from Counsel should be sought	Legal Services obtained confirmation of the legal standpoint on 10 September 2024 from external Counsel. External Legal advice was not sought prior to this as the Legal team were of the view that the position was clear and at that stage there was no need to spend sums if the position was going to be regularised.

Action	Outcome
That a meeting between officers and senior civil servants should be agreed. Once this meeting has been held CLT to have an update.	Officers advised that regular meetings with senior civil servants were in place at this time, but there is no record of a formal meeting being held or updates being report to CLT.
Report to go to Housing, Homelessness and Fair Work Committee explaining the position and asking the Convener to write to Scottish Government asking for a dispensation for Edinburgh. This report should then be referred to Council.	A series of meetings were held with the Scottish Government, Council housing and legal teams and with the Cabinet Secretary and Housing Minister and Director General Communities between October 2024 and January 2025. There is no record of previous meetings, and no subsequent reports were presented to HHFW or Council in line with this action.
CLT agreed to engage with the Police on this (as they may have a view on large numbers of people being displaced from housing).	It was unclear whether any engagement with the Police occurred in response to this agreed action.
Details on Scottish Government's position to be prepared for the Chief Executive to raise at the Ukraine Steering Group.	It is unclear whether this action was completed. There is no record of a formal meeting being held with senior civil servants near the time this action was raised. There is a record of action being taken in November 2024 related to this.

Conclusion

Email correspondence and internal reporting confirmed that internal advice was provided early on from Legal Services. While officers held meetings with other stakeholders including the Scottish Government, there was no formal action tracking or follow-up reports at a senior or Committee level to evidence the outcomes of such meetings or advice. External legal counsel was sought later, for the reasons set out above.

3. How long after it was known at a senior level that it was reported publicly

CLT papers confirm that non-compliance was known at a senior level since at least December 2021. The previously referred to B Agenda report presented to Housing, Homeless and Fair Work Committee on 29 September 2022 titled 'No recourse to public funds' was discussed in private, and therefore not reported or discussed publicly. However, during a later item on the agenda for that meeting, officers confirmed during Elected Member questions that unlicensed HMOs were being used as temporary accommodation within Homeless Services. The report was not referred to any other committee for scrutiny and no further reporting on the issue was requested.

There was no further internal or external reporting on the use of unlicensed HMOs and the conflict of legal obligations between the CLT follow up report in November 2022 and August 2024, when public disclosure was triggered by the Monitoring Officer's September 2024 report.

The Place Directorate Annual Assurance Schedules for 2021/22 and 2022/23 did disclose partial compliance with legislation by Homelessness Services with actions being taken to remediate via the Rapid Transition Housing Plan. However, there was no explicit reference to HMO licensing legislation.

Conclusion

Senior officers had knowledge of non-compliance in December 2021. Early public committee reports focused on meeting emergency demand and cost pressures without disclosing compliance risks.

A partial public disclosure was made in September 2022, prompted by a member's question, however a full public report which set out the scope and

scale of the issue was not provided until October 2024, after the Monitoring Officer escalated concerns in September 2024. From late 2024 onwards, reports openly quantified risks including legal breaches.

4. The actions that were taken to mitigate the impact of the loss of HMO spaces

Removing the unlicensed HMOs in use increased pressure on the supply of temporary accommodation. The November 2022 CLT report set out actions that were being taken to provide sustainable temporary accommodation, including progress with the establishment of a Flexible Purchasing Scheme approved by the Finance and Resources Committee in [October 2021](#). The report also advised that there was ongoing engagement with HMO operators that did not have a licence.

Annual reporting to the Housing, Homelessness and Fair Work Committee since 2021 provided updates on the Rapid Transition Housing Plan which includes information on actions being taken to increase the provision of temporary accommodation, however these updates did not make specific reference to the continued use of unlicensed HMOs.

The [Housing Emergency Action Plan](#) (December 2023) was developed in response to rising homeless presentations and pressures on the city's housing system which were expected to continue. The plan set out further actions to reduce the number of households in temporary homeless accommodation. This included working with partners such as other registered social landlords to increase lettings and the private sector leasing scheme provision. Other actions include reviewing the allocations policy, housing strategies, suspending repairs to enable faster relet of void properties, and a focus on prevention and providing support to enable people to remain in their current accommodation or tenancies.

On 13 November 2024, the Housing, Homelessness and Fair Work Committee agreed to suspend the Council's Letting and Repairs policies on a limited basis until 7 January 2025, to allow for void Council properties to be brought back into use to support availability of accommodation. This suspension of the Lettings policy was extended in April 2025 and on [12 August 2025](#), the Committee approved a further extension until December 2025. Action taken

from November 2024 to reduce the use of unlicensed HMOs included repurposing of 300 council properties as temporary accommodation, sourcing additional properties from market and the emergency licensing provisions to determine licensing decisions for HMO applications.

Conclusion

The removal of unlicensed HMO spaces placed significant strain on temporary accommodation which prompted a series of reactive measures on an already pressured system which was continually at full capacity. Reporting and discussion with officers indicate the following actions were taken to mitigate the impact of the loss of HMO spaces:

- action to encourage landlords to apply for an HMO licence continued throughout as per various reports to CLT, Council Leader, and Full Council with a deadline imposed to stop paying unlicensed providers
- issuing emergency licences to some properties to prevent the risk of displacement of homeless people outside of Edinburgh
- safety inspections of all properties were undertaken prior to accommodating households within them
- establishment of an Housing Incident Management Team in September 2024 that met at least twice a week, with processes identified and daily updates provided
- significant efforts were undertaken and are on-going to identify and secure suitable temporary accommodation in a challenging market.

5. The emergency licensing committee meetings and the perception that decisions were taken to license HMOs that didn't fully meet the criteria.

The Housing (Scotland) Act 2006 allows local authorities to impose conditions on an HMO license to ensure the property meets necessary standards and remains suitable for multiple occupancy throughout the licence period.

Review of the papers and minutes for 'emergency' licensing committee meetings confirmed decisions were taken to license HMOs that did not fully meet the standards for HMOs which the Council had adopted as a policy.

It is important to note that where licensing authorities exercise their discretion to adopt a policy they must consider on its merits any request to depart from the policy. Any such requests are determined by the Licensing Subcommittee; however, additional conditions were imposed such as restricting maximum occupancy as well as the capacity for specific rooms and excluding rooms in some properties due to size and lighting conditions. Time limits were imposed for required works to be carried out and physical inspections by officers to assess if compliance works had been completed.

In addition, provisions in the Housing (Scotland) 2006 Act allows the standard site notice requirement to be waived in certain circumstances, as was the case in November 2024, when the number of applications increased due to the decision to cease funding of unlicensed HMOs. The standard notification was waived on the justification that people were at risk of becoming homeless. A direct notification was sent to the police and fire service as required. Additionally, letters were sent to all those in the vicinity of the properties to advise of the meeting details and to allow oral objections to be heard. Emergency meetings were held to enable oral objections to be heard.

Conclusion

Some HMOs were granted licences that did not, at the time of the application, fully meet the criteria. However, in all cases and in line with legislation, decisions were fully recorded, and additional conditions were imposed which were required to be met in a timely manner.

Follow-up checks and inspections were undertaken by Licensing officers to inspect and confirm if required works were completed.

The decision to waive the standard notification requirement was in line with legislative provisions.

4. Recommendations and management actions

Rating	High Priority
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Ref.	Recommendation	Agreed Management Action	Action Owner	Lead Officers	Timeframe
1.1	<p>Escalation procedures and external advice - the Council should strengthen escalation procedures to ensure that legal advice provided which has potential statutory or criminal implications is promptly reported to senior management and Elected Members.</p> <p>High risk legal conflicts should trigger mandatory escalation to the Service Director, Legal and Assurance for consideration of whether further external legal or regulatory advice is required.</p> <p>A formal report on the outcomes of such discussions should be provided to senior management this should include but not be limited to engagement with senior civil servants, the police and Scottish Government.</p>	A governance framework for officers is currently being considered. This is focused on setting out clear expectations and corporate governance responsibilities for officers, to include internal decision making, escalation, working together and responsibilities for individual and collective governance responsibilities.	Chief Executive	Head of Democracy and Governance Operations Manager	30/10/2026
1.2	<p>CLT Actions - actions agreed at CLT meetings should be specific and have a single lead officer allocated with expected completion dates, to ensure accountability and timely delivery.</p> <p>In addition, CLT actions should be tracked to completion, with regular updates from the lead officer to ensure that actions progress as agreed and issues are escalated.</p>	An action tracker has already been developed for CLT however this will be reviewed in light of the audit recommendations and updated, if necessary, to ensure that a single lead officer is identified, with expected completion dates and action tracking to the actions being closed.	Chief Executive	Operations Manager	28/02/2026
1.3	<p>Risk reporting - a corporate standard should be introduced to ensure that material/conflicting legal or regulatory breaches are disclosed to CLT and the appropriate committee(s) in a consistent manner and within defined timescales. Reporting should align to the Council's risk appetite and be clear on the</p>	A governance framework for officers is currently being considered. This is focused on setting out clear expectations and corporate governance responsibilities for officers, to include internal decision making, escalation, working together and responsibilities	Chief Executive	Head of Democracy and Governance Operations Manager	31/10/2026

Ref.	Recommendation	Agreed Management Action	Action Owner	Lead Officers	Timeframe
	consequences of any breaches and include details of actions being taken to regularise such instances.	for individual and collective governance responsibilities.			
1.4	Intervention action tracking - officers should ensure that clear documentation of decisions, timelines, responsible officers and actions are maintained to provide a transparent record of organisational activity and clear audit trail.	A governance framework for officers is currently being considered. This is focused on setting out clear expectations and corporate governance responsibilities for officers, to include internal decision making, escalation, working together and responsibilities for individual and collective governance responsibilities.	Chief Executive	Head of Democracy and Governance Operations Manager	31/10/2026

Appendix 1 – Scope of audit work

The Governance, Risk and Best Value Committee considered the referral paper *Item 9.8 – Monitoring Officer Report - Conflict of Legal Obligations and Response – referral from the City of Edinburgh Council* on [23 January 2025](#). The following [amendment](#) was agreed by Committee which formed the scope of audit work:

Notes that subsequent to this report the council was forced to call an emergency meeting on the 13 November 2024 following legal advice that to continue to make payments for unlicensed HMOs would be unlawful. At this meeting the council sought agreement to immediately:

- Suspend the council's house letting policy other than for exceptional cases
- Suspend the council house repairs policy other than for exceptional cases

Notes that although both these policies have now been lifted this required the council to put in place emergency Licensing committee meetings where many HMO licenses were granted to operators under exceptional circumstances.

Therefore, agrees that committee will receive an internal audit report into the conflict of legal obligations including:

- When it became clear that the council was acting illegally
- What advice was sought by the responsible officers
- The timeline for when the chief executive, CLT, the Council Leader and relevant convener were alerted
- How long after it was known at a senior level that it was reported publicly
- The actions that were taken to mitigate the impact of the loss of HMO spaces
- The emergency licensing committee meetings and the perception that decisions were taken to license HMOs that didn't fully meet the criteria.

Appendix 2 – Priority ratings and definitions

Priority Ratings	
Advisory	A finding that does not have a risk impact but has been raised to highlight areas of inefficiencies or good practice.
Low Priority	An issue that results in a small impact to the achievement of objectives in the area audited.
Medium Priority	An issue that results in a moderate impact to the achievement of objectives in the area audited.
High Priority	An issue that results in a severe impact to the achievement of objectives in the area audited.
Critical Priority	An issue that results in a critical impact to the achievement of objectives in the area audited. The issue needs to be resolved as a matter of urgency.

