

NOTICE OF MEETING

Decision by the Leader

THURSDAY, 3RD APRIL, 2014 at 13:00 HRS – COMMITTEE ROOM 3, CIVIC CENTRE,
HIGH ROAD, WOOD GREEN, N22 8LE.

AGENDA

1. URGENT BUSINESS

To consider the admission of any items of urgent business. New items of urgent business will be considered under Item 3 below.

2. CONTRACTING OUT OF THE HOMELESSNESS REVIEW FUNCTION (PAGES 1 - 6)

(Report of the Interim Chief Operating Officer). The report seeks retrospective approval to the contracting out of the statutory homelessness review function to Housing Reviews Limited with effect from 1 May 2012 until 30 April 2014.

3. NEW ITEMS OF URGENT BUSINESS

To consider any new items of urgent business admitted under Item 1 above.


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Published: 26 March 2014



Haringey Council

Report for:	The Leader – 3 April 2014	Item Number:	
Title:	Contracting out of the Homelessness Review Function		
Report Authorised by:	 Phil Harris, Deputy Director of Community Housing Services Date: 19 March 2014		
Lead Officer:	Perry Singh, 4890, perry.singh@haringey.gov.uk		
Ward(s) affected:	Report for Non Key Decisions		
N/A	For decision		

1. Describe the issue under consideration

1.1 Homeless households have a statutory right to a review of certain decisions made by the Council. The process for conducting such reviews is set out in legislation and requires that reviews are conducted by someone independent of the original decision and sufficiently senior to the person making the original decision.

1.2 In May 2012 the homelessness review function was contracted out to Housing Reviews Limited. It was understood by the officers leading this process that it could be done under delegated powers, given that it is a low value contract. The Council was challenged on the decision making process with regard to contracting out this function, which has prompted officers to check the process for letting the contract. These decision reviews are considered to constitute an executive function and therefore under the provisions of the Council's Constitution approval by either the Cabinet or the Leader should have been sought.

1.3 A number of Councils have been challenged on the process for contracting out their homelessness review functions and in the event of a challenge being successful there is a risk that any decisions made through the contract could be deemed illegal. We are seeking to put the contract arrangements on to a sound footing.



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2. Cabinet Member introduction

2.1 Our aim is to provide value for money services. Contracting out of the decision review function has provided a cost effective solution to the Council. Given the legal challenges many Councils have had, including our own, it is right that we have examined the approach taken to letting the contract and take steps to regularise this.

3. Recommendations

3.1 The Leader is asked to retrospectively approve the contracting out of the statutory homelessness review function to Housing Reviews Limited with effect from 1st May 2012 until 30th April 2014, when the contract ends.

3.2 The Leader is asked to note that the re-tendering of the homelessness review function is underway, to ensure seamless provision at the end of the life of the current contract.

3.3 The Leader is asked to note that a further report will be needed seeking her authority to contract out the homelessness review function to the winner of the tender.

4. Options considered

4.1 The only alternative to contracting out the function is to have a specialist Housing Review Officer on a senior grade, with additional administrative support. However, given the number of reviews this is not the best option in terms of value for money, neither is it sufficiently responsive to the peaks and troughs in the workload. Contracting out the reviews enables the Council to pay only for work done. Based on the costs of the tendered service over the past two years savings of 60% have been achieved.

5. Background information

5.1 The duties of local housing authorities to a person who applies as homeless is governed by Part 7, Housing Act 1996, as amended by the Homelessness Act 2002. The authority must make such inquiries as are necessary to satisfy themselves whether the applicant is eligible for assistance and what, if any, duty is owed to them. The applicant has the right to request a review of any such decision and decisions relating to the suitability of accommodation offered to them in discharge of the duty owed. If the applicant is dissatisfied with the decision on review, they may appeal to the county court on a point of law. The review of the decision must be conducted by someone who is independent of the



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original decision and senior in terms of rank or grade to the officer making the original decision.

- 5.2 The Council previously had a dedicated officer on a PO4 grade to carry out these reviews. As part of budget savings in 2012/13 one of the posts that was deleted from the staffing structure was that of the Housing Reviews and Service Improvement Officer. The Corporate Committee Report advised that deletion of the post would provide a significant saving and that Community Housing Services would use the provisions of an external provider to undertake some of the statutory reviews, whilst others would be absorbed into the service using existing resources.
- 5.3 It was anticipated that the contract value would be significantly lower than the £50k threshold. In line with Contract Standing Orders, Requests for Quotation were sent to 3 independent review providers. There is limited choice as this a very specialised area. There was no response from one company, one responded to advise they did not have the capacity to take on the work, the only valid expression of interest came from Housing Reviews Ltd. As a consequence this was the successful tender for this contract of less than £50,000.00 over 2 years. The Contract was awarded and signed by the Director of Adults and Housing.
- 5.4 We have received a challenge on contracting the service to Housing Reviews Limited, which has not proceeded. However, this did prompt a review of how the contract was let.
- 5.5 The Local Authorities (Contracting out of Allocation of Housing and Homelessness Functions) Order 1996 enables Local Authorities to contract out a number of its housing and homelessness functions; section 3 of the same confirms that any decision to do so would require the approval of the Council. Under Part Two Article 11.06 of the Council's Constitution, the Council specifies how such authority for contracting out functions pursuant to the Act will be granted. The Constitution states that the Leader, or the Cabinet with the Leader's agreement will need to approve the contracting out of any executive function.
- 5.6 A number of local authorities have been challenged on the basis of the process of contracting out homelessness reviews. In terms of recent case-law *Tachie, Terera and others v Welwyn Hatfield Borough Council* [2013] is noteworthy. The legal challenge was on a number of grounds, but in terms of this report, the question was raised about the decision making with regard to contracting out an 'executive' function. The function should have only been contracted out with the approval of the Executive. Welwyn-Hatfield successfully won the case, but it did require them to retrospectively approve the contract award by the Executive using urgency procedures.
- 5.7 This report seeks retrospective approval to regularise the contract arrangement with Housing Reviews Limited. As the contract is due to expire officers are working on re-tendering the contract and will submit a further report for approval.



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6. Comments of the Chief Finance Officer and financial implications

- 6.1 The cost of employing an external provider to carry out the Housing Review function was £4,200 in 2012/13 and is expected to be up to £30,000 in 2013/14. The contract is due to expire in May 2014 at which time it will be re-tendered. The cost of carrying out the function within the Council would be approximately £50,000 per annum. Employing the external provider has therefore delivered significant savings to the council. The external provider does however charge on a per case basis, and caseloads have been increasing each year. If caseloads continue to increase, there may be a time when it is better value for money to revert to internal provision of the function. It will be necessary to continue to monitor caseloads to ensure Value for Money is still achieved.
- 6.2 There is financial provision for the cost of the Housing Reviews contract within the Community Housing Services direct budget.
- 6.3 The delivery of good quality reviews for the council will save significant sums that may otherwise get awarded against the council in judicial review cases.

7. Legal implications

- 7.1 The Assistant Director of Corporate Governance has been consulted in the preparation of this report.
- 7.2 The Deregulation and Contracting Out Act 1994 enables Councils to contract out certain of their functions that are carried out by officers, provided that there is an Order enabling that function to be carried out by a third party.
- 7.3 Under the Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996 (the Order) Councils have been given express authority to contract out their homelessness functions and the homelessness review function comes within the remit of the Order.
- 7.4 The homelessness review function is an executive function and in accordance with Part 2, Section 11.06 of the Council's Constitution its contracting out requires the approval of the Leader, or the Cabinet with the Leader's agreement.
- 7.5 The implications of not giving retrospective permission could be that all of the decisions made by Housing Reviews Limited are deemed unlawful, thus making them void. The Assistant Director of Corporate Governance notes that the Courts have confirmed that this approval can be given retrospectively and there are therefore no legal reasons preventing the Leader from approving the recommendations in this report.

8. Equalities and Community Cohesion Comments



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8.1 There are no equalities implications.

9. Head of Procurement Comments

9.1 The recommendations are supported by CPU.

9.2 The current external provider does charge on a per case basis, If caseloads continue to increase, It will be necessary to continue to monitor the level of caseloads to ensure Value for Money is still achieved.

9.3 If this provision is for under £50k the Request for Quotation (RFQ) will be carried out by the service. If it is thought that the cost could go over £50k based on the increasing caseload CPU will manage the RFQ process

10. Policy Implication

10.1 Contracting out the homelessness review function delivers the best value for money outcome. It is estimated that the contracting out process has saved 60% compared to providing an in-house service over the first two years.

11. Reasons for Decision

11.1 A decision is needed to regularise the contracting arrangements for the decision review function.

12. Use of Appendices

12.1 None

13. Local Government (Access to Information) Act 1985

Contract Standing Orders (Part 4 Section J):

http://www.haringey.gov.uk/index/council/how_the_council_works/constitution.htm



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EWHC 3972 (QB) (13 December 2013):

<http://www.bailii.org/ew/cases/EWHC/QB/2013/3972.html>

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