

Report for: Leader signing 9th November 2023

Title: Variation of Contracts Awarded to Three Law Firms in relation to Housing Disrepair Cases

Report authorised by : Fiona Alderman, Head of Legal & Governance (Monitoring Officer)

Lead Officer: Benita Edwards - Head of Legal Services - 020 8489 5935
benita.edwards@haringey.gov.uk

Ward(s) affected: Not applicable

**Report for Key/
Non Key Decision:** Key

1. Describe the issue under consideration

- 1.1 In October 2022, the Head of Legal and Governance approved the award of contracts to four law firms for them to advise and act for the Council in relation to Housing Disrepair cases. In the event, as one law firm did not respond, contracts were awarded to three law firms, Ashfords LLP, Birketts LLP and TLT LLP. The value of each contract was capped at £124,999.00 (inclusive of disbursements).
- 1.2 On 14th July 2023, owing to the volume of work outsourced and expected to be outsourced, approval was given for the abovementioned contracts to the three law firms to be varied to increase the contract value by £375,000 to a total value of £499,999 (inclusive of disbursements) for each firm.
- 1.3 Claims have continued to increase and there is a need to increase the contract values again so that the firms continue to carry out the work and so that the Council is able to pay the fees of the firms for the next year.
- 1.4 In September 2023, Cabinet approved the "2023/24 Finance Update Quarter 1 (Period 3) Report" and noted that "*net Housing Revenue Account (HRA) forecast is £4.279m lower than the budgeted surplus*" (c.f. Recommendation 3.3). In summary, the reasons for the variance were explained in Appendix 2 to the Report as follows - "*The Housing Revenue Account at period 3 – Q1 2023/24 reports a forecast adverse variance of £4.279m. The forecast year-end HRA surplus is £3.959m compared to the HRA budgeted surplus of £8.238m. The Q1 full year forecast variance is mainly driven by a high disrepair/compensation cost which are now forecast to be £4.7m representing a*

variance of £3.6m against the budgeted sum.” This adjustment in the HRA budget was needed to enable the Council to pay the costs associated with Disrepair cases (including the work carried out by Council’s appointed law firms, compensation and the costs of the tenant’s/ lessee’s solicitors). It was also anticipated that there might be sufficient headroom to enable Legal Services to recruit additional staff as set out in paragraphs 4.2, 5.7 and 5.10 to 5.14 of this report. The budget available in 2023/24 for carrying out legal disrepair casework (whether through inhouse or external lawyers) is £2,301,138.

2. Recommendations

It is recommended that the Leader:

- a. approves (in accordance with CSO 10.02.1(b)), the variation or variations of the contracts awarded to Ashfords LLP, Birketts LLP and TLT LLP in October 2022, so as to increase the value of each contract to a sum which cumulatively does not exceed a total of £2.3m for all three firms;
- b. delegates to the Head of Legal and Governance the decision on how much to award to each firm, in compliance with paragraph 2(a) above;
- c. notes that monies not allocated to the three firms through the variation(s) of the respective contracts, will be utilised by Legal Services to build a temporary inhouse Legal Disrepair team; and
- d. notes that Legal Services may run a further procurement exercise with a view to awarding further contracts to law firms in 2024, if the number of cases that need to be conducted by external lawyers continues to grow.

3. Reasons for decision

- 3.1 In cases where the Council has failed to satisfactorily address disrepair affecting its housing stock, tenants and leaseholders of such housing are entitled to escalate their concerns through legal channels by issuing a pre-action letter and / or issuing legal proceedings. Typically, where legal action is pursued, this will involve the tenant/lessee instructing solicitors who will issue a pre-action letter. If the Council does not respond to the letter with 20 working days and/or has not rectified the disrepair within an agreed timescale then the tenant/ lessee may issue legal proceedings seeking an order requiring that: the repair works are carried out, and that the Council pays compensation and damages as well as legal costs, court fees and interest.
- 3.2 In cases where a pre-action letter has been issued and/ or legal proceedings are issued at court, the Council’s lawyers become involved in the case and will seek instructions from the Housing Authority with a view to responding to the pre-action letter within 20 working days, taking such other steps as may be

required in accordance with the [Pre-Action Protocol for Housing Conditions Claims \(England\) - Civil Procedure Rules \(justice.gov.uk\)](#) and/ or filing a defence and taking such steps as may be required by the court. If the Council were not legally represented and proceedings were issued without a defence being filed, the tenant/ lessee would be able to ask the court for an order for judgment in default or summary judgment, in which case the Council would typically be required to carry out the repair works, pay compensation in the amount sought as well as legal costs, court fees and interest. Accordingly, it is essential that the Council is able to instruct lawyers to ensure that housing disrepair claims are properly addressed which is in the interests of both tenants/ lessees and the Council.

- 3.3 The Council is aware that it has significant problems with its housing stock. For that reason, the Council has self-referred to the Regulator of Social Housing and has developed a Housing Services Improvement Plan, which was approved by Cabinet in April 2023. In the meantime, where the Council has not tackled disrepairs claims in time, there remains a need to ensure that the Council has sufficient legal resources to tackle the high volume of housing disrepair claims that have resulted in pre-action letters and / or legal proceedings being issued.
- 3.4 Until Legal Services commenced outsourcing to the law firms in December 2022, all housing disrepair claims were managed by the Council's inhouse lawyers in the Litigation team. Owing to the high volume of work and insufficient resources in the Litigation team, a backlog of cases built up because the team has been experiencing significant capacity issues (e.g. some fee earners had been holding up to 200 cases, which – depending upon complexity - is 3 or 4 times the number of cases that a Litigation fee earner would normally be expected to manage).
- 3.5 In 2022, in order to address the resource issues experienced by the Litigation team, Legal Services ran a mini-tender exercise inviting bids in respect of housing disrepair work from the law firms on Lot 2 of the London Boroughs' Legal Alliance (LBLA) Framework. In October 2022 the Head of Legal and Governance approved the outsourcing of housing disrepair work to law firms, which led to contracts being awarded to Ashfords LLP, Birketts LLP and TLT LLP. The value of each contract was originally capped at £124,999.00 (inclusive of disbursements such as Counsel's fees). Owing to the large number of cases outsourced to each firm and the volume of new cases, a delegated authority report was approved in July 2023 so that the contract values for each firm could be increased to a cumulative total of £499,999 each (inclusive of disbursements). There is now a need for a key decision to be taken so that the values of each contract can be further increased to enable the law firms to continue to work on existing and new housing disrepair cases. Details as to the metrics are set out in section 5 of this report.

4. Alternative options considered

- 4.1 Doing nothing was considered. However, it is not an option because it is necessary that the law firms continue to work on the cases referred to them and for the Council to continue to pay their fees. If the law firms were to cease work, those cases will not be addressed on behalf of the Council, which would most likely result in the tenants/ lessees obtaining judgment against the Council. Further, in cases where the court has issued an Order against the Council and the Council fails to comply with its terms, there is a risk that the solicitors acting for the tenants/ lessees may apply to the court for a Penal Notice to be added to the Order, which could lead to senior officers being required to attend court and (in the worst case scenario) being sentenced to a term of imprisonment. In addition, where the Council fails to comply with Orders and pay compensation or costs in time, solicitors acting for the claimants may seek to enforce the Orders and may instruct bailiffs to attend the Council offices. For these reasons, it is essential that the law firms continue to act for the Council so as to protect its interests.
- 4.2 Insourcing has been considered as an option. Insourcing is not currently feasible because the Litigation team does not have sufficient resources to carry out the work that has been outsourced to Ashfords, Birketts and TLT or to manage all the new cases. However, Legal Services has a plan to build its inhouse capacity by creating a dedicated temporary inhouse disrepair team with a view to ensuring that there are sufficient resources in the Litigation team to enable some of the outsourced work to be brought back inhouse (where it makes economic sense to do so) and to manage new housing disrepair claims.
- 4.3 Take steps to reduce or eliminate housing disrepair cases reaching the stage where pre-action letters and / or legal proceedings are issued, thereby obviating the need for lawyers to be instructed. Achieving this outcome would entail the Council as Housing Authority taking steps to address and remedy all repairs reported by tenants and leaseholders within a reasonable time and, in cases where a pre-action letter is issued, ensuring that works are carried out promptly to avoid legal proceedings being issued. It is envisaged that the Housing Authority could respond to claims at the pre-action stage to reduce the reliance on legal services as well as carry out a higher proportion of repairs more speedily. This is the optimal scenario which the Housing Authority is working to achieve through implementation of the Housing Services Improvement Plan, recruitment and procurement of additional buildings repairs contractors. This is not a quick fix and so until such time as the Housing Authority is able to deliver on its plans, there will remain a need for a legal resource to manage housing disrepair claims.

5. Background information

- 5.1 There has been a steady increase in the number of housing disrepair claims received by the Council in recent years. From reports in the specialist press, it appears that this is an issue affecting many councils across the country. As a result, it appears that there has been a significant increase in the resources that law firms are putting into the sector so that they are able to represent tenants/ lessees - [Claims firm splashes £3m on housing disrepair cases | News | Law](#)

[Gazette](#). It is understood that such resources sometimes include law firms taking measures such as visiting council housing estates in order to find clients to represent.

- 5.2 The growth in housing disrepair claims has arisen in part because the Council (and prior to 1 June 2022, Homes for Haringey), has had difficulties in securing workers and / or contractors who are able and have capacity to maintain the Council's housing stock and to carry out works in cases where disrepair claims arise. It is estimated that approximately 40 new housing disrepair claims are received by the Council per month. The vast majority of disrepair cases pertain to the Council's housing stock. Approximately 60 current disrepair cases pertain to private sector properties that are being leased by the Council for the purposes of providing temporary accommodation to homeless persons. These "private sector property" cases are being managed by Legal Services and the HRA is not charged for this work as it comes within the remit of the General Fund. In cases where repairs works are not carried out satisfactorily or at all, it is not possible for legal cases to be closed. This inability to close legal cases means that the total number of legal cases being worked on at any one time is increasing at a rate of about 40 new cases per month. Since April 2023, approximately 303 disrepair cases have been received, of which 273 pertain to the Council's housing stock and 30 pertain to private sector properties. The increase in the number of new cases received by the Council over the last few years is set out in the table below (which includes the cases pertaining to private sector properties) -

Area of Work	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Disrepair	77	107	132	172	246	434

- 5.3 As of Monday 16 October 2023, there were 1042 open housing disrepair cases logged in the Legal Services case management system. Of those cases, a total of 880 cases have been outsourced to the law firms as follows: Ashfords - 289 cases; Birketts - 344 cases; and TLT - 247 cases. The 162 cases that have not been outsourced are being managed by lawyers in the Litigation team (approximately 103 of these cases pertain to the Council's housing stock and, as such, costs are recharged to the HRA). It should be noted that the Litigation team carries out a range of work and as such deals with hundreds of cases in addition to housing disrepair claims.
- 5.4 Most of the outsourcing has taken place since December 2022. A mix of new and existing cases has been outsourced to the law firms. It should be noted that from time to time the law firms have also expressed concerns that they do not have capacity to take on more work. They have addressed those concerns by recruiting additional legal staff. However, this is an issue that Legal Services has to bear in mind because (if the law firms are not able to resolve their capacity issues) there may come a point at which we will need to consider awarding a contract to additional law firms. Options in relation to a procurement strategy are set out in paragraph 5.15.
- 5.5 This paragraph is contained in the Exempt part of this report.

5.6 This paragraph is contained in the Exempt part of this report.

Proposed variations to the contracts

5.7 This paragraph is contained in the Exempt part of this report

5.8 This paragraph is contained in the Exempt part of this report

5.9 This paragraph is contained in the Exempt part of this report

Steps being taken by Legal Services

Insourcing / building a specialist legal housing disrepair team

5.10 As noted in paragraph 4.2 of this report, Legal Services have developed a plan to build temporary additional inhouse capacity. Given the high volume of existing and new housing disrepair cases, it is estimated that Legal Services would need to recruit up to 10 additional members of staff on fixed term or agency worker contracts to help manage the current level of new cases until such time as the Housing Authority's plans to manage all disrepair cases and complete repairs at the earliest opportunity are implemented and deliver the expected reductions in outstanding disrepair cases.

5.11 Owing to the extent of the housing disrepair problem across the country, the market for suitably qualified lawyers is very challenging because supply is limited with both local authorities and private practice law firms competing for such lawyers. Accordingly, although the preference is to recruit lawyers on a fixed-term contract basis, there might be a need to rely upon agency workers. However, Legal Services proposes to commence recruitment for a small team in the first instance and build from there as appropriate and depending on the needs of the Housing Authority.

5.12 On the assumption that each additional lawyer will hold approximately 50 to 60 disrepair cases each, a team of 8 to 10 lawyers should be able to handle new cases arising in the next 12 months subject to the budget being set aside for this to happen. In the event that the Litigation team have spare capacity, it may be possible to insource some of the cases already outsourced to law firms. The cost of creating an inhouse Legal team of 10 lawyers for a period of 12 months varies depending on whether the lawyers are recruited under fixed term contracts or as agency workers. In summary –

- a. Maximum annual salary costs (including on-costs) for 10 lawyers appointed under fixed term contracts are estimated to be £577,950
- b. Maximum annual costs for 10 lawyers appointed as agency workers are estimated to be £919,080
- c. Recharge costs to the HRA for 10 lawyers would be £727,830

5.13 This paragraph is contained in the Exempt part of this report.

- 5.14 It should be noted that the costs of running a legal team of up to 10 lawyers or of utilising the services of law firms from April 2024 are currently not covered by the HRA budget. Accordingly, Legal Services will be working with Housing, Finance and Procurement officers to develop a plan for the medium and longer term.

Future tender exercise

- 5.15 In addition to building a new specialist Housing Disrepair team (and subject to confirmation that a budget is available), Legal Services propose to either recommend a direct award of a contract or contracts to additional law firms and /or to run a new mini-tender exercise under the LBLA framework in the next few months. The purpose of the direct award/ tender exercise would be to appoint one or more law firms to take on housing disrepair casework, with a view to outsourcing some of the new cases and / or if appropriate and cost effective, to reallocating some of the currently outsourced cases. In the event that: Legal Services are able to build a new Legal Disrepair team; and the Housing Authority is able to quickly build capacity to (a) carry out the repairs works in a timely manner and (b) manage the pre-action letters without the need for instructing inhouse or external lawyers, then there may not be a need to procure additional law firms. Officers in Legal Services, Housing, Procurement and Finance shall be keeping these matters under review.

Steps being taken by the Housing Authority

- 5.16 The Repairs Service is putting in place a new staffing structure to create a dedicated Disrepair Team to improve disrepair case handling, increase resident satisfaction, and to reduce the reliance on external solicitors.
- 5.17 Recruitment has commenced and the disrepair team are expected to be in place in November 2023. The new structure will consist of 1 x Snr Disrepair Manager, 2 x Disrepair Managers, 1 x Contract Manager, 2 x Disrepair Coordinators and 4 x Surveyors. Additional surveying capacity has been procured with a firm of surveyors FFT, and that contract is due to commence by the end of September.
- 5.18 The increase in staffing numbers, combined with the introduction of new procedures and improved casework performance management will allow for the Council to actively manage the disrepair caseload more effectively, allowing us to reduce the amount of time a case remains open. This in turn will reduce costs spent on cases in terms of legal fees, claimant costs and compensation.
- 5.19 The planned strategy is that cases will be managed by individuals in the team at different levels depending on the maximum potential value of a claim or its potential risk (such as potential reputational damage). The Council is also implementing a new Case Management System & CRM (Granicus) which will allow cases to be more efficiently tracked and managed, with instructions given more quickly to the Council's legal services providers; this will reduce the requirement for high levels of email traffic and should also reduce the risk of litigation and the overall costs to the Council. With an increase in capacity, the Council will be able to take a more strategic approach to the prevention of litigation and use of legal services.

- 5.20 Elements of the Disrepair Pre-action Protocol allow the Council to reject claims where the Council's complaints process has not been followed or where there is an Alternative Dispute Resolution (ADR) process in place and the repairs Service is proposing to make better use of the complaints process and ADR to further reduce the number of cases that become litigated.
- 5.21 The Housing Authority also proposes that claims be dealt with by the disrepair team at the pre-action stage thereby reducing the reliance on the legal service and external lawyers once a pre-action protocol letter is received.
- 5.22 In addition the Housing Authority intends to explore the merits of the introduction of a voluntary disrepair arbitration scheme, similar to those operated by boroughs such as Lambeth, Southwark, and others. To participate in the scheme residents would be required to have first been through the Council's complaints procedure or to have engaged a solicitor. A voluntary arbitration scheme would have the power to meet the resident's reasonable legal costs up to a set amount, and award compensation.
- 5.23 Often the main beneficiary of a legal disrepair claim is not the resident but their lawyer as the legal fee can account for the majority of any disrepair award from the court. A voluntary arbitration scheme would be less adversarial for both parties. It is also likely to reduce dependency on external solicitors and contribute to a reduction in the risk of 'ambulance chasing' law firms targeting Council estates as it would provide a viable alternative.
- 5.24 It should also be noted that currently there is one contractor delivering disrepair works – Kind Diamond Build. The contract value is £2.5m. However, based on current workload and demand, further subcontractor capacity is required – procurement of an additional 4/5 contractors with an award of £500k each, is required to help build capacity, especially as the demand is currently at an additional 40 cases per month (i.e., approximately 480 new cases in the next 12 months). The repair team are working with the Head of Procurement to secure additional contractor resources.
- 5.25 This paragraph is contained in the Exempt part of this report.

6. Contribution to the Corporate Delivery Plan 2022-2024

- 6.1 Improving the Council's capacity and procedures to deal with legal disrepair claims and implementation of a plan to reduce the number of legal disrepair claims received in the future, contributes to Theme 5 of the Corporate Delivery Plan of Homes for the Future, specifically the vision where homes will be of a higher quality by improving the quality of our repairs service.

7. Carbon and Climate Change

The recommendations in the report do not have any impact in relation to Carbon and Climate Change and so the Climate Action Plan is not a consideration for this report.

8. Statutory Officers comments (Director of Finance (procurement), Head of Legal and Governance, Equalities)

Finance

- 8.1.1 The maximum value extension of each contract is based on the current and projected number of cases each firm is handling and the agreed rates.
- 8.1.2 The maximum combined value (£2.3m) of all the contracts can be contained within the revised budget following the virement approval by cabinet in September 2023.
- 8.1.3 It is anticipated that there will still be new and open cases into next financial year 2024/25, as such legal services are looking to build a temporary inhouse team to deal with such cases.
- 8.1.4 As the budget virement approved in September cabinet is a one off virement, the projected cost of this proposed temporary legal team needs to be built into next year's HRA budget/MTFS.
- 8.1.5 This is a risk that the actual costs might exceed the contract values/ budgeted sum if the repairs works are not completed on time and cases closed.

Procurement

- 8.2.1 The Head of Procurement has been consulted in this matter and can confirm the Council is a member of the London Boroughs' Legal Alliance (LBLA) and can therefore access the LBLA legal services framework.
- 8.2.2 The original award of the contracts were undertaken via a mini competition process of the LBLA legal services framework in accordance with Contract Standing Order (CSO) 7.01. b) (selecting one or more providers from a framework).
- 8.2.3. Legal services described in this report are a specific exemption under Regulation 10 of the Public Contract Regulations; therefore, the application of Regulation 72 does not apply to this variation. The Head of Procurement confirms the Leader has authority to approve the award or variation of contracts valued at £500,000 or above in accordance with CSO 16.02.
- 8.2.4. There are no procurement related reasons preventing the Leader approving the recommendations in paragraph 2 above.

Head of Legal & Governance

- 8.3.1 The Head of Legal and Governance (Monitoring Officer) has been consulted in the preparation of the report.
- 8.3.2 The report is seeking approval for the variation of contracts for the provision of legal services in the preparation of legal proceedings or on matters likely to be the subject of such proceedings. Legal services of the latter nature are excluded, under regulation 10(1)(d)(iv) of the Public Contracts Regulations 2015 (PCR 2015), from the application of the many of the provisions of the PCR 2015. As a result the variation of the contracts which this report relates to is not subject to the modification rules set out in regulation 72 of the PCR 2015. Under the Council's Contract Standing Order (CSO) 4.03, CSOs also do not apply to contracts to which PCR regulation 10 apply. The Council therefore has a wide discretion in the way it may carry out the contract variations proposed in this report.
- 8.3.3 The Council is a participating authority of the LBLA Framework Agreement for legal services that the contracts which this report is seeking approval to vary were called off from. While the rules of the LBLA Framework Agreement apply to contracts called off from it, those rules do not prevent the variation of the contracts that are the subject of this report.
- 8.3.4 Under Contract Standing Order 10.02.1(b), a decision to approve the variation of a contract valued at £500,000 or more will ordinarily be taken by Cabinet. However, under CSO 16.02 the Leader may take any such decision between meetings of the Cabinet.
- 8.3.5 There are no legal reasons preventing the Leader from approving the recommendations in paragraph 2 of the report.

Equality

- 8.4.1 The Council has a Public Sector Equality Duty under section 149 of the Equality Act (2010) to have due regard to the need to:
- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
 - Advance equality of opportunity between people who share protected characteristics and people who do not
 - Foster good relations between people who share those characteristics and people who do not
- 8.4.2 The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty. Although it is not enforced in legislation as a protected characteristic, Haringey Council treats socio-economic status as a local protected characteristic.

8.4.3 The decision in question concerns the variation of contracts to law firms that advise and act for the Council in relation to Housing Disrepair cases. This is owing to an increased volume of work outsourced and expected to be outsourced to these firms. It is considered that the implications of this report do not have any impact on persons sharing a protected characteristic and that the public sector equality duty is not engaged. Accordingly, it is considered that in approving the recommendations of this this report, the Head of Law and Governance will be acting lawfully.

9. Appendices

None

10. Background Papers

None