

**MINUTES OF MEETING Cabinet Member Signing HELD ON Thursday, 9th November, 2023, 3.00pm**

**PRESENT:**

**Councillor Peray Ahmet - Leader of the Council**

**ALSO ATTENDING: Michelle Williams, Benita Edwards, Ayshe Simsek**

**10. FILMING AT MEETINGS**

The Leader referred to the notice of filming at meetings and this information was noted.

**11. APOLOGIES FOR ABSENCE**

There were no apologies for absence.

**12. URGENT BUSINESS**

There were no items of urgent business.

**13. DECLARATIONS OF INTEREST**

There were no declarations of interest.

**14. DEPUTATIONS/ PETITIONS/ QUESTIONS**

There were no deputations, petitions or questions.

**15. VARIATION OF CONTRACTS AWARDED TO THREE LAW FIRMS IN RELATION TO HOUSING DISREPAIR CASES**

The Leader noted the timeline and circumstances for the decision being sought which was as follows:

- That 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).

- On 14<sup>th</sup> 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.
  
- Claims had 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.
  
- 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.

Further to considering the exempt information, the Leader of the Council,

## **RESOLVED**

1. To approve (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;
  
2. To delegate to the Head of Legal and Governance the decision on how much to award to each firm, in compliance with paragraph 2(a) above;

3. To note 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
4. To note 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.

### **Reasons for decision**

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 within 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.

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.

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.

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).

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.

## **Alternative options considered**

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.

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.

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.

## **16. NEW ITEMS OF URGENT BUSINESS**

None

## **17. EXCLUSION OF THE PRESS AND PUBLIC**

**RESOLVED**

To exclude the press and public be from the meeting as *it* contains exempt information as defined in Section 100a of the Local Government Act 1972 (as amended by Section 12A of the Local Government Act 1985); paras 3 and 5, namely information relating to the financial or business affairs of any particular person (including the authority holding that information) and information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

**18. EXEMPT VARIATION OF CONTRACTS AWARDED TO THREE LAW FIRMS IN RELATION TO HOUSING DISREPAIR CASES**

As per item 15.

**19. NEW ITEMS OF EXEMPT BUSINESS**

None

CHAIR:

Signed by Chair .....

Date .....