

Report for: **Leader of the Council**

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

Report authorised by : **Fiona Alderman, Assistant Director for 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 Following a mini-tender exercise which led to contracts being awarded to Ashfords LLP, Birketts LLP and TLT LLP, Legal Services commenced outsourcing housing disrepair claims to the law firms in December 2022.
- 1.2 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 total of £499,999 each (inclusive of disbursements).
- 1.3 In September 2023, Cabinet approved the "2023/24 Finance Update Quarter 1 (Period 3)" report. Resolution 3.6 approved "the revenue budget virements and receipt of grants as set out in Appendix 6". A virement of £3.6M was approved for "Transfer from HRA reserve to cover the additional costs arising from legal disrepair cases and compensations." Of the £3.6M, £2.3M was to cover the costs of the Council's external lawyers for the financial year 2023/24. The remainder was to cover the costs of paying compensation to tenants/lessees as well as their legal costs.
- 1.4 The number of disrepair cases have continued to rise and on 9th November 2023, the Leader approved a variation to the contracts for all three law firms to a value not to exceed a cumulative total of £2.3M, with a delegation to the Head of Legal and Governance to decide on how much to award to each firm. The Head of Legal and Governance exercised her delegated authority, as a result of which the maximum contract values have been increased so that Ashfords has been awarded £600,000 and TLT has been awarded £1.2M. The contract value

for Birketts has not been increased and remains at £499,999. Accordingly, a cumulative sum of £2.3M has now been awarded to the three law firms.

- 1.5 The £2.3M awarded to the law firms will shortly be exhausted and this report seeks authority to increase the value of the contracts awarded to the three Law firms as there is a continuing need for their services and so that there is no delay in the payment of their invoices.
- 1.6 Approval of the recommendations in this report will mean that a maximum cumulative contract value of £4.7M (£2.3M + £2.4M) may be awarded to the law firms.

2. Recommendations

It is recommended that the Leader:

- a. approves (in accordance with CSO 10.02.1(b)), the variation of the contracts awarded to Ashfords LLP, Birketts LLP and TLT LLP in October 2022, so as to increase the maximum value of each contract by the amounts set out in the Exempt Report;
- b. delegates Authority to the Assistant Director for Legal and Governance to further increase the maximum value of each contract as may be required from time to time provided that the cumulative amount awarded under this paragraph and paragraph 2(a) above does not exceed £2.4M.
- c. notes that, subject to budget remaining available from the £2.4M allocation, Legal Services may run a further procurement exercise (or make a direct award) with a view to awarding further contracts to one or more law firms in 2024.
- d. notes that recommendations 2(a), (b) and (c) shall not be implemented until such time as the Cabinet or Leader have approved a virement to the HRA budget covering the £2.4M costs of the law firms.

3. Reasons for decision

- 3.1 The Council is aware that it has significant problems with its housing stock. In cases where the Council has failed to satisfactorily address disrepair that has been reported, 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 damages as well as legal costs, court fees and interest. For that reason, there is a need to ensure that the Council has sufficient legal resources to tackle the high volume of housing disrepair claims.

- 3.4 The Legal and Housing Services are building in house capacity to deal with more of the disrepair cases inhouse but in the meantime there is still a need to instruct external Solicitors and therefore a key decision is required to approve the extension of the contract values for the three law firms. That will enable them to continue to work on existing and new housing disrepair cases.

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 a penal notice could 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 and capacity is currently being developed by both the Legal and Housing Teams, so that more of the new disrepair cases can be dealt with inhouse. However, there is a need to extend the contracts of the three firms in the meantime.
- 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.
- 4.4 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. 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 49 new claims are now being received each month. The growth in claims is set out in the table below:

Number of new Claims	
Year	Total
2023/24	492*
2022/23	434
2021/22	246
2020/21	172
2019/20	132
2018/19	107

*April 2023 to January 2024 (10 months of data)

- 5.2 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 now increasing at a rate of about 49 every month.
- 5.3 Based on Housing Service records, there are currently about 1040 open disrepair cases (reduced from over 1200 cases, with approximately 160 cases having been closed in 2023/24). About 1,069 cases were allocated to external Solicitors with about 190 being dealt with by the inhouse legal team. The split between the external Solicitors was: Ashfords – 356; TLT – 278; Birketts - 435.
- 5.4 The Council's spend on our external Solicitor's fees and disbursements for disrepair work for the period from January 2023 to end of February 2024 is about £2.2M (with approximately £60K of that amount having been paid in 2022/23). Given the volume of new and backlog cases being dealt with by the law firms, the whole of the £2.3M budget for the financial year 2023/24 has now been allocated to the contracts with the three law firms. It should be noted that Ashfords has recently exceeded the contract cap of £600K. In the circumstances, there were no monies left in the budget to enable Legal Services to build a temporary inhouse Legal Disrepair team. However, (as noted in paragraph 5.11 below) a budget of £700K has recently been made available for that purpose and so work has commenced on seeking to recruit temporary staff for that team.
- 5.5 This paragraph is contained in the Exempt report.

- 5.6 This paragraph is contained in the Exempt report.
- 5.7 This paragraph is contained in the Exempt report.
- 5.8 This paragraph is contained in the Exempt report.
- 5.9 This paragraph is contained in the Exempt report.
- 5.10 As set out in paragraph 5.7 of the Exempt report, it is recommended that a sum of £2.4M be allocated for the purposes of covering legal costs for the period up to end of March 2025. However, as there is no provision in the HRA budget for this purpose, there will be a need for a virement to the HRA budget to be approved by Cabinet or the Leader. Accordingly, it is recommended that the Leader note that recommendations 2(a), (b) and (c) shall not be implemented until a virement to the HRA budget of £2.4M for legal costs has been approved.

Steps being taken by Legal Services

Insourcing / building a specialist legal housing disrepair team

- 5.11 Legal Services has recently been allocated a budget of £700k for the period 2024/25 in order to build a temporary inhouse specialist Legal Disrepair team within the Litigation Team. On 12 March 2024, the Director gave authority for the creation of that team comprising up to ten additional members of staff on fixed term contracts.
- 5.12 It is envisaged that Legal Services will need additional capacity until such time as the Housing Authority's plans to manage all unissued disrepair cases and complete repairs on new and backlog cases at the earliest opportunity are implemented and delivered. As such, an additional budget for the purpose of maintaining a temporary inhouse Legal Disrepair team, may be required for the period 2025/26.
- 5.13 Given the lead times for recruitment of workers on fixed terms contracts, Legal Services are currently seeking to recruit agency workers in the first instance with a view to converting them onto fixed term contracts in accordance with the Council's policies. Legal Services is also preparing a recruitment campaign to recruit staff on fixed term contracts, which is due to be launched in April 2024. It is envisaged that the temporary team will consist of a Senior Lawyer, 8 Senior Legal Assistants and one Admin Assistant. In the event that the Legal Disrepair team have spare capacity, it may also be possible to insource some of the cases already outsourced to law firms.

Steps being taken by the Housing Authority

The Housing Authority has been consulted and provided the comments contained in paragraphs 5.14 to 5.31 below.

Contractors

- 5.14 Haringey Repairs Service (HRS) require the appointment of contractors to increase capacity to support the undertaking of disrepair works across the Council's housing stock to reduce the level of disrepair cases, reduce the financial burden placed on the council in connection with legal disrepair cases and make sure that residents are provided with safe and healthy homes.
- 5.15 Since the Covid pandemic, the volume of legal disrepair cases has increased, this has resulted in an increase in legal costs, disbursements, and compensation payments. These costs, along with the reputational and legal risks associated with increasing legal disrepair case volumes, will reduce by increasing contractor capacity to deliver disrepair works.
- 5.16 The additional capacity will enable legal disrepair works to be carried out in a timely fashion, in line with legal protocols, resulting in a reduction of legal costs and reduction in the number of outstanding legal disrepair cases.
- 5.17 There is a significant number of disrepair cases, both current and backlog due to the increase in demand and lack of subcontractor support to complete the repairs. This is resulting in increased disrepair compensation, legal fees, and adverse reputational risk, along with an increased risk of penal action and resident dissatisfaction.
- 5.18 For a disrepair claim to be successfully closed, repair work needs to be carried out and fully completed within a specified timescale as these are agreed as part of the settlement. If work is not fully completed within the prescribed timescale, a breach claim can be made, and further damages and costs will be payable; and court proceedings will ensue, causing further significant costs, such as damages and increased legal costs along with potential breach and enforcement actions including penal notice applications.
- 5.19 HRS (Haringey Repairs Service) does not have the capacity or capability to undertake the repairs. Therefore, the appointment of four principal Contractors are required to support HRS and the Council to meet its obligations as a landlord to ensure residents are provided with a safe and healthy home. The contractors will enable HRS to increase the volume and frequency of completed disrepair works and reduce the time that disrepair cases remain open and increase the number of disrepair cases being concluded. Thus, drastically reducing compensation payments and the risk of penal notices being granted, which in turn, will, support the Council to fulfil its statutory duties.
- 5.20 The financial implications of failing to manage disrepair cases are severe. Each time an agreed or ordered timescale is breached, it will cost the Council a minimum of £4,000 in both sets of legal fees and compensation; but in some cases, it will be significantly higher than this. There are at least 500 jobs at risk of breach at a minimum risk of £2,000,000 to the business, which is growing weekly due to new settlements and Orders.
- 5.21 We need to improve the service to complete works under agreements and court Orders without breaches occurring. Initial case costs of settlement and works completion are unavoidable, however all breach costs are avoidable, additional costs are the primary cause of the financial problems in disrepair.

5.22 By having adequate contractor capacity, the service will be enabled to make substantial progress on the backlog and begin closing cases for significantly lower sums. If this is delayed further or not implemented, the costs will increase dramatically from the present figures year on year, and all sums, both avoidable and unavoidable will be incurred at an alarming rate.

New Posts

5.23 The Disrepair Team is undergoing reform to modernise and professionalise the service to the required standards in order to address the significant challenges surrounding disrepair.

5.24 A Disrepair Manager and two Disrepair Co-ordinator roles were created and implemented, to address the lack of necessary resources to deal with the required work. This has assisted with the volume, organisation and reduction of single point failure issues which were being experienced and causing significant financial and reputational liabilities.

5.25 We require a Contract Manager, to manage two main areas: (i) Legal Providers and; (ii) Repairs Contractors. The contract management of the latter is an essential aspect of the improvement plan, as it represents a significant risk to the business in terms of contractor performance, particularly operational service delivery if contracts are not implemented and monitored correctly.

5.26 Recruitment was not successful, so the job description has been redrafted and submitted for evaluation on a new and improved basis, to ensure the right candidates are attracted to this important role. The Contract Manager will report directly to the Senior Disrepair manager and exist laterally on the structure with the Disrepair Manager.

5.27 The post of Senior Disrepair Surveyor is being filled on a temporary basis, it reports directly to the Senior Disrepair Manager, the post is required to service the high level of technical demands on the department in defect analysis, specifying works, works completion verifications and the responsibility to engage within legal procedure pertaining to expert evidence under Part 35 of the Civil Procedure Rules under guidance from legal representatives.

5.28 We also required an additional three Disrepair Caseworkers for the team. This is to enable the reduction of legal costs being paid by the Council, by developing its own Pre-Action Team. The Disrepair Caseworkers will take on a large caseload of work and be responsible for carrying out the Protocol stages up to and including settlement of claims, correspondence with the opposing parties and internal colleagues, and monitoring the works issues to ensure compliance with repairs deadlines, otherwise known as specific performance.

5.29 By HRS taking on cases, there will be no instruction costs borne for instructing solicitors to conduct work they are not strictly necessary for, thereby drastically reducing the overall legal spend in the 'New Model' by limiting it to cases which become litigated and therefore do require legal representation at approximately 10%. This exchanges the 3 salaries for the instruction costs of approximately

189 cases (210-10%) per annum, which costs approximately £409,563. This figure relates only to the first tranche of cases; and it is likely the caseworkers will achieve +50%- +75% on top of this, saving approximately £614,344 to £716,735. Considering that cases are not being closed and therefore, far more than simply the instruction costs are being incurred on the historic cases, the overall savings are likely to be significantly greater, provided the contractors perform at the required speed and quality, highlighting the importance of the Contract Manager role and the 4 Disrepair Contractors.

- 5.30 These posts are intended to essentially eliminate the disbursement cost centre for future cases, and significantly increase the closure frequency, which will address the key vector of increased costs in the service, which is ongoing legal fees for cases which cannot close due to lack of repairs resources.
- 5.31 This tried and tested model previously implemented, with success by the current Senior Disrepair Manager, is a low cost, high case turnover model will complement the introduction of the new Disrepair Contractors and new roles within the team. The caseworkers will report directly to the Disrepair Manager and with the Disrepair Co-ordinators, who will continue to work on the winding down of the existing model on the implementation of the described changes. This will be closely overseen by the Senior Disrepair Manager to ensure efficacy.

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.

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

Finance

- 7.1 In September 2023, a virement of £3.6m was approved to cover the cost of outsourced legal cases, disrepair, and tenant's compensation costs.
- 7.2 Of this sum, £2.3m was for outsourced legal cases. This report seeks approval of variation of contract to law firms to an aggregate value of £4.7m.

- 7.3 This is an additional £2.4m, which can be contained within the HRA subject to approval of another virement of funds report.
- 7.4 Further finance comments are contained in the exempt report.

Procurement

- 7.1. The Chief Procurement Officer 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.
- 7.2. 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).
- 7.3. 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 Chief Procurement Officer 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.
- 7.4. There are no procurement related reasons preventing the Leader approving the recommendations in paragraph 2 above.

Assistant Director for Legal & Governance

- 8.10 The Assistant Director for Legal and Governance (Monitoring Officer) has been consulted in the preparation of the report.
- 8.11 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 this 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.
- 8.12 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.

- 8.13 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.
- 8.14 There are no legal reasons preventing the Leader from approving the recommendations in paragraph 2 of the report.

Equality

- 8.15 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
- 8.16 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.
- 8.17 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 report, the Leader will be acting lawfully.

8. Appendices

None

9. Background Papers

Report approved by Cabinet in September 2023 - [Q1 Finance Update Cabinet ver1.1FINAL.pdf \(haringey.gov.uk\)](#)

Report approved by the Leader on 9 November 2023 - [Agenda for Cabinet Member Signing on Thursday, 9th November, 2023, 3.00 pm | Haringey Council](#)

