

Report for: **Leader of the Council**

Title: Approval of revenue budget virement from the Housing Revenue Account (HRA) reserves for the provision of services to manage housing disrepair cases, and funding for the delivery of Electrical Inspection & Condition Reports (EICR) programme.

Report authorised by: Jahedur Raham Operational Director Housing & Building Safety

Lead Officer: Laura Johnson 07973 803904; laura.johnson@haringey.gov.uk

Ward(s) affected: All

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

1. Describe the issue under consideration.

- 1.1 There is a need for additional £6.851m to fund the increasing cost of managing legal disrepair and to meet the revenue cost of the EICR inspection programme.
- 1.2 In September 2023, the 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.
- 1.3 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, accordingly, the maximum contract values were subsequently increased.
- 1.4 On approval of the virement the maximum cumulative contract value for the Council’s external law firms for the period 2023/25 will be £4.7m (£2.3m + £2.4m).
- 1.5 To address the need for works to housing disrepair cases in a timely manner, to mitigate against further legal costs and because the responsive repairs service does not have sufficient capacity to undertake the work required, £2m is required to appoint 4 contractors to work on historic disrepair cases.

- 1.6 Following transfer of responsibility for delivery and budget management of the Electrical Inspection & Condition Report programme from HRS to Building Safety & Compliance in 2023, a new contract has been tendered and an award report has been drafted, pending confirmation of budget provision under this report.
- 1.7 The programme was previously delivered by the Housing Repairs Service (HRS) electrical team, due to the type of work undertaken, this has previously been capitalised. There was no existing revenue budget that could be transferred from HRS to Building Safety with the responsibility for the service.
- 1.8 In line with the capitalisation policy this can no longer be capitalised, due to the core inspection programme being routine re-inspections. The regulatory requirement for this revenue funded work stream for 2024/25 is £651,000.00. Future requirements will be incorporated within the annual budget setting process.
- 1.9 The total additional spend requirement for disrepair and EICRs is £6.9m, which is made up of:
- Contractors to complete legal disrepair work £2m
 - Tenant / lessee legal costs £1.1m
 - Compensation payment for tenants £700k
 - Cost of external law firms £2.4m
 - Contractor to complete programme of EICRs £651k
 - **Total £6.9m**

2. Recommendations

That the Leader of the Council:

- a. Notes that of the £6.9m required, £3.4m will be funded from sources highlighted in the report 4.2.1.
- b. Approves a virement of £2.8m from the Housing Revenue Account (HRA) reserves for the provision of legal services for housing disrepair cases and the appointment of four contractors to complete repair work.
- c. Approves the virement of £0.7m from the HRA reserves to cover the cost of Electrical Inspection Condition Reports (EICRs) for 2024/25 for the Council housing portfolio for which Haringey Council holds responsibility for electrical safety.

3. Reasons for decision

- 3.1 This report seeks approval from the Leader a virement from the HRA reserve, so as to cover part of the projected costs of the law firms in 2024/25 (which is estimated to be £2.4M) as the agreed 2023/24 budget for the legal firms who are acting for the Council on legal disrepair cases is exhausted, resulting in outstanding invoices that need payment to ensure they are paid for their services and can continue to work for the Council. A virement is also required to have sufficient budget in place for the work that we need four external contractors to undertake repair work on legal disrepair cases and for provision of funding to complete EICRs.
- 3.2 The decision was not taken to February cabinet as the position was not clear on the total budget virement required. The funding gap has increased over a period of months as it became apparent the quantum of the budget shortfalls, this did not allow for sufficient time to draft and submit a report for the February cabinet meeting.
- 3.3 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 are entitled to escalate their concerns through legal channels. If the Council does not respond to the pre-action 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 damages as well as legal costs, court fees and interest.
- 3.4 The Council needs to ensure it has sufficient resources in place to repair the 1000+ housing disrepair claims where legal action has commenced. At the present time there is not sufficient capacity within the responsive repairs service to provide the required repairs, we therefore need to procure contractors to ensure that we can complete the repairs in a timely manner.
- 3.5 Legal and the Housing Repairs Service are building capacity to deal with the increased demand from housing disrepair inhouse, but in the meantime there is still a need to instruct external solicitors to enable them to continue to work on existing and new housing disrepair cases.
- 3.6 The Council has a regulatory responsibility to undertake Electrical Inspection & Condition Reports (EICRs) within its managed housing properties at least once every 5 years, and when a property is re-let. This provision is for the 5-year testing and remediation programme only. The costs associated with remediation of electrical faults, repairs and re-lets are included within the responsive repairs and voids budgets respectively.
- 3.7 To comply with the requirements of the Regulator for Social Housing, The Health and Safety Act 1974 and the requirements and the Council's

capitalisation policy, this programme requires a new annual revenue funding stream. This will be managed through the budget setting process from 2025/26 onwards and for 2024/25 requires an initial virement from the Council's reserves due to the completion of capital works identified through previous inspection programmes to date.

4. Alternative options considered.

4.1 Do Nothing

4.1.1 Doing nothing it is not an option for the following reasons:

4.1.2 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/ lessee's obtaining judgment against the Council.

4.1.3 Furthermore, 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.

4.1.4 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 to protect its interests.

4.1.5 If contractors are not appointed to complete disrepair works, they will not be completed in a timely manner, causing further delay in resolution, further legal costs, and customer dissatisfaction. There are insufficient resources within the direct labour organisation in HRS to undertake the repairs required and, in the timescale, they need to be completed.

4.1.6 The Council has a regulatory duty to complete an EICR inspections in every property at least once every 5 years.

4.2 Identify savings and/or stop other Housing related works to fund disrepair works / legal costs.

4.2.1 To fund the required £6.9m costs, £3.5m one-off draw down from reserves has been requested to fund the exceptional costs for disrepair and the EICR inspection programme. The remaining £3.4m will be funded through savings

from the Housing Operations & Building Safety revenue budget. This saving will be delivered by a review and reconfiguration of HRS services, a potential increase from refunds/claims and the reallocation of £0.5m of the Housing Improvement Plan (HIP) Budget. All Housing related works required will continue to be reviewed, prioritised and funding agreed as part of the MTFS process.

There is an expectation to replenish the HRA reserve to maintain adequate reserves balance, ensuring the viability of the HRA.

Further information about the refunds/claims mentioned above is contained in the Exempt Report.

4.3 Insourcing

4.3.1 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.

4.3.2 There is not sufficient resources withing HRS DLO to complete the required level of work in the timescale required for the outstanding disrepair caseload.

4.3.3 This is not an option for EICRs and has been considered in detail in the contract award report previously referred to.

5. Background information

5.1 The Council currently has over 1000 disrepair claims. The primary issue is that the total number of claims have built up at a rapid pace over the last year, due to lack of adequate contractor/housing repairs service capacity to complete the remedial works required. Disrepair claims cannot close until repair works are completed to a satisfactory standard, and failure to do so results in breaches, which incurs additional, avoidable legal costs and compensation. This is the primary cause of the increased costs in disrepair. The cost of works is unavoidable and will always have to be completed upon service of a valid claim. Therefore, the Council will either pay a lower, minimum unavoidable cost, or a significantly higher figure to achieve the same result in avoidable legal costs.

5.2 A decision was previously taken to outsource disrepair claims to external law firms to handle the legal aspects of the operation due to the volume increase in new claims. However, cases have been unable to close at the required level, due to the lack of repairs capacity. As a result, the number of claims with external solicitors have increased beyond initial expectations. There is not adequate resource to take back all, or a substantial proportion of those claims to the in-house team. Therefore, further funds are required to maintain

representation by the external solicitors, until the newly planned model can be implemented.

- 5.3 This problem has caused significant financial pressure on the budget. Rectification involves increasing the in-house legal team's capacity through recruitment, and the implementation of a pre-action model by the Disrepair Team, whereby caseworkers will handle the claims up to litigation, with the objective of drastically reducing the number of claims for which legal representation is required. This will apply to new cases, once the recruitment has been completed.
- 5.4 The existing caseload will still require representation, whether provided internally or externally. These cases are of particular concern, as they are escalating at scale and incurring substantial costs through lack of closure. Additional concerns with these cases are breach payments and reputational damage, through failing to comply with settlement agreements and Court Orders. Rectification of these cases involves the urgent provision of finance to allow for the contractors to be onboarded and commence repair works. There is a substantial backlog of these cases and therefore the additional legal resource will likely be required throughout the next financial year.
- 5.5 Once the new posts are filled and the contractors are on board, the new model will commence and run concurrently with the backlog clearance operation. With adequate capacity to complete repairs at the required scale and frequency, the costs of the new cases can be curtailed significantly, when compared to the backlog cases, by reducing legal fees on both sides through faster case closure.
- 5.6 Failure to adequately fund the repairs demand will result in significant financial escalation. A compound increase effect is in progress and action is required now to arrest the escalating costs. The costs incurred through disrepair claims are legal liabilities and cannot be avoided. There is a simple choice of investing in the operational requirements to complete works now or paying significantly higher costs in the future. In addition, tenants will remain in disrepair, despite engaging solicitors and obtaining settlements and Court Orders requiring the repairs to be completed.
- 5.7 The Council self-referred to the Regulator for Social Housing, over the failure to undertake a suitable programme of 5-yearly EICRs in January 2023. Since then, we have completed over 7,800 inspections to raise compliance from 45% to over 95%. To fail to provide sufficient funding to maintain this programme could result in risk of harm to residents due to poor maintenance of electrical installations in tenants' homes, additional risk from fire and further scrutiny and possible sanctions by the Regulator of Social Housing. An additional £651,000 is required to meet contractor costs.

5.8 The table below sets out the funding agreed in 2023/24 and the amount required in 2024/25 for disrepair and EICR works:

Item	Existing 2023/24	Proposed 2024/25
Contractor	£472k	£2m
Tenant / Lessee legal cost	£470k	£1.1m
Compensation	£315k	£700k
External law firms	£2.3m	£2.4m
Disrepair Total	£3.557M	£6.2m
EICR Works	N/A	£651,000
Virement Total		£6,851,000

6. Contribution to strategic outcomes

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.

6.2 This project will also help to deliver theme 5 of the Corporate Delivery Plan. A borough where everyone has a safe, sustainable, stable, and affordable home.

7. Carbon and Climate Change

7.1 This report requests the virement of budgets to support the delivery disrepair. The programmes themselves are the subject of individual procurements and award reports. Carbon and Climate Change is therefore considered in each of those reports in line with the "Carbon in All Cabinet Reports – Guidance for Report Writers"

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

8.1 Finance

8.1.1 There is need for additional £6.9m to fund the cost of legal disrepair cases, EICR and associated works and backlog of repairs works.

The report requests approval for a virement of £3.5m from the HRA reserve to part fund the cost of these works. This will leave the HRA reserve with a balance of £15.7m.

A key aspect of the HRA financial plan is to maintain an HRA reserve of £20m, to enable the Council to manage risks associated with the extensive development programme and changes in external environment such as borrowing rates, government policies, etc.

There is need to replenish the HRA reserve to ensure that the HRA remains viable, and that the Council continues to deliver the programmes set out in the business plan.

The remaining £3.4m required will be funded from other sources in the HRA as highlighted in the report.

If this £3.4m sum is not found from HRA resources, it may require further call on the HRA reserve which will impact on HRA viability and the Council's ability to deliver Housing services.

Further finance comments are contained in the exempt report.

8.2 Assistant Director of Legal & Governance

8.2.1 The Assistant Director of Legal and Governance (Monitoring Officer) has been consulted.

8.2.2 The Executive is responsible for discharging Executive functions in accordance with the Council's policy framework and budget. Under Part 4, Rules of Procedure Section I, Financial Regulations, the Leader of the Council has the power to authorise the virements set out in the recommendations in section 2 of the report.

8.2.3 With respect to the costs of the Council's external lawyers: at a Signing on 28 March 2024 ([Agenda for Cabinet Member Signing on Thursday, 28th March, 2024, 2.00 pm | Haringey Council](#)) the Leader resolved as follows (and, in respect of (a) below, approved that the total sum of £1M be allocated to the law firms) -

- 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.

8.2.4 The Assistant Director of Legal and Governance (Monitoring Officer) sees no legal reasons preventing the Leader of the Council from approving the recommendations set out in section 2 of the report.

8.2.5 Further Legal comments are contained in the Exempt report.

8.3 Equalities

8.3.1 The council has a Public Sector Equality Duty under 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.

8.3.2 The three parts of the duty apply 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.

8.3.3 Although it is not enforced in legislation as a protected characteristic, Haringey Council treats socio-economic status as a local protected characteristic.

8.3.4 The purpose of this decision is to approve the virements to cover the cost of the law firms who are managing disrepair cases for the Council and completion of a programme of electrical inspection reports.

8.3.5 This decision is not expected to have any effect on those who share the protected characteristics and will not advance or hinder the Public Sector Equality Duty in Haringey. As such it will have a neutral impact on equalities.

8.3.6 As an organisation carrying out a public function on behalf of a public body, the firms will be obliged to have due regard for the need to achieve the three aims of the Public Sector Equality Duty as stated above.

8.4 **Procurement**

8.4.1 Strategic Procurement note the contents of this report and confirm there are no procurement related matters preventing the Leader of the Council approving the recommendations stated in paragraph 2 above.

9. **Use of Appendices**

N/A

10. **Background papers**

1. Report "Variation of Contracts Awarded to Three Law Firms in relation to Housing Disrepair Cases" approved by the Leader on 28 March 2024:
[Agenda for Cabinet Member Signing on Thursday, 28th March, 2024, 2.00 pm | Haringey Council](#)