

Report for: Leader Signing

Item number: 3

Title: Statutory Homelessness Decisions

Report authorised by : Tracie Evans, Chief Operating Officer

Lead Officer: Mustafa Ibrahim, Head of Housing Commissioning and Investment.

Ward(s) affected: All

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

1. Describe the issue under consideration

- 1.1 On 15th March 2016, Cabinet approved the new ten year Management Agreement (expiring 31 March 2026) between the Council and Homes for Haringey (HfH), but acknowledged it would not come into effect until after it received Secretary of State consent. The required consent has not yet been obtained, but authority already exists to extend the old agreement until the new one comes into effect.
- 1.2 There is no existing authority to extend the arrangements to contract out Homelessness and Allocations decisions to HfH, so approval is being sought to retrospectively and prospectively authorise this arrangement until the new Management Agreement becomes effective.
- 1.3 Separately, the Council's contract with Housing Reviews Limited ("HRL") which contracts out conduct of reviews of homelessness and allocations decisions to that company, expired on 31 March 2016. The contract contains provision for extension for a further 6 months, and authority is required for this extension.

2. Cabinet Member Introduction

- 2.1 In July 2015 Cabinet commissioned a review of the Future Housing Delivery Model for Haringey. The report of the review group was presented to Cabinet in September 2015 and led to a decision by Cabinet to award a new ten year Management Agreement to HfH, which was subsequently approved by the Cabinet on 15 March 2016.
- 2.2 For the principles of the review to be fully effective and the benefits delivered to residents, it is important that there is no disruption to the delivery of Homelessness Services. The recommendations of this report are required to allow a continuation of current services.

3. Recommendations

It is recommended that the Leader:

- 3.1 Authorises retrospectively and prospectively the continued contracting out of the permitted Part VI and VII functions of the Housing Act 1996, to HfH on the terms of the old management agreement as varied by the Deed of Variation of 24 September 2014 notwithstanding expiry of that agreement from 1 April 2016 until the new agreement comes into effect or for a period of 10 years, whichever comes first, subject to the Council's right to determine the contracting out of those functions at any time.
- 3.2 Authorises contracting out of the permitted Part VI and VII functions on the terms of the new agreement for a period until 31 March 2026 subject to the Council's right to determine the contracting out of those functions at any time.
- 3.3 Authorises amendment of Schedule 1 of the 2016 Management Agreement, to clarify the scope of the Part VI and VII functions delegated to HfH.
- 3.4 Authorises the extension of the contract with HRL until 3^{1st} October 2016.
- 3.5 Notes that the Council's tenancy management functions continue to be contracted out to HfH on the terms of the old management agreement until replaced by the new management agreement.

4. Reasons for decision

- 4.1 The Council has responsibilities under parts VI and VII of the Act that it can only delegate to third parties under the terms of the Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996. The existing authorisations to contract out these responsibilities, to HfH and HRL expired on 31st March 2016, with the expiry of the 2014 deed of variation to the 2011 Management Agreement and on 30 April 2016 with expiry of the contract to HRL, respectively. The Council has a statutory duty to carry out these functions or to contract them out to a third party.

5. Alternative options considered

- 5.1 Not to authorise the extension of the contracting out arrangements would mean that Homelessness and Allocations decisions made by HfH would be open to legal challenge. The alternative to this is that the Council would take these decisions in-house until the new Management Agreement comes into effect. Council staff with expertise and experience in this area were however transferred to HfH on 1st May 2016 and are now permanent employees of HfH.
- 5.2 If, in addition, the Housing Reviews contract is not extended, neither HfH, nor HRL will be authorised to carry out these reviews and any reviews made by those parties will be open to legal challenge.

6. Background information

6.1 Extension of the Management Agreement

- 6.1.1 On 15th March 2016 Cabinet authorised a new ten year Management Agreement between the Council and HfH, but recognised that the agreement needed Secretary of State consent and would therefore not come into effect until the consent was obtained. Consent is still outstanding, but anticipated sometime before mid June 2016.
- 6.1.2 On 15th December 2009, Cabinet had agreed to enter into a revised Management Agreement with HfH to take effect from 7th September 2011, coming to an end on 31st March 2016 and allowed for this agreement to be extended for a further two years beyond March 2016. This agreement contracted out the Council's tenancy management responsibilities to HfH. This authority is now being relied upon to extend the old Management Agreement, until the new Management Agreement takes effect.

6.2 Contracting out of parts VI and VII functions

- 6.2.1 By a decision dated 18 March 2014 Cabinet authorised contracting out of the Council's Homelessness and Allocations functions to HfH as part of a refresh of the Management Agreement, until 31 March 2016.
- 6.2.2 By a Deed of Variation dated 24th September 2014 the 2011 Management Agreement was varied with effect from 29 September 2014 to contract out permitted Homelessness and Allocations functions, under part VI and part VII of the Housing Act 1996, from the Council to HfH until 31 March 2016.
- 6.2.3 Although the Cabinet decision of December 2009 allows for the original Management Agreement to be extended for a period up to 31st March 2018, the 2014 authorisation of the contracting out of Homelessness and allocations decisions under parts VI and VII came to an end on 31st March 2016 and there is no authority in place to extend this arrangement.
- 6.2.3 Between 1st April 2016 and 1st May 2016, permitted functions under parts VI and VII were performed by Council Officers who were seconded to HfH. However, those officers were transferred permanently to HfH with effect from 1st May 2016 and are now employees of HfH.
- 6.2.4 This report therefore asks for retrospective authority to contract out homelessness and allocations decisions under parts VI and VII from the Council to HfH from 1st April 2016 onwards, and prospectively until the 2016 Management Agreement comes into full effect, after obtaining Secretary of State consent.
- 6.2.5 For the complete avoidance of doubt, this report also asks for authority to contract out parts VI and VII under of the 2016 Management Agreement and to amend schedule 1 of this agreement to make this position completely clear.

6.3 Extension of the Contract with HRL

- 6.3.1 On 1st May 2014, the Leader of the Council granted authority for the Council to enter into a contract with Housing Reviews Ltd, from 1st May 2014 to 30th April

2016. Clause 3.2 of this contract allows for the further extension of the contract for a period of six months after 30th April 2016.

- 6.3.2 In this contract, the Council uses its powers under the Local Government Contracts Act 1997 and the Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996 to authorise Housing Reviews Ltd to carry out Homelessness Reviews on the Council's behalf.
- 6.3.3 The contract value from 1st May 2014 to 30th April 2015 is less than £500,000 and the cost of the six month extension will not exceed £13,000.
- 6.3.4 HfH are undergoing a full transformation programme within their Housing Demand service, which manages the Homelessness function. As part of this process, options are being considered for how Housing Reviews will be undertaken in future. Models that are being considered include bringing the review function back in-house within HfH, continuing to outsource the function (which would mean re-tendering the contract) or a combination of the two options.
- 6.3.5 The transformation and related re-structure of Housing Demand has been put back, for a number of reasons, including the delayed TUPE transfer of 143 staff formerly seconded from the Council. Therefore, authorisation is sought to extend the current Housing Reviews contract for six months, by which time the transformation of Housing Demand would be complete and the long term arrangements for the Housing Review process would be put in place.

7. Contribution to strategic outcomes

- 7.1 Priority 5 of the Council's corporate plan has as its second objective to prevent homelessness and support residents to lead fulfilling lives. This can only be achieved if the Council is able to discharge its statutory responsibilities in terms of making decisions under parts VI and VII and conducting statutory Housing Reviews.

8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

8.1 Finance and Procurement

- 8.1.1 There are no new financial implications due to this decision. Budgets for the relevant functions have already been agreed by Cabinet and will continue to be managed by Homes for Haringey. Given the pressures of the Council's General Fund due to increased rent costs and reduced Housing supply within the Homelessness budget it is important that arrangements to minimise the impact of these factors remain in place.

8.2 Legal

- 8.2.1 The Assistant Director of Governance has been consulted in the preparation of this report and makes the following comments.

- 8.2.2 The Council has statutory functions under Parts VI and VII of the Housing Act 1996 in relation to allocation of social housing and assistance of the homeless.
- 8.2.3 By the Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996 the Council is permitted to contract out those functions to a third party, provided that any such contract is (i) for no more than 10 years, and (ii) subject to revocation forthwith by the Council.
- 8.2.4 Certain Part VI and VII functions, principally in relation to policy-making and grant-giving, may not be contracted out. Those functions are in fact still exercised by Council officers and the Council itself, but it is desirable that the terms of the agreement reflect that position.
- 8.2.5 By Article 10.06 power to authorise contracting out of Council executive functions is reserved to the Leader, or to Cabinet with the Leader's agreement. The Part VI and VII functions are executive functions.
- 8.2.6 Relevant caselaw including *Tachie and others v Welwyn Hatfield Borough Council* establishes that it is open to the Leader to authorise contracting out after the fact as set out in the recommendations in this report.

8.3 Equality

- 8.3.1 The Council has a public sector equality duty under the Equalities Act (2010) to have due regard to:
- tackle discrimination and victimisation of persons that share the characteristics protected under S4 of the Act. These include the characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (formerly gender) and sexual orientation;
 - advance equality of opportunity between people who share those protected characteristics and people who do not;
 - foster good relations between people who share those characteristics and people who do not.
- 8.3.2 Residents in receipt of Homelessness services are typically vulnerable and in need of help. One way that they are protected is through the statutory decision making responsibilities given to Local Authorities. By authorising the extension of the existing arrangements, the Council is ensuring that these residents continue to receive the services they are entitled to, which protect them and help them.
- 8.3.3 Cabinet took into consideration the Council's public sector equality duty when on 15 March 2016 it authorised entry into the new management agreement. The present decision raises no new equalities considerations.

9. Use of Appendices

- 9.1 None

10. Local Government (Access to Information) Act 1985

Report to Cabinet 15th December 2009 - Review of the Management Agreement between Haringey Council and Homes for Haringey

Report to Cabinet 18 March 2014 – Total Housing Services – Interim Arrangements

Cabinet Member signing 1st May 2014 - Contracting out of the Homelessness Review Function

Report to Cabinet 15th July 2014 - Improvement and unification of Housing Management Services

Report to Cabinet 15th September 2015 - Report of the steering group on the Future Housing Delivery Model

Report to Cabinet 15th March 2016 - Management Agreement with Homes for Haringey for Housing Services