

**CABINET
18 DECEMBER 2018**

PART 1 – PUBLIC DOCUMENT

TITLE OF REPORT: THE CONTRACTING OUT OF HOMELESSNESS REVIEW DECISIONS

REPORT OF : SERVICE DIRECTOR - REGULATORY

EXECUTIVE MEMBER : COUNCILLOR BERNARD LOVEWELL

COUNCIL PRIORITY : RESPONSIVE AND EFFICIENT

1. EXECUTIVE SUMMARY

- 1.1 The Council undertakes statutory reviews of certain homelessness decisions for applicants who would like the outcome to be reconsidered. Review decisions often involve judgements on situations that can be legally complex in nature. Due to limited officer capacity, this process can last for an extended period of time.
- 1.2 The Homelessness Reduction Act 2017 places significant new legal duties on the Council, including the introduction of additional provisions that are also subject to review.
- 1.3 The Ministry of Housing, Communities and Local Government has provided all local authorities with ring-fenced homelessness grant to help them meet their new legal obligations.
- 1.4 There are specialist organisations who undertake homelessness reviews on behalf of local authorities, providing a cost effective and efficient option.

2. RECOMMENDATIONS

- 2.1 That Cabinet approves the 'contracting out' of homelessness reviews and the subsequent issuing of decisions on the Council's behalf, in accordance with the relevant legislation.
- 2.2 That Cabinet agrees the allocation of the ring-fenced homelessness grant (from the Ministry of Housing, Communities and Local Government) to fund the anticipated initial cost of contracting out, of between £5k-£10k for the period 1 January 2019 to 31 March 2020.

3. REASONS FOR RECOMMENDATIONS

- 3.1 The outsourcing of homelessness review decisions to a specialist organisation should provide an efficient and cost effective solution, releasing management capacity that can be directed at further supporting the front-line response to the new provisions of the Homelessness Reduction Act 2017 (HRA).

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The in-house management of reviews could remain as it currently stands, however due to the legal complexities involved and the limited capacity of reviewing officers, it is likely some may not be completed in a timely fashion, impacting adversely on the turnover of temporary accommodation units.
- 4.2 The Council could retain the review decision making in-house, taking advice from an appointed contractor, who would recommend a decision. However, this would still rely on review officer capacity (as all decisions would still need full internal consideration) whilst also incurring the cost of the contractor.
- 4.3 Some local authorities have recruited specialist reviews officers, often sharing them between authorities. This option was not pursued as the current volume of reviews does not justify this response and it would initially cost significantly more than the proposals in this report.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 Cllr Bernard Lovewell has been consulted and is supportive of this decision.

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key decision that was first notified to the public in the Forward Plan on the 22 October 2018.

7. BACKGROUND

- 7.1 The Council is the local housing authority for the purpose of homelessness services under the Housing Act 1996. The legislation provides any applicant with a right to request a review of certain homelessness decisions made by the authority.
- 7.2 A homelessness review is a fresh assessment of the circumstances at the time of the review and this function is currently undertaken by Council officers. The initial outcome may be upheld, or an alternative decision reached. In terms of decision making, reviews can only be decided by an officer who was not involved with the original decision and who is also senior to the original decision maker (this means that two officers in Housing Services qualify to undertake this function on behalf of the Council).
- 7.3 The following table highlights the number of review requests made over recent years:

Year	Number of reviews requested
2016/17	18
2017/18	19
2018/19 (as at 27 November 2018)	11

8. RELEVANT CONSIDERATIONS

8.1 Following the introduction of the HRA in April 2018, the number of reviewable decisions has increased from eight to 14. They are summarised below (the new reviews introduced by the HRA are in italics):

1. Not eligible
2. Not homeless
3. *Steps taken to end prevention duty*
4. *Steps taken to end relief duty*
5. *Decision to end prevention duty*
6. *Decision to end relief duty*
7. *Decision to make a local connection under the relief duty*
8. *Decision to issue notice on non-cooperation*
9. Not in 'priority need'
10. Intentionally homeless
11. Local connection referral under main duty
12. Suitability of accommodation
13. The length of time temporary accommodation remains available to applicants who are intentionally homeless, but in priority need (reasonable notice)
14. Whether duty has been discharged to applicant

Although the number of review requests received appears to be fairly consistent, the volume may grow as the provisions of the HRA bed in.

8.2 The specialist nature of some of the reviews requires constant reference to the legal provisions (many of which are new), the Homelessness Code of Guidance and emerging case-law. Many of the reviews are requested by legal firms who specialise in challenging the homelessness decisions of the local authority. As a result, the internal review function requires a significant amount of officer time in comparison to the number of reviews received per year.

8.3 The capacity in Housing Services is limited due to the implementation of the Council's response to the new HRA provisions. The front-line housing service has been redesigned in order to ensure the new legal duties are met. This has included an ongoing training programme for team members and the implementation of system upgrades whilst adhering to vastly increased central government reporting requirements.

8.4 Due to the legal complexities involved with homelessness reviews and general challenges with review officer capacity, the decision making process can extend for a significant period of time. Although every effort is made to prioritise reviews of those residing in temporary accommodation, delays can impact adversely on the availability of vacancies for other homeless households and can occasionally result in the usage of nightly-paid accommodation.

- 8.5 Should Cabinet agree the proposals in this report, the Council would still retain the ability to undertake homelessness reviews. Although the intention would be to outsource the majority of reviews decisions, there may be some undertaken by officers from time to time, resources allowing.
- 8.6 Some Hertfordshire local authorities have outsourced homelessness review decisions for some time. More recently, Three Rivers DC and Watford BC have developed a county-wide Framework Agreement that provides two panels of specialist organisations, who are able to undertake this work at a competitive rate. Should Cabinet agree the proposals in this report, a contractor would be appointed from the Hertfordshire Framework, until March 2020.
- 8.7 In terms of the applicant, when they initially request a review, they will be advised of the organisation who will be undertaking this. Outsourcing the function can also assist with the perception of bias that internal reviews can generate as an external third party could be viewed as being completely impartial. Should an applicant be unhappy with the review outcome, they will still retain the right to an appeal via a county court, as is the case now.

9. LEGAL IMPLICATIONS

- 9.1 The Council is the local housing authority (LHA) for the purpose of homelessness services under the Housing Act 1996 (HA1996). S202 of Part VII of the HA1996 provides any applicant with a right to request a review of certain homelessness decisions made by the authority.
- 9.2 Section 70 of the Deregulation and Contracting Out Act 1994 permits the contracting out of any function of a local authority if it is authorised by a statutory instrument made under the Act. The Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996/3205 ("the Order") is made pursuant to this power. Article 3 of the Order allows the contracting out of any function of an authority which is conferred by or under Part VII of the HA1996, except for those listed in Schedule 2 to the Order. S202 of the Housing Act 1996 is not listed in Schedule 2 and therefore is capable of being contracted out.
- 9.3 Cabinet has within its terms of reference at paragraph 5.6.15 to oversee the provision of all the Council's services other than those functions reserved to the Council. This power, combined with the provisions of paragraph 11.6.1 of the Constitution, enables Cabinet to make the decision as to whether or not to contract out the function of determining homelessness reviews under S202 HA 1996.
- 9.4 Paragraph 11.6 of the constitution sets out the relevant decision making process in respect of contracting out. It states:

11.6 Contracting Out

The Council (in respect of Non-Executive Functions) and the Cabinet (in respect of Executive Functions) may contract out to another body or organisation functions:

- 11.6.1 *which may be exercised by an Officer and which are subject to an order under section 70 of the Deregulation and Contracting Out Act 1994; or*
- 11.6.2 *under contracting arrangements where the Contractor acts as the Council's Agent under usual contracting principles, provided there is no delegation of the Council's discretionary decision making.*

The Council's homelessness function is an executive function pursuant to the provision of the Local Authority (Functions and Responsibilities) (England) Regulations 2000/2853.

- 9.5 Should Cabinet agree the proposals in this report, the appointment of a contractor will be made in accordance with the Council's Contract Procurement Rules, June 2018.

10. FINANCIAL IMPLICATIONS

- 10.1 The Ministry of Housing, Communities and Local Government (MHCLG) has provided all LHAs with:

- Flexible Homelessness Support Grant (FHSG)
- Transitional new burdens funding

This funding is ring-fenced and has been provided to help LHAs meet the new legal responsibilities introduced as part of the HRA.

- 10.2 The Council allocation of ring-fenced FHSG and new burdens funding for 2017/18, 2018/19 and 2019/20 totals £542.4k. Of this allocation, £372.9k has already been committed (via Cabinet resolutions in September 2017 and two subsequent decisions made under delegated authority by the Service Director – Regulatory, in consultation with the Executive Member for Housing and Environmental Health). This leaves a MHCLG grant balance of £169.5k remaining to meet demand pressures.
- 10.3 The future level of homelessness reviews is unpredictable; however it is anticipated, certainly in the short-term, they will continue at a similar rate. Should a contractor be appointed from the Framework Agreement highlighted in paragraph 8.6, the approximate cost between 1 January 2019 and 31 March 2020 would be £5k-£10k. This amount can be fully funded by the remaining MHCLG grant allocation highlighted in paragraph 10.2. The performance of the contractor will be monitored and the post March 2020 options reviewed in due course, including an assessment of funding availability at that time.
- 10.4 There are no specific capital implications arising from this report.

11. RISK IMPLICATIONS

- 11.1 Should the review function remain in-house, there is a risk that some decisions will take longer than necessary due to the complexity (in legal terms) of the applicants' situation and the lack of capacity for the reviewing officer to consider it in a timely manner. This could result in longer stays in temporary accommodation and occasional use of nightly-paid accommodation.

- 11.2 There is a risk that the number of homelessness review requests grows as the HRA becomes fully embedded. The numbers will be monitored closely, with appropriate intervention at the time.
- 11.3 There is the ongoing risk of perceived bias if the homelessness review process remains 'in-house'.

12. EQUALITIES IMPLICATIONS

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2 There are no equality implications expected as a result of the recommendations in this report. The contracting out of the review decision making process allows the management capacity to further support front-line service provision and therefore vulnerable members of the community.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 The Social Value Act and "go local" policy do not apply to the decisions being considered as part of this report. When a contractor is appointed for the purposes of this report, it will be made in accordance with the Social Value Act and the Council's "go local" policy.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 Should Cabinet agree the proposals in this report, the management capacity that is liberated will be redirected to further support front-line staff in meeting the new provisions of the HRA.

15. APPENDICES

- 15.1 None.

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

- 17.1 None.