

Decision Maker: EXECUTIVE

Date: For Pre-Decision Scrutiny by the Care Services Policy Development and Scrutiny Committee on Thursday 13th October 2016

Decision Type: Non-Urgent Executive Key

Title: GATE REPORT FOR THE PROVISION OF STATUTORY HOMELESSNESS REVIEWS

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Chief Officer: Sara Bowrey, Assistant Director: Housing (ECHS)

Ward: Borough-wide

1. Reason for report

1.1 Homeless Households have a statutory right to a review of decisions made by the Council in respect of applications for accommodation and accommodation offered under the provisions of part VII of the Housing Act 2996 (as amended by the Homelessness Act 2002). The process for conducting such reviews is set out in the legislation under s202, part VII of the Housing Act 1996 and requires that reviews are conducted by someone independent of the original decision and sufficiently senior to the person making the original decision

1.2 Legal Advice confirms that the decision to contract out the statutory homelessness reviews function must be agreed by Executive in order to comply with the Homelessness legislation and accompanying statutory order in relation to the reviews function.

2. RECOMMENDATIONS

2.1 Subject to the views of the Care Service and Executive & Resources Policy Development and Scrutiny Committees, the Council's Executive is asked to agree to:

- i) Confirm the current arrangements for contracting out homelessness reviews until the new contract begins;
- ii) To contract out the statutory reviews function under the terms set out in this report;
- iii) To tender the external homelessness reviews contract for a period of 3 years with an option to extend for a further 2 year period; and,
- iv) To delegate agreement to extend the current contract, if required, to the Care Services Portfolio holder for a period of up 3 months until the new contract begins to enable handover and completion of any existing reviews under the current contract.

Corporate Policy

1. Policy Status: Existing Policy
 2. BBB Priority: Excellent Council:
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Financial

1. Cost of proposal: £12,000 per annum
 2. Ongoing costs £12,000
 3. Budget head/performance centre: 746000
 4. Total current budget for this head: £16,000
 5. Source of funding: Core funding
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Staff

1. Number of staff (current and additional): N/A
 2. If from existing staff resources, number of staff hours:
-

Legal

1. Legal Requirement: Statutory Requirement
 2. Call-in: Applicable
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Bromley currently receives approximately 1200 applications per year from people seeking assistance under the homelessness legislation. In all cases applicants have a right to request a statutory review of any decision made in respect of their homelessness application. Bromley currently receives on average 130 homelessness reviews per year across all types of decisions. The number of homeless approaches is starting to rise and is likely to increase further once the proposals in the current Homeless Reduction Bill come into force.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

- 3.1 The duties of local housing authorities to persons who apply as homeless is governed by Part VII, Housing Act 1996, as amended by the Homelessness Act 2002. The authority must make such enquiries as are necessary to satisfy themselves whether the applicant is eligible for assistance and what, if any, duty is owed to them. The applicant has a right to request a review of any such decision and decisions relating to the suitability of accommodation offered to them in discharge of the duty owed. If the applicant is dissatisfied with the decision on review, they may then appeal to the county court on a point of law. The review of the decision must be conducted by someone who is independent of the original decision and senior in terms of rank or grade to the officer making and authorising the original decision and must be completed within set timeframes, usually 56 working days from receipt of the request for a review..
- 3.2 Since 2011 a proportion of review investigations have been undertaken by external independent reviewers in order to provide sufficient capacity to undertake the volume of reviews being received. The current provider was identified after price and quality comparison with other possible providers and in discussion with other local authorities.
- 3.3 As recent case law, in particular pertaining to the assessment of vulnerability (*Hotak v LB Southwark*) and suitability of accommodation (*Nzolameso v Westminster*) have increased the volume of reviews, the Council has had to rely more heavily on the current provider for investigation in order to meet statutory timeframes.
- 3.4 This arrangement was approved by the then Assistant Director in 2010/11 on behalf of the Council, with the independent reviewer being used on an ad hoc basis to provide reviews investigations with the decision to refer being taken under officer delegated authority.
- 3.5 Where the service is fully contracted out to enable the independent reviewer to investigate and also issue a s202 homelessness review decision this decision requires formal approval by the Executive.
- 3.6 As it would not be practicable to have a break in service or hand over reviews in progress from one external reviewer to another. A short extension may be required on the existing contract to enable current reviews already referred across at this stage to be concluded.

Service delivery options considered:

- i) The only alternative to contracting out the statutory review function is for the Council to employ a specialist housing review officer/s on a senior grade. Many local authorities keep an in-house service for the majority of reviews. However, given the number of reviews, this is not considered to be the best options in terms of value for money, neither is it responsive to the peaks and troughs in the workload.
- ii) Contracting out the reviews enables the Council to pay solely for the work done. Payment is made on receipt of the reviews and these must be completed within a set time according to legislative and contractual arrangements. The contracted service is estimated to provide significant savings compared to an equivalent in-house service. Based upon comparisons with the current arrangements and other local authorities the estimated cost of carrying out this function via independent reviewers is approximately £12,000 per annum based upon current volumes. A specialist in-house officer would cost in the region of £40,000 per annum.

4. SERVICE PROFILE/DATA ANALYSIS

- 4.1 The number of homeless applications to the service remained fairly steady since the earlier increases in 2011 and this can be attributed to the emphasis on homeless prevention. Whilst

the numbers have remained static the profile of cases has changed quite dramatically as a result of welfare reform and the single highest reason for homeless is now eviction from the private sector.

- 4.2 Recent legislation and case law findings have lead to a significant increase on the current number of reviews having to be undertaken and there is not sufficient capacity in-house to meet the current level of statutory review investigations. As such, there has been an increased reliance on independent reviews to provide sufficient capacity to fulfil the Council’s statutory review obligations.

Figure 1 shows the number of reviews received in 2015/15

| | | |
|--|---|-------------------------|
| S202 – review of homelessness application decision | S202 review of suitability of accommodation offered | Housing Register Review |
| 68 | 49 | 70 |

Figure 2 shows the number of reviews during 2015/16

| No. of Reviews 2015/16 | | | |
|-------------------------------------|--|---|-------------------------|
| | S202 – review of homeless application decision | S202 review of Suitability of accommodation offered | Housing Register Review |
| No. responded to within our service | 15 | 50 | 301 |
| No. requiring independent reviewer | 66 | 12 | 0 |
| Total | 81 | 72 | 301 |

- 4.3 A new Homeless Reduction Bill was published on 29th June proposing roll out of the changes recently implemented in Wales to be extended to all English local authorities. Early profiling of the impact of the Bill suggests a significant rise in the number of homeless applications and subsequent statutory reviews that the Council will have to consider. Based upon the experience in Wales this has seen approximately a 63% increase in homelessness presentations. If this follows through into reviews in this area it would equate to an increase of 41 reviews at an annual cost of approximately £6,237.

5. CUSTOMER PROFILE

- 5.1 Those who approach the Council for assistance under the provisions of the homelessness legislation are some of the most vulnerable members of the community with high representation from certain equality groups; in particular vulnerable due to disability, mental health, pregnancy or young children and people.
- 5.2 The use of independent reviews ensures that there is sufficient capacity to fulfil the Council’s statutory reviews function within the prescribed timeframe of 56 working days. This helps to reduce the length of time households are waiting for a decision.

6. MARKET CONSIDERATIONS:

- 6.1 This is a specialist area of work and as such there are only a very small number of organisations providing this service, in the main these are officers who were formerly local authority reviews officers who have set up small limited companies or consultancy arrangements to undertake reviews on behalf of local authorities. A small number of solicitors will also consider undertaking reviews to assist local authorities, usually on an ad hoc basis, but this model tends to be more expensive charged at a standard daily rate for the solicitor appointed.
- 6.2 In discussions with other boroughs operating a similar arrangement to the one proposed, the majority report that providers tend to focus on building relationships with the local authorities they work with as this ensures a full understanding of local priorities and procedures in order to ensure that decisions are robust and able to defend legal challenge in the local context.
- 6.3 Recent tenders by other local authorities have tended to only attract one bid, usually from the existing provider and there have been a small number receiving zero bids. As this is a very limited market and providers tend to be small with limited capacity in terms of the number of local authorities they are able to provide a reviews service for at any one time, providers are highly sought after. Consultants with plenty of work are unlikely to tender as there is little incentive to bid given the intense competition for the scarce resources available to undertake this specialist area of work. Current procurement experience in similar tenders has shown that professional individuals are unlikely to register with an e-procurement system to submit a bid especially where they are offered work by other Local Authorities who have not required a tender submission.
- 6.4 Market testing has confirmed the current provider in Bromley demonstrates VFM against as set out in appendix 1 which confirms a lower pricing structure for reviews and follows up work reducing the overall cost.

7. STAKEHOLDER CONSULTATION

- 7.1 Commissioners are consulting with the current provider as well as other Local Authorities operating similar schemes to ensure that as many providers as possible are aware of the Council's intentions.

8. SUSTAINABILITY/IMPACT ASSESSMENT

- 8.1 The potential risk to the Council for not taking this course of action include the potential reputational and compliance risk that the Council has as a statutory obligation to complete s202 reviews with 56 working days. If this is not done and decisions are issued late, there are risks of judicial review actions which if successful, are very likely to result in considerable financial risk to the Council as well as causing reputational damage.
- 8.2 External providers do however charge on a per case basis, and caseloads have been increasing each year. There is a risk that if caseloads continue to increase, there may be a time when it is a better value for money to revert to internal provision of this function.
- 8.3 Not all reviews need to be referred to the contractor and the Council retains the right to carry out reviews. The Council also retains the right to revoke the authorisation to an independent reviewer at any time during the contract.
- 8.4 Sufficient contingency has been built into the budget to cover any sudden fluctuations in demand arising from legislative and case law changes.

9. OUTLINE PROCUREMENT STRATEGY AND CONTRACTING PROPOSALS

- 9.1 Officers will send out a Request for Quotes in line with CPR 8.1.1 for a contract period of 3 years plus a 2 year extension option using the Council's e-procurement system and following the timetable below:

| | |
|------------------------|-------------------|
| Publish tender | Mid October 2016 |
| Tender submissions due | Mid November 2016 |
| Evaluation of tender | End November 2016 |
| Contract award (Exec) | 11 January 2017 |
| Contract start date | 1 March 2017 |

- 9.2 **Estimated Contract Value:** £60,000 (5 years)

- 9.3 **Proposed Contract Period:** 3 years plus the options to extend for a further 2 years.

This will not be a fixed price contract. The price will depend on:-

- The number of reviews in a year
- the complexity of the cases
- The number of oral hearings and court appearances required

- 9.4 We would also propose to ask contractors to quote prices for training and audit report feedback, to ensure that learning from reviews continues to be fully embedded into the service. Some further allowance also needs to be included to allow for increased reviews, particularly in light of increased homeless presentations and the impact of the new Homelessness Reduction Bill. The budget does have a level of contingency built in to cover peaks in review applications.

- 9.5 **Proposed Evaluation Methodology:** Evaluation will be based on the methodology recommended by the Chartered Institute of Public Finance & Accountancy (CPFA). Tenders will be evaluated based on 60% Price and 40% quality. The overall weightings for this contract evaluation have been set to identify the most economically advantageous tender (MEAT) and deliver best possible combination of whole life cost and quality to meet the Council's requirements. Evaluation of the following proposed evaluation criteria will be undertaken by Members of the Housing Team responsible for the contract and a representative from the leaving Care Team responsible for the setting up home fund. The procurement officer will manage and oversee the process, with Finance scrutinising the financial aspects of the bid. All areas will be weighted equally.

| | |
|--------------------------|-------|
| Service Delivery | (20%) |
| Quality Assurance | (20%) |
| Service Consistency | (20%) |
| Legislative Compliance | (20%) |
| Financial Sustainability | (20%) |

- 9.6 **Service Review:** The current provider has assisted in more than 350 review investigations and has performed well. They have continued to meet agreed timescales and costs during this period. The process has continued to fulfil requirements providing a balanced set of outcomes with thorough investigations and robust decision recommendations which have enable the Council to successfully defend all legal challenge which can be very costly and would normally exceed £10,000 even for a very basic county court review.

9.7 As set out in paragraph 6.4 above, market testing has confirmed that prices between providers are very similar and the current provider in Bromley demonstrates VFM against the small number of alternative providers currently operating within this field.

9.8 The contract will be managed by the Housing Compliance and Development Manager.

10. POLICY IMPLICATIONS

10.1 The current procedures comply with the legislative framework for statutory reviews and set out that that reviews will normally be referred to the independent reviewer with the Council retaining the option of undertaking the review itself. As such there would be no changes to the current arrangements and information given to applicants.

10.2 There are no equalities implications

10.3 There are no children and vulnerable people impacts. An external reviews offers an impartial oversight of cases decisions and has access to advocates, translations services it e same way as service.

11. COMMISSIONING & PROCUREMENT CONSIDERATIONS

11.1 Procurement options considered:

- 1) Single Tender Waiver: Given the limited market for this service, request an exemption from tendering in line with CPRs 3.1 and 13 to award a contract to the current provider for a period of one year with the option to extend for a further year. This option is supported by recent Current procurement experiences in other tenders. However, this option does not enable Best Value to be established and does not give longer term assurance to the provider.
- 2) Approach the market ensuring that all likely providers are aware of the opportunity and are provided maximum support to complete bids. The complexity of the paperwork requirements will reflect existing knowledge of provider behaviour.

11.2 Having considered both options, the recommended option to proceed to tender in order to meet financial regulations and ensure best value is achieved with a secured price contract.

12. FINANCIAL IMPLICATIONS

12.1 The expenditure on this area is set out in the table below:

| | <u>2013/14</u> | <u>2014/15</u> | <u>2015/16</u> | <u>2016/17</u> |
|------------------------|----------------|----------------|----------------|----------------|
| | <u>£000</u> | <u>£000</u> | <u>£000</u> | <u>£000</u> |
| BUDGET | 16 | 16 | 16 | 16 |
| EXPENDITURE ON REVIEWS | 12 | 11 | 8 | |

NB: 2013/14 and 2014/15 also includes spend on the provision of specialist on case law and legislative changes in addition to review investigations.

12.2 There is financial provision for the cost of housing reviews within the operational housing budget. Based on current volumes this is estimated to be £12k p.a. However this is dependent on volumes of reviews and is liable to fluctuate.

12.3 The delivery of good quality reviews for the Council will save significant sums that may otherwise get awarded against the Council in Judicial review cases.

13. LEGAL IMPLICATIONS

13.1 The Local Authorities (contracting out of allocation of housing and homelessness functions) Order 1996 enables local authorities to contract its statutory reviews function. Section 3 of the same confirms that any decision to do so would requires approval of the Council. As an executive function, this requires executive approval to contract out the statutory reviews

13.2 The authorisation to contract out this function will ensure that when review decisions are made by the independent reviewer this cannot be challenged as being ultra vires.

13.3 The above regulation order also requires that:

- The contract must be for a defined period of no longer than 10 years – in this case it will be for a defined period of up to 5 years.
- That the contract can be revoked and the function exercised by the Council – this clause has been built into the contract.

13.4 The estimated contract value is below the EU threshold for services and as such is not subject to the application of the Public Contract Regulations 2015.

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|---|------------------------------|
| Non-Applicable Sections: | Personnel Implications |
| Background Documents: (Access via Contact Officer) | [Title of document and date] |