

Decision Maker: **EXECUTIVE**
For decision scrutiny by the Renewal, Recreation and Housing Policy, Development and Scrutiny Committee

Date: 16th June 2021

Decision Type: Non-Urgent Executive Key

Title: **GATEWAY REPORT FOR THE PROVISION OF STATUTORY HOMELESSNESS REVIEWS**

Contact Officer: Tracey Wilson, Head of Compliance & Strategy
Tel: 020 8315 4515 E-mail: Tracey.Wilson@bromley.gov.uk

Chief Officer: Sara Bowrey

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 1996 (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. Executive previously confirmed this agreement in 2016 (Report CS17045) and are asked to confirm continuation of this arrangement.
- 1.3 The current contract for statutory housing reviews commenced on the 01 June 2017 for three years with the option to extend for a further two years, which was utilised. The contract is due to expire on 31st May 2022. It is proposed to retender this provision as set out in sections 6 and 10, subject to Executive agreement on the principle of contracting out.

2. RECOMMENDATION

Subject to the views of the Renewal, Recreation and Housing Policy, Development and Scrutiny Committee, the Council's Executive is asked to agree to:

- i) To continue to contract out the statutory reviews function under the terms set out in this report;**
- ii) To note the intent to tender the statutory housing reviews requirement, subject to Executive approval on the principle of contracting out, for a 4 year contract with an option to extend for a further 2 year period at an estimated whole life value of £120k.**

Impact on Vulnerable Adults and Children

1. Summary of Impact: 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.
-

Corporate Policy

1. Policy Status: Existing Policy
 2. BBB Priority: Supporting Independence
-

Financial

1. Cost of proposal: Estimated Cost: £20,000 per annum, £120k over maximum 6 year term
 2. Ongoing costs: Estimated Cost: £20k per annum
 3. Budget head/performance centre: Operational Housing
 4. Total current budget for this head: £21k
 5. Source of funding: Existing revenue budget
-

Personnel

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

Legal

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

Procurement

1. Summary of Procurement Implications: This report sets out the proposed procurement plans for the Statutory Homelessness Reviews Contract
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Estimated number of users/beneficiaries (current and projected): Approximately 5,000 – 6,000 enquiries are received each year and 2000 -3000 of these households are at imminent risk of homelessness. There are currently in excess of 1800 households placed in temporary accommodation to whom the Council has a statutory rehousing duty under the homelessness legislation. This number is currently rising by between 12 and 15 households per month.
-

Ward Councillor Views

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

3. COMMENTARY

- 3.1 Under Part VII of the Housing Act 1996, persons presenting as homeless who are in priority need and are not intentionally homeless are entitled to substantive assistance under the provisions of that Part of the Act. Any applicant who receives an adverse decision is entitled to a review of their decision and, if they remain dissatisfied with the decision on review, they are entitled to pursue a statutory appeal with the County Courts. Both types of decision are administrative decisions, not discretionary.
- 3.2 Regulation 5 of the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 requires the Council to notify the applicant in writing within 56 days of the outcome of the review decision. With the introduction of the Homelessness Reduction Act 2017, the opportunities for applicants to request a review have increased significantly with the increase in legal notification letters and Personal Housing Plans. The impact of this has not been fully felt yet, but it is expected to significantly increase as the new procedures introduced by the Act become more established, and we require a robust procedure to manage this demand.
- 3.3 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.
- 3.4 In order for the Council to retain control the final decision on all reviews undertaken by an external source will remain with the Council. Any external providers of this service will prepare the decision for approval and sign of by the relevant Lead Officer at the Council
- 3.5 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. Approval for the extension is within the delegated authority of the Chief Officer.

4. SUMMARY OF THE BUSINESS CASE

- i) The introduction of the Homelessness Reduction Act has succeeded in creating more access points for individuals intending to present as homeless, with free advice and information for self-referrals and the Duty to Refer.
- ii) 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. Report CS17045 (18th October 2016) refers and approved this decision.
- iii) Recent legislation and case law findings have led to a significant increase in 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
- iv) Homeless households have the right to appeal any decision against them that is made regarding a homelessness application and offer of accommodation.

- v) It is necessary for the review to be conducted by someone independent of the original decision maker and someone who is sufficiently senior to the person making the original decision, as set out in the Homelessness Code of Guidance.

4.1 SERVICE PROFILE/DATA ANALYSIS

- 4.1.1 Currently, Bromley Council’s statutory review function is outsourced to an external provider. This has worked well for Bromley and has provided flexibility in meeting fluctuating demand. This contract expires 31 May 2022.
- 4.1.2 Recent legislation and case law findings have led 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 expected level of demand in terms of the statutory review investigations. As such, there has been an increased reliance on an external provider sufficient capacity to fulfil the Council’s statutory review obligations.
- 4.1.3 The use of an external independent reviews service 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.
- 4.1.4 Figure 1 shows the number of reviews received in 2019/20 and also 2020/21. 2020/21 has not been a ‘typical’ year due to the COVID-19 pandemic. In terms of projected number of reviews, we expect around a 30-40% increase in the number of reviews.

Figure 1

Housing Reviews			
	2019/20	2020/21	Projected for future years (+35%)
S202 – reviews of homelessness application decisions	26	23	35
S202 – Suitability Reviews	18	16	24
S202 – Discharge of Duty	13	6	5
Housing Register Reviews	204	174	250 (expected to rise with new Allocations Scheme implementation)
Total:	261	219	314

4.2 OPTIONS APPRAISAL

- 4.2.1 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.

4.2.2 Another local authority could be contracted to undertake S202 reviews under a Service Level Agreement. This brings the added risk that reviews may increase due to the implementation of the Homelessness Reduction Act. In-house reviews officers may be required to prioritise its own case load in the event of increased demand.

4.3 PREFERRED OPTION

4.3.1 Our preferred approach is to contract a third party to carry out the statutory reviews function which will bring efficiencies and performance management expectations that will, in turn, improve the quality and accuracy of our service delivery to applicants.

4.4 MARKET CONSIDERATIONS

4.4.1 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.

4.4.2 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.

5. STAKEHOLDER ENGAGEMENT

5.1 Households requesting a review of their homelessness decision are some of the most vulnerable members of the community with high representation from particular equality groups; in particular vulnerable due to disability, mental health, pregnancy or young children and people including those leaving care.

5.2 We will be 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.

5.3 Support under this contract will enable vulnerable adults and families to engage fully in the review process ensuring that they are able to understand the legislation, procedures and actively make any representations they need to make to ensure their review is fully investigated and considered.

5.4 As this service currently exists there will not be an impact on other projects or IT or Customer Services; the current scheme and the way in which it operates is well established

6. PROCUREMENT AND PROJECT TIMESCALES AND GOVERNANCE ARRANGEMENTS

- 6.1 **Estimated Contract Value** – £120k – proposed procurement
Estimated extension period for handover - £5k (as described in 3.5)
- 6.2 **Other Associated Costs** – N/A
- 6.3 **Proposed Contract Period** – 4 years with the option to extend for a further 2 years
- 6.4 Figure 2 below shows approximate dates for tendering process

Figure 2

Documents made available from	03 rd August 2021
Closing date for Questions & Answers	31 st August 2021
Closing date for Return of Tenders	07th September 2021
Evaluation of submitted tenders commences	08 th September 2021
Clarification Interviews	Council will notify interested parties if required
Anticipated Award date and advise tenderers	29 th September 2021
Stand still period ends	13 th October 2021
Contract Commencement Date	01 st June 2022

7. SUSTAINABILITY AND IMPACT ASSESSMENTS

- 7.1 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.
- 7.2 In the event that a future provider fails to meet it's contracted obligations the London Borough of Bromley would need to procure an alternative solution. This could cause some delay in the administration of case work but is not considered a significant risk.
- 7.3 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
- 7.4 Sufficient contingency has been built into the budget to cover any sudden fluctuations in demand
- 7.5 The delegation of this function to a third-party provider represents good value for money and a low-risk solution to a statutory requirement.
- 7.6 In order for the Council to retain control the final decision on all reviews undertaken by an external source will remain with the Council. Any external providers of this service will prepare the decision for approval and sign of by the relevant Lead Officer at the Council.

8. POLICY CONSIDERATIONS

- 8.1 The Statutory Homelessness Reviews service meets the Council's objectives within 'Building a Better Bromley' for Supporting Independence.
- 8.2 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.
- 8.3 There are no children and vulnerable people impacts. An external review offers an impartial oversight of case decisions and has access to advocates, translation services in the same way as an internal service.
- 8.4 Any reviews undertaken by a third party will ensure the public sector equality duties are adhered to with regard to eliminating discrimination, advancing equality of opportunity and fostering good relations.

9. IT AND GDPR CONSIDERATIONS

- 9.1 IT and GDPR have been considered and there is an established process and recording mechanisms already in place.

10. PROCUREMENT RULES

- 10.1 This report seeks to proceed to procurement for an external homelessness reviews contract for a period of 4 years with an option to extend for a further 2 year period at an estimated cost of £120k and to extend the current contract for this service, if required, for a further 6 months at an estimated cost of £5k.
- 10.2 The anticipated tender timeline for is noted in 6.4 above.
- 10.3 This is a services contract and the value of this procurement falls below the thresholds set out in Part 2 of the Public Contracts Regulations 2015, so is only subject to Part 4 of the Regulations.
- 10.4 As per 8.2.1 of the Council's Contract Procedure Rules, this procurement must make use of public advertisement, and therefore must also be advertised on Contracts Finder.
- 10.5 The procurement must comply with PCR 2015 principles of transparency and equal treatment. Any time limits imposed, such as for responding to adverts and tenders, must be reasonable and proportionate.
- 10.6 The Council's specific requirements for authorising proceeding to procurement are covered in 1.3 of the Contract Procedure Rules with the need to obtain the Agreement of the Budget Holder for a procurement of this value. However, as noted in 1.2 of this report Legal have confirmed the decision to contract out this service, must be agreed by Executive. In accordance with CPR 2.1.2, Officers must take all necessary professional advice.

10.7 In compliance with the Council's Contract Procedure Rules (Rule 3.6.1), this procurement must be carried out using the Council's e-procurement system.

10.8 The actions identified in this report are provided for within the Council's Contract Procedure Rules, and the proposed actions can be completed in compliance with their content.

11. FINANCIAL CONSIDERATIONS

11.1 The costs to date of the current contract are summarised in the table below:

	£'000
2017/18	15
2018/19	18
2019/20	10
2020/21	16
2021/22 to date	3
	62

11.2 The £20k per annum estimated cost of the proposed contract will be contained within the existing £21k revenue budget for this service.

12. PERSONNEL CONSIDERATIONS

12.1 N/A

13. LEGAL CONSIDERATIONS

13.1 There are no significant legal issues identified in this report. Given the low estimated value of this contract, the Council would have considerable freedom in determining the procurement route (i.e. it is well below thresholds for the purposes of the Public Contracts Regulations 2015).

13.2 Officers may wish to consult with Legal Services regarding the procurement route and appropriate contractual documents. It appears that the proposed arrangement would operate as a framework. However, officers may wish to consult with Legal Services to confirm this.

Non-Applicable Sections:	N/A
Background Documents: (Access via Contact Officer)	