

East Herts Council Report

Executive

Date of meeting: 5 January 2021

Report by: Councillor Peter Boylan, Executive Member for Neighbourhoods

Report title: Contracting Out of Homelessness Reviews

Ward(s) affected: All

Summary

Homeless applicants have a statutory right to request a review of various decisions the council makes about their case. Reviews often involve judgements that can be legally complex in nature.

By law, reviews must be conducted by someone more senior to the original decision maker, therefore, they are currently conducted by the Service Manager – Housing Services as one of a number of competing tasks. Given the urgency and time critical nature of handling reviews, the Service Manager must react to reviews as they are requested. Having to be reactive in this way can compromise the Service Manager's ability to address more strategic issues, such as providing advice to the Gilston Garden Town team and procuring additional temporary accommodation, to the council's detriment.

There are, however, independent organisations which specialise in undertaking homelessness reviews on behalf of local authorities. As this is their main business, they are able to make timely decisions, taking into account the very latest guidance and court judgements.

Contracting out the homelessness reviews function until 31st March 2022, with a review to then determining whether or not to continue this arrangement, is now recommended. Case law dictates that contracting out the reviews function is a matter for the Executive to determine.

RECOMMENDATIONS FOR EXECUTIVE:

- a) that work to determine and issue, in accordance with the relevant legislation, the outcome of reviews requested by those subject to homelessness decisions made by the council up to 31st March 2022 be contracted out to a suitably qualified and experienced independent contractor**
- b) authority be delegated to the Head of Housing and Health to appoint a contractor, in accordance with the council's Contract Procurement Rules, from the Hertfordshire Framework Agreement for Homelessness Reviews Contracts developed by Three Rivers and Watford Councils**
- c) authority be delegated to the Executive Member for Neighbourhoods, acting in consultation with the Head of Housing and Health, to review the outcome of the trial of the contracted out service and determine whether or not to contract out this function beyond the trial period.**

1.0 Proposal(s)

- 1.1 The proposal is to trial the contracting out of the determination and issuing of homelessness reviews requested by those subject to homelessness decision made by the council up to 31st March 2022.
- 1.2 It is proposed to commission an experienced independent contractor whose business is primarily to conduct such reviews. This will, officers believe, ensure that legally complex decisions are made in a timely way with reference to national guidance, emerging case law. The decision making process will arguably also be more transparent.
- 1.3 Clear and robust decision making minimises confusion on the part of the homeless person and reduces the risk of council being unable to successfully defend its position if legally challenged or if investigated by the Local Government Ombudsman.

- 1.4 It is further proposed to delegate to the Executive Member for Neighbourhoods the authority to determine whether or not to continue the contracted out arrangement beyond the trial period.

2.0 Background

- 2.1 The council is the local housing authority for the purpose of homelessness services under the Housing Act 1996 and the Homelessness Reduction Act 2017. The legislation provides any applicant with a right to request a review of certain homelessness decisions made about them by the authority.
- 2.2 A homelessness review is a fresh assessment of the circumstances at the time of the review made by a more senior officer who was not involved in the original decision. Such reviews are currently undertaken by the Service Manager – Housing Services.
- 2.3 The following table shows the number of review requests made in the last four years.

Year	Number of reviews
2017/18	19
2018/19	7
2019/20	17
2020/21 - Until Sep 20	10

- 2.4 Following the enactment of the provisions of Homelessness Reduction Act 2017, the number of different decisions that a housing authority can make regarding someone's homelessness has increased from eight to 14. While the table above doesn't suggest any significant increase in reviews thus far, the range of decisions now open to review added to the increased range of duties brought in by the Homelessness Reduction Act is leading to greater

complexity. As a result, reviews can be more time-consuming.

- 2.5 The original decision may be upheld or substituted with an alternative decision. The council must complete the homelessness review within 56 days. When a review request is submitted, households that are living in temporary accommodation will often ask the council to extend their stay pending the outcome of the review. Thus, it is in everyone's interests for the council to ensure that all homelessness reviews are completed in a thorough and timely manner.
- 2.6 Although the reviews can be rather complicated, as noted above, it is vital to conduct a thorough investigation as the applicant may challenge this decision through judicial review and possibly contact the Local Government Ombudsman. Responding in such situations can be extremely time-consuming and costly for the council and protracted for the applicant.
- 2.7 The specialist nature of some of the reviews requires reference to legal provisions (many of which are new or regularly updated), the Homelessness Code of Guidance and new and emerging case law. Some of the requests are made via legal firms who specialise in challenging the homelessness decisions of local authorities. As a result, the internal review function requires a significant amount of officer time in comparison with the number of reviews received each year.
- 2.8 There is provision within The Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996/3205 for local housing authorities to contract out this reviews functions. Nationally, a number of authorities have done this including Watford, Three Rivers and North Herts in Hertfordshire, along with Broxbourne who are considering this. Recently Three Rivers and Watford Borough Council developed a county-wide framework

agreement that provides a panel of specialist organisations which are able to undertake this work at predetermined, competitive rates. This report recommends procuring a contractor using this framework agreement.

- 2.9 The homeless applicant requesting a review will have their request dealt with just as if conducted in-house, save that they would be advised of the organisation who would be undertaking their review. Should the applicant be unhappy with the review decision they will still retain the right, as now, to appeal the decision via the County Court. The Service Manager – Housing Services would monitor the outsourced review process and outcomes.

3.0 Reason(s)

- 3.1 The benefits of outsourcing the reviews function are considered to be:
- it provides an additional layer of independence and further reinforces that the reviewer has not been involved in the original decision
 - the staff within the contracting organisation specialise in reviews for local authorities and so they have an extensive expertise and knowledge of the law and have the capacity to keep up with changes in case law
 - it would build resilience into the process as currently there is only one officer in the Housing Service who has experience and the seniority to carry out reviews
 - it would free up management time for the Service Manager – Housing Services to concentrate on managing more strategic issues, such as helping ensuring an appropriate affordable housing mix at Gilston Garden Town and other strategic sites, procuring additional temporary accommodation and handling an increasingly complex homelessness, housing allocations and housing development environment.

- 3.2 The contractor will make a standard charge for each homelessness review completed. Currently, officers estimate that 20 reviews costs around £14,900 in council officer time. While contracting out reviews would release council officer time for other tasks, the contract costs will represent an additional cost to the council. That said, this cost will be in the range of £7,000-£10,000 for 20 reviews, depending on the contractor and level of service selected. This is clearly lower than the in-house staff costs.
- 3.3 Trialling contracting out from January 2021 to March 2022 would therefore incur costs of up to around £12,250. These costs can legitimately be met in full from unallocated grant resources for homelessness prevention and support already held by the council.
- 3.4 In addition, officers believe that reviews by a specialist contractor may reduce to likelihood of legal challenges and/or investigations by the Local Government Ombudsman. If such judicial reviews are sought these can incur staff and legal costs in excess of £10,000.

4.0 Options

- 4.1 Option 1: Keep the reviews function in-house and do not trial contracting out – NOT RECOMMENDED because, as discussed above, the potential benefits of contracting out indicate the council should pilot this.
- 4.2 Option 2: Recruit a specialist reviews officers – NOT RECOMMENDED as without seeking to appoint a shared officer with another authority or authorities, it would be hard to justify even a 0.5 FTE officer given the current numbers of reviews. A 0.5 FTE officer appointed at grade 9 would cost c£26k a year and so is more than the anticipated cost of the outsourced service. This option does not therefore represent best value.

- 4.3 Option 3: Trial the contracting out of reviews –
RECOMMENDED for the reasons discussed in this report.

5.0 Risks

- 5.1 As noted above, the current situation is becoming increasingly untenable. There inherent risks with the continued in-house management of reviews including decisions being taken out-of-time, the complex legal context not being fully taken into account. These factors could lead to prolonged stays in temporary accommodation reducing availability of the accommodation along with legal challenge.
- 5.2 The risks associated with outsourcing have been identified as:
- less experienced staff in the contracted service working on East Herts' cases leading to low quality decisions being made. This would be mitigated by close monitoring of the service by the Service Manager – Housing Services and swift escalation of issues via the contract. The contract will include a service level agreement (SLA) between the council and the contractor regarding, the contract specification, service expectations and on-going performance monitoring
 - increases in reviews leading for an escalation of costs. This would be mitigated by the inclusion of appropriate break clauses in the contract and/or contracting for a predetermined maximum of cases.

6.0 Implications/Consultations

Community Safety

No implications identified.

Data Protection

The council will remain the data controller in GDPR terms, with the contractor acting as a data processor. Robust data sharing protocols will be included in the contract and appropriate methods for transferring sensitive data will be utilised to minimise any risk of data breaches.

Equalities

In line with the Public Sector Equality Duty public bodies must in the exercise of its functions give due regards to the need to eliminate discrimination so as to advance opportunity and foster good relations between those who share protected characteristics and those that do not.

The homeless applicant requesting a review will face no changes in how to do so should a contractor conduct the review rather than the council. The applicant will not be required to provide any different information, interact with the contractor in a different way to interacting with the council. The council will ensure that its communications standards, notably the font size for correspondence, will be replicated by the contractor.

Therefore, it is considered that no-one with a protected characteristic will be disadvantaged by the recommendations in this report.

The contracting out of the review decision making process would allow the management capacity to further support front-line service provision and therefore vulnerable members of the community.

Environmental Sustainability

No implications identified.

Financial

The Ministry of Housing Communities and Local Government has provided all Local Authorities with a Flexible Homelessness Support Grant (FHSG) and New Burdens funding since the introduction of the Homelessness Reduction Act 2017.

This funding is designed to help local authorities meet the new legal responsibilities introduced as part of the Homelessness Reduction Act 2017 and to prevent or relieve homelessness in the district.

The council's grant in 2020/21 is £156,475 for FHSG and there is an additional £30,655 held in reserves of the New Burdens Funding, awarded in 2019/20, and not yet allocated. From the FHSG, the Housing Service funds a number of initiatives to support its homelessness prevention work, including grants to assist homeless applicants access the private sector, the provision of specialist debt advice and advice for those who are the victims of domestic abuse. The intention is to fund the contracting out of reviews from the various grant funding held in reserve.

The future level of homelessness reviews is unpredictable, however it is anticipated that they will at least continue at the current rate. Should a contractor be appointed from the framework agreement as recommended the approximate annual cost is would be between £7,000 and £10,000 for 20 reviews depending on the complexity of the review. This can be fully funded by the unallocated grant funding. The performance of the contractor will be monitored and the options post March 2022 reviewed in due course, including assessment of funding availability at that time.

The contract will be commissioned in line with the council's contract procedure rules.

Health and Safety

No implications identified.

Human Resources

The Service Manager – Housing Services role is experiencing considerable demands and pressures which are typically accommodated by working additional hours.

By law, reviews must be conducted by someone more senior to those involved in the original decision, they therefore fall to the Service Manager. Given the urgency and time critical nature of handling reviews, the Service Manager must react to reviews as they are requested. Having to be reactive in this way can compromise the

Service Manager's ability to address more strategic issues, such as providing advice to the Gilston Garden Town team and procuring additional temporary accommodation, to the council's detriment.

The recommendation would not impact on the need to retain a full time Service Manager – Housing Services, rather, the post-holder could better address more strategic demands.

Human Rights

The human rights of homeless applicants are protected through their statutory right to request reviews of local authority decisions taken. The council would be liable for the decision made by the external organisation regardless of the fact that the review itself had been outsourced.

Legal

The council is the Local Housing Authority for the purpose of homelessness services under the Housing Act 1996 (HA 1996). Section 202 of part VII of the Housing Act 1996 provides any applicant with a right to request a review of certain homeless decisions made by the authority.

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 that act. The Local Authorities Contracting Out of Allocation of Housing and Homelessness Functions Order 1996/3205 (the Order) has been 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 HA 1996, except for those listed in Schedule 2 to the Order. Section 202 of the HA 1996 is not listed in Schedule 2 and therefore can be contracted out.

The Head of Legal and Democratic Services has advised that the case of *Tachie and others v Welwyn Hatfield Borough Council [2013]* that went to the High Court settled that outsourcing such reviews is a decision for the Executive and not Council. Although Part 3(c), paragraph 16.1 of the council's Constitution delegates to the Head of Housing and the authority *To exercise the council's functions with*

regard to homeless persons that this matter has been adjudicated on by the High Court as an Executive matter it would not appear appropriate for the Head of Housing and Health to act under authority delegated by Council.

Should the Executive approve the recommendations, the appointment of a contractor using the framework agreement will be made in accordance with the council's Contract Procurement Rules.

Specific Wards

No

7.0 Background papers, appendices and other relevant material

7.1 None

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