

**Contracting Out of Homelessness Reviews Function**

<b>Final Decision-Maker</b>	Communities, Housing and Environment
<b>Lead Head of Service</b>	Head of Housing and Community Services
<b>Lead Officer and Report Author</b>	Housing Advice Manager
<b>Classification</b>	Public
<b>Wards affected</b>	All

**Executive Summary**

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.

A homelessness review is a fresh assessment of the circumstances at the time of the review. 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.

Under the Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996 SI No. 3205, the Council has the power to contract out different housing functions, including the review function. Presently, the Council contracts out the homelessness review function to Housing Reviews Limited, the authorisation for which is made under the delegated powers of the Head of Housing and Community services, under paragraph 2.3.9 (3) of the Council's Constitution.

This report seeks to expressly ratify the delegated authority to the Head of Housing and Community Services under the aforementioned paragraph of the constitution to contract out the Council's homelessness review function under section 202 of the Housing Act 1996 (as amended).

**Purpose of Report**

Decision

**This report makes the following recommendations to this Committee:**

1. That it be noted that the Head of Housing and Community Services has been using his delegated authority under part 2.3.9 of the Constitution to contract out the Council's homelessness review function; and
2. Further to that delegation the Committee grants specific delegation to the Head of Housing and Community Services to contract out the Council's homelessness review function under Section 202 of the Housing Act 1996 (as amended).

<b>Timetable</b>	
<b>Meeting</b>	<b>Date</b>
CHE Committee	30-11-2021

# Contracting Out of Homelessness Reviews Function

## 1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<b>Impact on Corporate Priorities</b>	The homelessness review function is a statutory function with procedures set out by Homelessness (Review Procedure etc) Regulations 2018. We do not expect the recommendations will by themselves materially affect achievement of corporate priorities. However, they will support the Council's overall achievement of its aims as set out in section 4 [preferred alternative].	Head of Housing and Community Services
<b>Cross Cutting Objectives</b>	The report recommendations support the achievements of both the 'Health Inequalities are addressed and reduced' and 'Deprivation and Social Mobility is improved' cross cutting objectives by ensuring that the Council has a robust homelessness review function.	Head of Housing and Community Services
<b>Risk Management</b>	The risks associated with this proposal have been set out in the body of the report.	Head of Housing and Community Services
<b>Financial</b>	The proposals set out in the recommendation are all within already approved budgetary headings and so need no new funding for implementation.	Section 151 Officer & Finance Team
<b>Staffing</b>	There will be no impact on current staffing by delivering the recommendations.	Head of Housing and Community Services
<b>Legal</b>	This report provides confirmation of the legal authorisation for the Head of Housing and Community Services to delegate the function of carrying out homelessness reviews under section 202 Housing Act 1996 (as amended) to a third party. Paragraph 2.3.9 (3) of the Council's Constitution is broad, and we seek an express reference to the Council's homelessness duties and obligations under sections 202 and 203 Housing Act 1996 (as amended). Failure to accept the recommendations without agreeing suitable alternatives could lead to confusion or argument in respect of the Head of Housing	Team Leader, Contentious and Corporate Governance

	and Community Services right to delegate review functions on behalf of the Council to a third party.	
<b>Privacy and Data Protection</b>	The Council's service level privacy notice for Housing Services will be amended to include details of the sharing of personal information with Housing Reviews Limited for the purpose of carrying out the Council's homelessness review function.	Policy and Information Team
<b>Equalities</b>	There are no equality implications expected as a result of the recommendations in this report, as it does not propose a change in how the homelessness review function is being delivered and therefore will not require an equalities impact assessment.	Equalities & Communities Officer
<b>Public Health</b>	We recognise that the recommendations will not negatively impact on population health or that of individuals.	Housing Advice Manager
<b>Crime and Disorder</b>	The recommendations will have a no impact on Crime and Disorder.	Head of Housing and Community Services
<b>Procurement</b>	A waiver of the Council's contract standing orders to tender for a reviews service would be sought, the reasons for this are detailed in paragraph 2.13	Head of Housing and Community Services & Section 151 Officer
<b>Biodiversity and Climate Change</b>	No impact.	Head of Housing and Community Services

## 2. INTRODUCTION AND BACKGROUND

- 2.1 The Council is the local housing authority for the purpose of homelessness services under the Housing Act 1996. The legislation provides an applicant with a right to request a review of certain homelessness decisions made by the authority.
- 2.2 A homelessness review is a fresh assessment of the circumstances, conducted at the time of the review. 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.

- 2.3 The authority is permitted by legislation, the Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996, to contract out certain functions under Parts 6 and 7 of the 1996, including the function of carrying out reviews of homelessness decisions. An authorisation given under this Order must be for a period not exceeding 10 years.
- 2.4 There are specialist organisations who undertake homelessness reviews on behalf of Local Authorities, providing a cost effective and efficient option to the alternative of directly employing a member of staff.
- 2.5 Indeed, the Council has been contracting out its homelessness review function to Housing Reviews Ltd since 2010, with this having been authorised each year by the Head of Housing and Community Services, under a general delegated power to fulfil the Council's duties in relation to homelessness by entering into a 12-monthly contract with Housing Reviews Ltd.
- 2.6 Paragraph 2.3.9 (3) of the Council's Constitution provides that the Head of Housing and Community Services must "ensure the Council's duties and obligations in relation to homelessness and the operation of the Council's allocation scheme are fulfilled". This is a broad reference, but as there is specific mention of the Council's duties and obligations in relation to homelessness, inclusion of both sections 202 and 203 of Housing Act 1996 (as amended) can be inferred.
- 2.7 The Council's Constitution does not specifically state that authorisation to contract out any of Council's homelessness functions can be made under the Head of Housing and Community Services delegated powers. This means there is a risk that such authorisation could be open to challenge as not being compliant with the Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996.
- 2.8 The following table highlights the number of review requests received over recent years:

Year	Number of reviews requests
2018/19	30
2019/20	40
2020/21	22
2021/2022 (to date)	12

- 2.9 Many of the reviews are requested by legal firms who specialise in challenging the homelessness decisions of the local authority. Due to the legal complexities involved with homelessness reviews, the decision-making process can be protracted.
- 2.10 With the Council contracting out the homelessness review function, it not only ensures that an officer completely independent of the case carries out the review, complying with the Review Regulations, it provides for a focus

and prioritisation of the review requests, helping to ensure decisions on the review are reached in a timely matter. The specialist knowledge held by the Reviews Officer helps to ensure complex areas of housing law and legal provisions are negotiated without delay. This is particularly important if the applicant is occupying nightly paid temporary accommodation pending a decision on the review.

- 2.11 The Council still retains the ability to undertake homelessness reviews, with a small number of the reviews being undertaken by the Housing Advice Manager each year.
- 2.12 Since the Council first contracted out the homelessness review function to Housing Reviews Limited, in September 2010, the Council has paid an amount c.£55,125.00 for the service of carrying out homelessness reviews.
- 2.13 In 2018 the Council sought quotations from other suppliers providing a homelessness review service, in line with the Council's procurement procedures as well as attempting to recruit to a Homelessness Reviews Officer. With only a limited number of suppliers able to be identified who offer this service, Housing Reviews Limited were found to be competitive with their charges and offered value for money. Two recruitment campaigns failed to identify a suitable candidate for the position. Given their proven record of service delivered to the Council, Housing Reviews Limited have been contracted each year to deliver the Council's homelessness review function.
- 2.14 The total spend to Housing Reviews Limited on delivering the Council's homelessness review function is approaching the Council's threshold for requiring a tender for the service. Since the service of carrying out homelessness reviews is extremely niche, with only a limited number of suppliers providing this service, and significant legal costs could be incurred by the Council if reviews are not carried out robustly, as review decisions can be challenged by way of a county court appeal, a waiver of the Council's contract standing orders to tender would need to be sought.

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### **3. AVAILABLE OPTIONS**

- 3.1 Continue contracting out the homelessness review function to Housing Reviews Limited as authorised by the Head of Housing and Community Services under their general delegated powers without expressly specifying in the Constitution that the powers include sections 202 and 203 of the Housing Act 1996 (as amended). However, as the Council's Constitution does not specifically state that authorisation to contract out the Council's homelessness reviews function can be made under the Head of Housing and Community Services delegated powers, there is a risk that such authorisation could be interpreted as not lawfully contracting out this statutory homelessness function.
- 3.2 Homelessness reviews could be carried out in-house, however due to the legal complexities involved and the limited capacity of senior officers to carry out reviews, it is likely that some may not be completed in a timely

fashion, impacting adversely on the turnover of temporary accommodation units and costs associated with the provision of temporary accommodation, as well as opening the Council to increased risk of legal challenge and criticism.

- 3.3 Some local authorities have recruited specialist reviews officers, often sharing them between authorities. This option was previously explored but current volume of reviews does not justify this response and the costs of employing a Reviews Officer does not offer value for money in comparison to the cost of contracting out homelessness reviews.
  - 3.4 Formalise and confirm the intention that the Council's Constitution under paragraph 2.3.9 (3) includes the authorisation of contracting out the Council's homelessness review function under section 202 of the Housing Act 1996 (as amended) to the Head of Housing and Community Services.
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#### **4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

- 4.1 Option 3.4 is the preferred option. This option ensures that the Council is not at risk of legal challenge that the current authorisation of delegated powers to contract out the homelessness review function is unlawful.

##### Value for Money

The Council has spent c.£55,125.00 on contracting out its homelessness reviews function over a period of approximately 12 years. The Homelessness Reviews Officer post unsuccessfully recruited to was a grade 11 post with an annual salary of £36,798 before on costs. It is therefore demonstrated greater value for money in contracting out the function and recruiting an inhouse post.

##### Knowledge of complex housing law

Conducting homelessness reviews requires a thorough and detailed knowledge of complex homelessness legislation and case law. As homelessness reviews are often submitted by law centres and legal practitioners, conducting reviews can often extend for a significant period of time. Contracting out the homelessness review function, ensure both sharp focus is given to the reviews, as well as drawing on the specialist knowledge and skills of the Reviews Officer.

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#### **5. RISK**

- 5.1 The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council's Risk Management Framework. We are satisfied that the risks associated are within the Council's risk appetite and will be managed as per the Policy.
- 5.2 There is a risk that Housing Reviews Limited do not deliver the service to the expected level of the Council and within the required timeframe. This

risk can be mitigated by the Council entering into, and renewing, contracts with Housing Reviews Limited for a period of no more than 12 months at a time. The Council also retains the right to carry out in-house reviews even where the Council has contracted out the homelessness review function.

- 5.3 Should the review function not be contracted out and delivered wholly 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 additional costs associated with the use of nightly-paid accommodation.

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## **6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK**

- 6.1 None Required.

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## **7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION**

- 7.1 The Head of Housing and Community Services to renew and keep under review annual contracts with Housing Reviews Limited to deliver the Council's homelessness reviews function.
- 7.2 A contract standing order waiver report to be submitted to Director of Finance and Business Improvement or Head of Finance to approve.
- 7.3 The Council's service level housing service privacy notice will be amended.

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## **8. REPORT APPENDICES**

- 8.1 None.

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## **9. BACKGROUND PAPERS**

- Housing Act 1996
- Deregulation and Contracting Out Act 1994 (Section 70)
- The Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996.
- Homelessness Reduction Act 2017