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**Subject:** **CONTRACTING OUT OF HOUSING ALLOCATION AND HOMELESSNESS FUNCTIONS**

**Date:** **5 July 2017**

**Decision to be taken by:** **The Leader of the Council**

**Report of:** **Mike Davis, Director of Finance, Housing and Community**

**Portfolio Holder:** **Councillor Pauline Beresford, Portfolio Holder for Housing, Health and Wellbeing**

**Decision Type:** **Executive Non-Key Decision**

**Classification:** **Unrestricted**

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**Purpose of the report:** To consider the Council's arrangements in relation to contracting out of allocation of housing and homelessness functions

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**Recommendation:** To authorise the Council's contracting out of:

1. Homelessness functions under Part VII of the Housing Act 1996 in accordance with article 3 of 'The Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996'
  2. Allocation of housing functions under Part VI of the Housing Act 1996 in accordance with article 2 of 'The Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996'
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## **1. Summary**

1.1 The report seeks authorisation for the contracting out of independent reviews of Council decisions relating to aspects of housing and homelessness functions. This can be done in accordance with the Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996 (the Order), which is made under the Deregulation and Contracting Out Act 1994.

1.2 It is expected that vast majority of reviews will be undertaken within the Council but there will be occasions where it would be beneficial to be able to use an independent reviewer eg a very complex case which would have a significant impact on available staff resources or one where there was a perceived conflict of interest. On these occasions, the contract will be let under existing delegated authority which rests with all Chief Officers.

## **2. Introduction and Background**

2.1 There are currently a number of areas of housing service either directly provided by the Council or through East Kent Housing, where there is a legal right for service users to request a review of the decision taken by the Council or East Kent Housing. The two which are relevant under the above Order are:

- Homelessness decisions made by local authorities (section 202 of the 1996 Housing Act as amended by 2002 Homelessness Act and Localism Act 2011).
- Allocation policy decisions relating to eligibility and qualifying person status (section 166A of the Housing Act 1996).

### Homelessness Decisions

- 2.2 Housing Options Officers make the initial decision on an applicant's homelessness application, and the duty owed to them. An applicant then has a right to request a review of the decision made, as long as the request is received within 21 days of the date they were notified of the decision.
- 2.3 The process for conducting such reviews is set out in legislation and requires that reviews are conducted by someone independent of the original decision and, if being made by the authority themselves, by someone sufficiently senior to the person making the original decision.
- 2.4 The Homelessness Code of Guidance states that a review may be carried out by the housing authority itself or by someone acting as an agent of the housing authority.
- 2.5 The Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996 enables local authorities to contract out certain functions under parts 6 and 7 of the 1996 Housing Act. In terms of homelessness, the Code of Guidance lists 'carrying out reviews of decisions' as one of the functions that can be contracted out.
- 2.6 The Housing Options Manager currently carries out approximately five reviews per year. Reviews can be very complex and time consuming and there have been occasions when legal advice has been required.
- 2.7 The new Homelessness Reduction Act, expected to be implemented next April, introduces four new decision stages where the applicant can request a review.
- 2.8 In view of the anticipated increase in the number of review requests, agreement is sought to contract out the review function. This will enable the Housing Options Manager to utilise an external organisation should the number of review requests place undue pressure on her workload.

### Allocation Policy Decisions

- 2.9 Housing authorities are required by S166A(1) of the Housing Act 1996 to have an allocation scheme for determining priorities and for defining the procedures to be followed in allocating housing accommodation; and they must allocate in accordance with that scheme (S166A(14)). All aspects of the allocation process must be covered in the scheme, including the people by whom decisions are taken.
- 2.10 By virtue of S160ZA (9) and (10) housing authorities must notify an applicant in writing of any decision that he or she:
- Is ineligible for an allocation of accommodation under S160ZA(2) or (4), or
  - Is not a qualifying person under S160ZA(7).

2.11 Housing applicants have a legal right to request a review of these decisions.

### **3. Identification of Options**

3.1 Option 1: The Council could employ a dedicated review officer

3.2 Option 2: All reviews are carried out internally by an officer of appropriate seniority and in a way that meets any legal requirements regarding independence.

3.3 Option 3: The majority of reviews are carried out internally with the same safeguards as for Option 2 but with the flexibility to refer some reviews to an external reviewer where this is considered necessary and appropriate.

### **4. Evaluation of Options**

4.1 Option 1 is not recommended as the number of reviews currently being undertaken does not currently justify the creation of a dedicated post and due to legal requirements it would have to be a relatively senior post.

4.2 Option 2 is not recommended because, based on experience, we can expect that there will be a small but increasing number of reviews which will be complex and difficult to resource at the appropriate officer level. Consequently, there is a risk that the Council could fail to adhere to legislative timescales.

4.3 Option 3 is the recommended option as it provides for the majority of reviews to be undertaken internally but with the flexibility to use an independent reviewer for more complex cases or where lack of capacity means the Council is at risk of failing to meet legal timescales.

### **5. Resource Implications**

5.1 The Housing Options Manager currently carries out approximately five reviews per year however with the introduction of the Homelessness Reduction Act next April it is anticipated that this number will increase.

5.2 The average cost per case for a review to be carried out by an independent reviewer is £180. All Councils will receive New Burdens Funding from the DCLG as a result of the Homelessness Reduction Act and it is proposed fund these costs from this money.

### **6. Corporate Implications**

6.1 Comment from the Section 151 Officer: Accountancy have been consulted during the writing of this report and have no further comments to make. (BW)

6.2 Comment from the Solicitor to the Council: The Head of Legal Services has been consulted during the preparation of this report and has no further comments to add.

6.3 Comment from the Equalities Officer: This report does not specifically highlight any equalities implications however, in discharging their responsibilities members are required to comply with the public sector equality duty as set out in section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15>

6.4 Other Officers (as appropriate):

7. **Appendices**

None.

8. **Background Papers**

Contact Officer: Elly Toye, Housing Options Manager