

Report to	-	Cabinet
Date	-	12 March 2018
Report of the	-	Executive Director of Resources
Subject	-	Contracting out of Allocation of Housing and Homelessness Functions

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**Recommendation:** It be **RESOLVED**: That:

- 1) the Service Manager (Finance and Welfare) be authorised to contract out to the London Borough of Southwark until 1 March 2023 any of the Council's functions under Part VII of the Housing Act 1996, save for those set out in Schedule 2 to The Local Authorities (Contracting out of Allocation of Housing and Homelessness Functions) Order 1996; and
  - 2) the decision of the Service Manager (Finance and Welfare) made on 14 August 2017 to contract out to the London Borough of Southwark until 31 March 2018 in respect of the following Council's functions be ratified:
    - (a) conducting reviews of any decision referred to in s.202 of the Housing Act 1996;
    - (b) making inquiries for the purposes of conducting such reviews;
    - (c) carrying out any other functions which are incidental to the conduct of such reviews, including, but not limited to, writing review decision letters and agreeing with applicants to extend the period within which notice of review decisions shall be given.
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**Service Manager: Robin Vennard**

**Lead Cabinet Member: Councillor Mrs Hughes**

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1. Housing law allows applicants to request a review of their homelessness decision made by a local authority (section 202 of the 1996 Housing Act (as amended) (the "1996 Act")). The Council's Housing Needs Team make an initial decision on an applicant's homelessness and the legal duty that is owed to them. Applicants then have a right to request a review of this decision in writing as long as the request is received by the Council within 21 days of the date applicants are notified of the decision.
2. The Homelessness Code of Guidance 2006 states that a review may be carried out by the housing authority itself or by someone acting as an agent of the housing authority. Where a review is to be carried out by an officer of the housing authority, the officer must not have been involved in the original decision and they must be senior to the officer that made the decision.
3. The Local Authorities (Contracting out of Allocation of Housing & Homelessness Functions) Order 1996, enables housing authorities to contract out certain functions under Parts VI and VII of the 1996 Act. Due to the small

size of the Housing Needs Team it was seen as sensible to outsource to external providers some of the homeless reviews and decisions including carrying out investigations, making enquiries and other related activities. This was primarily because senior officers can be involved in homeless investigations or decisions, thereby leaving no one sufficiently qualified and senior to undertake an independent review. In addition, the use of an external provider can be a robust and cost effective way of managing the Council's legal duty (acting in its capacity as local housing authority) without the risk of being challenged on the grounds that a review was not wholly independent.

4. Since the 14 August 2017 the Council has been using the London Borough of Southwark to help undertake reviews. An initial contract was agreed by the Service Manager - Finance and Welfare up to the 31 March 2018. It has become apparent however, that officers needed to seek Cabinet approval to the decision to contract out the review and associated functions. This follows a Court of Appeal decision, *Tachie, Terera and Il v Welwyn Hatfield Borough [2013] EWHC 3972 (QB)* where it was determined that a local housing authority had not lawfully contracted out its homelessness review decisions because it had not sought the relevant authorisation to do so but that the position could be rectified through retrospective ratification by Welwyn Hatfield's Cabinet. In view of this, this report asks Cabinet to ratify the appointment of the London Borough of Southwark to carry out Section 202 Housing Act 1996 (as amended) reviews from the 14 August 2017 to the 31 March 2018.
5. It is also necessary to ask Cabinet to approve the continued use of the London Borough of Southwark from the 1 April 2018 to the 1 March 2023.

Malcolm Johnston  
Executive Director of Resources

### **Risk Assessment Statement**

It is necessary to have the correct approvals in place to contract out this work. To not do so will make the outcome of the reviews invalid.