

Cabinet

Date of meeting: 19 September 2016

Report title: Improving the efficiency of homelessness applications

Wards: All

Report Authorised by: Sue Foster, Strategic Director for Neighbourhoods and Growth

Portfolio: Councillor Matthew Bennett, Cabinet Member for Housing

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Report summary

This report sets out the need for Cabinet to approve previous officer decisions to contract out Section 202 Housing Act 1996 reviews (s202 reviews) to RMG Ltd. At its meeting on 11 April 2016 the Cabinet agreed that s202 reviews be undertaken by RMG Ltd. The RMG Ltd contract is a fixed price contract offers a service across the year and allows greater flexibility to meet demand and ensure consistent and efficient decision making in the light of any service redesign. The decisions are paid per case and have proved to be of a very high standard and good value for money.

Previous to the agreement with RMG, there had been capacity issues resulting in long delays in the decision-making process and a backlog of 250 cases pending a decision at an average of 240 days against a statutory limit of 56 days. This resulted in families waiting too long for a decision to be made, creating uncertainty about their future housing situation. The number of reviews awaiting a decision has now decreased significantly, to 70 reviews, with 40 of those households in temporary accommodation.

Prior to this decision and since April 2015, RMG Ltd. was used on an 'ad-hoc' basis to provide review decisions on behalf of the authority with the decision to refer the review to RMG Ltd. taken under officer delegated authority. However, it has subsequently become apparent that this method of authorising the use of external review officers from RMG is not sufficient to lawfully contract out the s202 review function. It is therefore necessary to rectify this to ensure that review decisions made by RMG Ltd prior to 11 April 2016 are valid.

Finance summary

The sec.202 review decisions referred to in this report were made prior to April 2016 and therefore have been paid and budgeted for. The schedule of costs is in the table below.

Item #	Line Item Description	Fixed Price
1	Fee for each review case (including draft reg 8 and s202 decision letters)	£150
2	Where required daily fee for court appearances	£235
3	Where required medical assessment (per decision)	£35
4	Where required psychiatric assessment (per decision)	£50
5	Where required Experian check (per check)	£2.50
6	Where required Land Registry check (per check)	£2.50

Based on an average number of 120 reviews per annum, a contract approach costs approximately £18,000 a year. Payment is only made on receipt of the reviews from RMG Ltd, and these must be completed within a set time frame and according to contractual arrangements. This reduces the length of time families are waiting for a decision to be made and is a more cost efficient way of managing reviews, as the cost to the council of each full time reviews officer is currently £42k per annum

If review decisions made by RMG Ltd before April 2016 are held to be invalid, fresh decisions would have to be made in each case where the Council's decision was upheld, leading to increased fees. There is also the potential for having to place households in to temporary accommodation during the decision-making process, and the possibility of compensation claims in some cases, at an unknown cost.

Recommendation

1. To approve the previous decisions to contract out the Section 202 Housing Act 1996 reviews to RMG Ltd prior to 11 April 2016.

1. Context

- 1.1 The context for contracting out s202 reviews was set out in April Cabinet report (Appendix A) which was approved in April 2016.
- 1.2 The Council is currently facing a legal challenge where the appellant alleges that the s202 review, which was made prior to 11 April 2016, was not lawfully contracted out to RMG. Because of this, and the risk that other challenges may be made, approval is sought to ratify the previous officer decisions to the contract out this function prior to 11 April 2016.
- 1.3 If ratification is not obtained, it is arguable that s 202 HA 1996 reviews carried out by RMG Ltd on behalf of the Council are not valid. There is case law which says Cabinet authorisation can be sought retrospectively (please see section 4 below).

2. Proposal and Reasons

- 2.1 Cabinet approved the contracting out to RMG Ltd on 11 April 2016.
- 2.2 As a result of a legal challenge to the Council, it has become apparent that the previous method of officer delegated authority to RMG Ltd was not sufficient to lawfully contract out the function of carrying out s.202 HA 1996 reviews.
- 2.3 The Council's constitution states that only the Council or Cabinet may authorise a contract to another body or organisation, functions which may be exercised by an officer (e.g. s202 HA 1996 reviews) and which are subject to an order under section 70 of the Deregulation & Contracting Out Act 1994.
- 2.4 There were 153 review decisions made by RMG Ltd in the period between January 2015 and 11 April 2016. The potential consequence of these reviews being invalid is that there would have to be fresh decisions in each case where the Council's decision was upheld, and the Council could face claims for compensation from those households who were not accommodated whilst their review was carried out.
- 2.5 Cabinet approval is therefore needed to make the s202 decisions by RMG of before 11 April 2016 valid.

3. Finance

- 3.1 None arising from this report.

4. Legal and Democracy

- 4.1 Pursuant to section 70 of the Deregulation & Contracting Out Act 1994, section 3 of Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996 permits the Council to contract out functions (other than excluded functions) conferred by or under Part VII of the Housing Act 1996 (homelessness).
- 4.2 The Council's constitution provides that only the Council or the Cabinet may contract out to another body or organisation functions which may be exercised by an officer and which are subject to an order under section 70 of the Deregulation & Contracting Out Act 1994, provided there is no delegation of the Council's discretionary decision-making.
- 4.3 In the case of *Tachie and others v Welwyn Hatfield Borough* [2013] the High Court held:
 - (a) 'Discretionary decision making' was a term that was intended to capture the range of relatively high-level policy or strategic decisions which the local authority would be wishing to retain for itself. It did not include decisions which required evaluative judgments to be made, such as under Pt VII of the 1996 Act.
 - (b) The local authority's ratification on 25 November 2013 of an earlier 2011 decision to delegate its homelessness functions was lawful, and that therefore there was no operative error of law for the purposes of the claimants' appeal under s204 of the 1996 Review.
- 4.4 The consequence of not ratifying the earlier decision to delegate the homelessness function to RMG Ltd will be that all section 202 reviews carried out by them prior to 11 April 2016 are potentially unlawful.
- 4.5 This proposed key decision was entered in the Forward Plan on 22 July 2016 and the necessary 28 clear days' notice has been given. In addition, the Council's Constitution requires the report to be published on the website for five clear days before the proposed decision is approved by the Cabinet Member. Any representations received during this period must be considered by the decision-maker before the decision is taken. A further period of five clear days - the call-in period – must then elapse before the decision is enacted. If the decision is called-in during this period, it cannot be enacted until the call-in has been considered and resolved.

5. Consultation and co-production

- 5.1 No consultation has taken place.

6. Risk management

- 6.1 There are no identified risks to this course of action. The risks identified to the Council would arise from a failure to approve the recommendation. This could potentially lead to all s202 reviews carried out by RMG Ltd before 11 April 2016 being invalid, with potential implications for the Council in terms of increased financial outlay for fresh reviews, legal challenges and claims for compensation.

7. Equalities impact assessment

7.1 None required as no service users will be affected by this decision. All requested reviews will continue to be undertaken according to the statutory requirements as they are now.

8. Community safety

8.1 Not applicable.

9. Organisational implications

None.

10. Timetable for implementation

10.1 The decision would be implemented immediately.

Audit trail				
Consultation				
Name/Position	Lambeth directorate /division or partner	Date Sent	Date Received	Comments in para:
Sue Foster	Strategic Director, Neighbourhoods and Growth	5.8.16	5.8.16	Cleared
Neil Wightman	Director of Housing Services	8.8.16		
Andrew Ramsden	Finance	3.8.16	4.8.16	
Greg Carson, Legal Services	Corporate Resources	10.07.16	12.07.16	4.1 to 4.4
David Rose,	Democratic Services	26.07.16	26.07.16	4.5
Councillor Matthew Bennett	Cabinet Member for Housing:	17.7.16	18.7.16	Cleared

Report history	
Original discussion with Cabinet Member	18.07.16
Report deadline	24.08.16
Date final report sent	24.08.16
Report no.	293/16-17
Part II Exempt from Disclosure/confidential accompanying report?	No
Key decision report	Yes
Date first appeared on forward plan	22.07.16
Key decision reasons	Meets community impact test
Background information	The Deregulation and Contracting Out Act 1994 http://www.legislation.gov.uk/ukpga/1994/40/contents
Appendices	11 April 2016 Cabinet Report, <i>Improving the efficiency of homelessness applications</i>