

Birmingham City Council

Report to Cabinet

5 September 2023



Subject: Securing Emergency Temporary Accommodation
Report of: Paul Langford, Interim Strategic Director of City Housing

Relevant Cabinet Member: Councillor Jayne Francis – Cabinet Member for Housing & Homelessness
Councillor Brigid Jones – Cabinet Member for Finance & Resources

Relevant O&S Chair(s): Councillor Mohammed Idrees, Homes
Councillor Jack Deakin, Finance and Resources

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 011498/2023		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential.		

1 Executive Summary

- 1.1 This report provides details of the sourcing strategy and process for securing the provision of emergency accommodation (EA) in compliance with the Public Contract Regulations 2015 (PCR15), to support the Council's statutory duty to provide interim/emergency accommodation to vulnerable households pursuant to the Housing Act 1996, the Homelessness Act 2002 and the Homelessness Reduction Act 2017.

2 Recommendations

That Cabinet:

- 2.1 approves the use of Regulation 10.1 (a) of the Public Contract Regulations 2015 (PCR15) to put in place direct rental contracts for land or existing buildings or interests or rights in them with providers supplying Emergency Accommodation (EA).
- 2.2 approves the strategy for the procurement activity in 7.4 and delegates authority to the Interim Strategic Director of City Housing in conjunction with the Assistant Director Corporate Procurement, the Interim Director of Finance (Section 151) and the City Solicitor & Monitoring Officer (or their delegates) to approve the award of negotiated direct rental contracts with selected providers to supply the Council with EA capacity to meet the Council's statutory obligations.
- 2.3 authorises the City Solicitor (or their delegate) to negotiate, execute and complete all necessary documentation to give effect to the above recommendations.

3 Background

- 3.1 The demand for the Council to supply EA for our homeless citizens and families has grown significantly over recent years, as of May 2023 there are over 830 families in Bed & Breakfast (B&B) accommodation.
- 3.2 B&B provides the flexibility needed to address immediate EA presentation needs, however the aim is to reduce and minimise B&B as the last resort for temporary accommodation (TA). In June 2023 Cabinet approved the TA Strategy this describes the work currently under way and additional work planned, with the objective to reduce and then end the use of B&B, beyond the six-week statutory limit, for families as TA. These interventions include:
- 3.2.1 Increasing the supply of TA through extending the existing residential property acquisition programme and adding 300 properties to dispersed TA.
- 3.2.2 Improving access to Private Rental Sector (PRS) through investment in Accommodation Finding Team (AFT) resource and the landlord incentive programme.
- 3.2.3 Sourcing Private Sector Leased (PSL) property via the Dynamic Purchasing System (DPS), approved by Cabinet in September 2022.

- 3.2.4 Investing in early intervention and prevention and engendering a focus on prevention and move-on across the end-to-end customer journey.
- 3.3 The shortage of social housing stock and consequent lack of temporary accommodation means that increasing numbers of citizens and families presenting as homeless are spending extended placements in B&B EA.
- 3.4 The current compliant route to placement is through the Council's travel and accommodation contract which has recently been re-tendered and awarded to Travelperk UK IRL Ltd (Click Travel) a 3rd party travel booking service provider. As this route cannot meet the current demand for EA, colleagues' also book directly through individual providers web portals at the published non-negotiable day rate and this process requires bookings to be settled at the point of booking.
- 3.5 Using Travelperk to source EA forces inefficient operational practices on the EA team, and with no means to engage directly with providers of EA there has been no mechanism for the Council to leverage its position to negotiate preferential rates or ensure compliance with statutory accommodation standards – this also impacts the scope of available providers.
- 3.6 As part of the ongoing focus on improving the operational and commercial benefits relating to EA, colleagues in Corporate Procurement Services (CPS) have engaged in discussions with other Local Authorities (LA's) in relation to the approach they are adopting to support their own EA requirements.
- 3.7 Regulation 10.1 (a) of the Public Contract Regulations 2015 (PCR15) which is a specific exclusion from applying the regulations to service contracts *“for the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property”* has been identified as current good practice to enable LA's to adopt an efficient and compliant direct contracting route with providers of EA.

4 Options considered and Recommendation

4.1 Option 1 – Current services continue

- 4.1.1 The Council extends its current arrangements utilising the travel and accommodation contract with TravelPerk UK & IRL Ltd (Click Travel) to secure all EA requirements through the existing procurement routes. This option is not recommended given its limitations and in-flexibility within the EA marketplace and is only recommended as a partial solution as it is unable to fully support current levels of demand in this service area.

4.2 Option 2 – Direct Contracting Routes via 3rd Party Frameworks

- 4.2.1 The use of 3rd party PCR15 compliant frameworks restricts the Council to using only those service providers appointed to the framework. This approach, therefore, prevents the Council from engaging directly with any new and or alternative/innovative EA service providers who are not appointed to those frameworks resulting in lost opportunities and reduced accommodation options.

Currently, there are no suitable 3rd party frameworks which meet the Council's EA requirements and therefore, this approach is not recommended.

4.3 Option 3 – Alternative direct contracting routes – Regulation 10.1(a)

4.3.1 PCR15 Regulation 10.1(a) is an efficient, effective and compliant route to enable direct contracting with providers of EA. The advantages of direct contracting with providers of EA to the Council include:

4.3.1.1. Securing accommodation which meets the Council's Housing Health and Safety Rating System standards for EA and is compliant with Council mandated accommodation standards.

4.3.1.2. Implementation of standard operational processes and procedure between the Council and EA providers.

4.3.1.3. Adoption and implementation of robust internal bespoke procedures which ensures compliance and adherence by the EA team to operate in accordance with PCR15 and 10.1(a) guidelines and mitigate any potential commercial and/or operational risks.

4.3.1.4. Prioritising directly contracted EA Providers as a preference over the Council's existing travel and accommodation contract with Travelperk UK & IRL Ltd (Click Travel) will minimise the associated booking administration and management fees where applicable.

4.3.1.5. Direct negotiation with EA Providers will enable the Council to realise better value for money through negotiated discounts for EA provision through block booking opportunities and the leverage of Council demand.

4.3.1.6. Uniform implementation of the Council's standard purchasing terms and conditions and robust bespoke Council facing contract management processes with all directly contracted EA Providers.

4.3.1.7. Widen the scope and reach within the local marketplace with suitable EA Providers, improving the Council's ability to react quickly to support critical service needs as required.

4.4 The **RECOMMENDATION** is to approve the use and implementation of Regulation 10.1 (a) of the Public Contract Regulations 2015 (PCR15) as set out in this report to put in place direct rental contracts for land or existing buildings or interests or rights in them with providers of EA solutions and the continued use of the Council's travel and accommodation contract with TravelPerk UK & IRL Ltd (Click Travel) as a supplementary means to support and secure additional EA requirements where appropriate.

5 **Consultation**

5.1 External

5.1.1 The development of this approach has included research and discussion with other LA's who are facing similar significant homelessness pressures.

5.1.2 Legal advice has been sought regarding the suitability of Regulation 10.1 (a) to support direct contracting for this service area as detailed in paragraph 7.2 of this report.

5.2 Internal

5.2.1 Senior Council officers from City Housing, Corporate Procurement Services (CPS), Legal Services, Finance, HR and Audit have all been consulted and/or involved in the development of this report as detailed in sections 7.2 – 7.5.

6 Risk Management

6.1 The main risks associated with implementing the recommendations of this report are:

Risk	Impact	Likelihood	Mitigation
6.1.1. Providers do not commit to the levels of placements required – impacting the ability to realise the efficiencies sought through scale	High	Medium	<ul style="list-style-type: none">• Approach to negotiations with providers takes account of potential sensitivities, assumed risks and medium-term impact on established businesses• Relationship account management approach is adopted with providers
6.1.2. Providers are not willing to sign up to the Council's standard contracting terms - limiting increasing the scope of providers	High	Medium	<ul style="list-style-type: none">• Communicate to providers the business benefits and opportunity created through using the Council's standard terms
6.1.3. Providers charge rates are not attractive – leading to this route not being used as intended as less affordable for the Council	High	Medium	<ul style="list-style-type: none">• Present the commercial case to providers as part of the individual negotiations, leveraging occupancy rates to secure VfM and affordable rates
6.1.4. Negotiations with providers are protracted - delays in onboarding providers restricts placement options	Medium	Low	<ul style="list-style-type: none">• Provide early sight of contractual documents and clear engagement and negotiation timetable to providers.
6.1.5. Placement teams do not prioritise directly contracted providers – Council fails to realise the	High	Medium	<ul style="list-style-type: none">• Ensure placement teams are trained on new direct contracting process, their responsibilities, and procedures

Risk	Impact	Likelihood	Mitigation
benefits of directly negotiated contracts			<ul style="list-style-type: none"> • Monitor placements through direct contracting versus use of Travel Perk
6.1.6. Case law arises which challenges the use of Reg 10.1 (a) for sourcing EA – resulting in the Council not being able to contract directly with providers	Low	Low	<ul style="list-style-type: none"> • Keep abreast of the relevant and emerging legislation and guidance and legal commentaries relating to PCR 15. There are several London Borough Councils already using this route and as such the precedent has been set which mitigates any such risk

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

The recommendation within this report will make a direct contribution to both Corporate and Directorate outcomes:

- 7.1.1 **A Bold Inclusive Birmingham:** Tackle poverty and inequality - through providing Council assured EA increasing the scope of availability and meeting the emergency needs of vulnerable families presenting as homeless.
- 7.1.2 **A Bold Safe Birmingham:** Protect and safeguard vulnerable citizens - through providing families experiencing homelessness with EA which meets the Council's statutory accommodation and Health & Safety standards.
- 7.1.3 **A Bold Healthy Birmingham:** Advancing equality, health and wellbeing - through providing EA which meets the Council's statutory obligations for the most vulnerable families and their dependents.

7.2 Legal Implications

- 7.2.1 Legal Services has reviewed the relevant legislation and researched PCR 15 Guidance and various legal commentaries relating to PCR15 and could find nothing in the PCR15 Guidance restricting the use by Local Authorities (LA) of Reg 10.1 (a) specifically to source EA.
- 7.2.2 A reliable, independent, legal commentator is of the view that Regulation 10.1(a) of the Public Contracts Regulations 2015 (PCR 2015) can be used for the type of services as set out above and depending upon the terms of the rental and all the other circumstances, it appears that such a contract could, in principle, come within Regulation 10.1(a) if it is simply a contract for the rental of land or existing buildings or an interest or rights in them without any other element of public contracting (for example, procuring providers to provide specific services to the homeless families simultaneously) as defined within the PCR 2015.

- 7.2.3 Based on the above, Legal Services have now confirmed that they are of the view that the renting of property or land or existing buildings or interests or rights in them to support the Council's EA requirements could be an exclusion under Sub-Section 3, Regulation 10 of PCR 15 and would be in their view low risk regarding any successful challenge to this proposed approach.

7.3 Financial Implications

- 7.3.1 The recommendations of this report are to ensure that the spend on EA secures the best value for money for the Council. Volume negotiation will support meeting demand for EA, lead to improved direct control of, and lower, the EA placement costs. There are more indirect financial implications, and these are mentioned below.
- 7.3.2 Approval to negotiate with selected providers of EA is felt likely to result in lower costs than the present back up process of booking through individual providers web portals and associated transactions. The costs will be monitored as part of the new process, drawing on cost comparative benchmark information prior to negotiation, to ensure value for money is achieved. This is incorporated at step 6 in the process flow in Appendix 1. Where lower costs are achieved this will reduce the potential budget overspend for EA.
- 7.3.3 The recommended process in this report will provide a standard approach to use alongside the existing contract with TravelPerk UK & IRL Ltd (Click Travel). Standardisation will improve financial controls and ensure the process is compliant with procurement regulations.

7.4 Procurement Implications

- 7.4.1 Other Local Authorities (LAs) have been consulted to understand how they are procuring emergency accommodation. One effective PCR15 compliant approach identified is the application of Regulation 10.1 (a) which states: *"10.— (1) This Part does not apply to public service contracts — (a) for the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property, or which concern interests in or rights over any of them"*.
- 7.4.2 In effect, Regulation 10.1 (a) would allow the Council to set aside the PCR15 regulations and compliantly negotiate with 3rd party service providers directly without needing to tender the requirements.
- 7.4.3 The Council's Procurement and Contract Governance Rules effectively mirror the PCR 15 exemption and state under item 1.8(ii) that *"Transactions regarding the purchase or lease of property"* are out of scope and therefore, subject to approval of these recommendation the process which will be adopted is detailed in Appendix 1 of this report.

7.5 Human Resources Implications

- 7.5.1 The adoption of Regulation 10.1(a), while resulting in a new way of working, will not require any additional resource over and above that already budgeted and approved.
- 7.5.2 The new activities identified in Appendix 1 process flow, will require specific skills, knowledge and experience which can be met through drawing down on existing programme management and support capabilities.

7.6 Public Sector Equality Duty

- 7.6.1 An EIA has been undertaken (Ref EQUA1162) to support this report and associated appendix. The screening has highlighted that the impact of this proposal is envisaged to be positive in terms of providing more appropriate EA to meet a range of needs. Policies and procedures are already in place to mitigate any potential negative impacts.

8 Environment Sustainability Assessment

- 8.1 The approved environmental sustainability assessment is documented in Appendix 2.

9 Background Documents

- Not applicable.

List of appendices accompanying this report:

- Appendix 1: Process Documentation - Direct Contracting for Emergency Accommodation
- Appendix 2: Environment Sustainability Assessment
- Appendix 3: Equality Impact Assessment (EQUA1162)