

Birmingham City Council

Report to Cabinet

17th January 2023



Subject: Domestic Abuse Homelessness Prevention Waiver

Report of: Janie Berry, City Solicitor & Monitoring Officer

Relevant Cabinet Member: Councillor Ian Ward, Leader of the Council

Relevant O & S Chair(s): Councillor Akhlaq Ahmed, Chair of Resources O & S

Report author: Gary Messenger, Acting Director
Telephone: 07826 873 454
Email: gary.messenger@birmingham.gov.uk

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: 010576/2022		
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, state which appendix is exempt, and provide exempt information paragraph number or reason if confidential:		

1 Executive Summary

- 1.1 In February 2019, City Housing piloted a specialist domestic abuse housing solutions and support service in partnership with Birmingham & Solihull Women's Aid (BSWAID). It was envisaged that this pilot would be formalised by way of a contract variation to the Adult Social Care

commissioned DA Wellbeing Hub. A subsequent cost appraisal of the Housing Solutions and Support activities undertaken by BSWAID identified that the costs amounted to more than 50% of the Domestic Abuse (DA) Wellbeing Hub and so the HRA element could not be added on to that existing contract.

1.2 In February 2021, it was initially considered the Single Contractor Negotiation (SCN) route could apply given the COVID 19 flexibilities afforded to the Council to issue a direct award via a single contractor negotiation. However, subsequently this approach was discounted because COVID related issues and restrictions no longer applied.

1.3 Housing Solutions and Support made a contractual commitment on 14 February 2021, this is understood to be following a verbal agreement by Officers to continue the Domestic Abuse (DA) Housing Solutions and Support Service with BSWAID until 31 March 2023. This was to maintain a vital service. The service is currently being funded through the Homelessness Prevention Grant and this spend has Cabinet approval. As such, in accordance with the Council's constitution, this report notes a breach of the Council's Procurement and Contract Governance Rules as per the constitution and seeks a waiver in relation to these and furthermore, provides recommendations on appropriate measures to be taken to resolve the issue.

2 Recommendations

That Cabinet:

2.1 Approves the waiver request for the existing implied contract arrangements with BSWAID for the period March 2021 to June 2023 at a value of up to £1,158,687.83.

2.2 Authorises that the Director of Housing in consultation with the Director of Council Management and City Solicitor ensures compliant contractual and procurement arrangements are established by way of an open tender process using a compliant procurement route for June 2023 for this contract.

2.3 Notes that since existing procurement and breach, the Council's rules have been updated and amended with the new Procurement and Contract Governance Rules (July 2022), including strengthening requirements for maintaining of records for audit and accountability purposes in how decisions are taken.

3 Background

3.1 Birmingham City Council's Homelessness Prevention Strategy 2017+ sets out the commitment of the city to prevent homelessness wherever possible. A key aspect reflecting this commitment is the commissioned

Domestic Abuse Homelessness Prevention Waiver

Prevention Hubs. These sites provide a specific location, hosted by an expert organisation at which services to build resilience for independent living are delivered. These include personal resilience, money management, advocacy, planning and support. Partnerships of multiple agencies sit around these Prevention Hubs, bringing together the resources of many public and voluntary sector agencies.

- 3.2** Alongside this prevention focus the city has diversified its specialist Housing Options provision, targeting specific groups. This is either through the commissioning of other organisations to undertake duties on behalf of the Local Authority, or through the embedding of Local Authority Housing Options Officers in the service.
- 3.3** In February 2019, having acted as partner consultees with Adults Social Care and in support of the Putting Prevention First: Commissioning and Procurement Strategies for Vulnerable Adults Housing & Wellbeing Support, the Neighbourhoods Directorate (Now City Housing) piloted a specialist domestic abuse housing solutions and support service in partnership with BSWAID. Services falling within this strategy are vital in delivering against Council priorities which include corporate parenting, improved health, and wellbeing, building resilient and independent communities and access to suitable and sustainable housing options for the most vulnerable.
- 3.4** It was envisaged that this pilot would be formalised by way of a contract variation to the Adult Social Care commissioned DA Wellbeing Hub, which was initially piloted by way of a contract variation to an existing social inclusion contract before being commissioned as a standalone service for one year by way of a single contract negotiation in September 2019. In support of Putting Prevention First, Housing Solutions agreed to fund the Homelessness Reduction Act (HRA) element.
- 3.5** A subsequent cost appraisal of the HRA activities undertaken by BSWAID identified that the costs amounted to more than 50% of the DA Wellbeing Hub and so the HRA element could not be added on to that existing contract.
- 3.6** As part of the response to the challenges presented by the COVID response BSWAID made representations to Members and Officers regarding the potential financial impacts for BSWAID if they did not receive full funding for the HRA element of the DA Hub. Subsequently, the then Deputy Chief Executive committed to looking into this and asked for consideration of the need to proceed with payment under COVID Delegated Decision Rules to be undertaken with the then Strategic Response Cell.
- 3.7** In February 2021, discussions took place on whether Housing Solutions needed to go out for a full tender process on the basis that BSWAID would be the only organisation who can deliver the HRA element. Discussions

also took place between senior officers and senior colleagues within City Housing, Procurement and Legal respectively with a view to applying the then COVID 19 flexibilities afforded to the Council to issue a direct award, through a Single Contractor Negotiation, to Women's Aid on the basis that the rates of Domestic Abuse in the City had spiked as a result of the pandemic and were likely to continue to rise for the foreseeable time. In view of consideration of the new plans for the future domestic abuse arrangements and Legal advice for a direct award on the basis of COVID was limited to the period March 2020 to March 2021, continued reliance on the direct award provisions by City Housing was not appropriate, resulting in the actions taken being deemed a breach in respect of formalising the governance arrangements for the Council.

- 3.8** In seeking to apply the Single Contractor Negotiation approach to cover this expenditure. During late 2021, through to March 2022, City Housing were advised by Legal Services / Corporate Procurement Service, that it is not appropriate under emergency measures as these can only be invoked where the circumstances used to justify extreme measures are not attributable to the contracting authority
- 3.9** Presently, the HRA element of the DA Hub is funded through the Homelessness Prevention Grant and is projected to cost up to £535,156 for the financial year 2022-2023. This is included in the Cabinet paper of March 2022 covering planned expenditure of Homelessness Prevention Grant.
- 3.10** Accordingly, this report seeks approval via Cabinet to retrospectively waive the Procurement and Contract Governance Rules by way of notifying for transparency purposes, this as formal breach of the rules for the services currently placed with BSWAID and authorisation for City Housing to undertake a new procurement to ensure compliant contractual arrangements are established by way of an open tender process using a compliant procurement route.
- 3.11** The DA Housing Solutions and Support Hub provided a valuable resource and pathway to wider specialist support services for women and children who were homeless/threatened with homelessness as a result of domestic abuse during the Covid-19 pandemic and continues to do so. In June 2020, BSWAID received a 40% increase in DA related calls to their helpline, whilst monthly refuge requests made direct to BSWAID jumped from 246 requests in June 2019 to 685 requests in June 2020. Furthermore, between April 2021 and October 2021, West Midlands Police reported a 75% increase in DA crimes.
- 3.12** For the reasons outlined above, whilst there is wider recognition of the need to formalize the working relationship between BSWAID and City Housing by way of contract for the HRA element of the DA Hub, City Housing have ensured there is no break in service provision. Through the waiver procedure, acknowledgement is made of error in process during the Covid-19 pandemic; and a Planned Procurement Activities Report will

be submitted to Cabinet outlining City Housings intentions to establish to secure a settled position going forwards.

4 Options Considered and Recommended Proposal

- 4.1** Immediately cease a dedicated DA provision as part of HRA duties, bringing provision in-house and suspend any future payments promised up until March 2023. This is not recommended as it would cause a loss of reputation and partnership working across the sector, particularly as senior officers at BCC have made assurances to BSWAID in terms of ongoing commitment. Furthermore, this option would place enormous strain on an already stretched internal Housing Solutions & Support Service. DA cases account currently for the third highest reason for presenting as homeless and 15% of all presentations. BCC provision is not established to manage the level of vulnerability of women presenting, the specialist requirements associated with DA, and the increased expectations relating to service provision arising from the Domestic Abuse Act 2021. The Act expects greater prevention, specialist provision, and priority given to people experiencing homelessness as a result of DA.
- 4.2** In line with the Council's constitution, it is recommended Cabinet agrees to a waiver of the procurement rules by way of a request for noting for transparency as a formal Breach of the Rules until 31 March 2023. In the interim, City Housing will advertise for a contract via Find a Tender, Contracts Finder and www.finditinbirmingham.com and a tender process will be commenced using the open procurement route with contracted services to commence in April 2023. This will support the delivery of Homeless Prevention Strategy 2017+, Domestic Abuse Prevention Strategy 2018+, as well as all statutory duties in relation to the prevention and relief of homelessness under Part VII of the Housing Act 1996 as amended by the Homelessness Reduction Act 2017, and the Domestic Abuse Act 2021.

5 Consultation

- 5.1** Consultation has been undertaken between senior officers of City Housing and BSWAID as well as all corporate services involved in preparing and approving this cabinet report.

6 Risk Management

- 6.1** At this stage the main risks are related to the breach of procurement rules and lack of contract, these will be mitigated by the immediate commencement of a full tender exercise via an open procurement route with contracts and services due to commence from 01 June 2023.
- 6.2** The impact of not appointing a contractor will be a failure to meet obligations of the Homelessness Reduction Act, a level of unmet need

amongst vulnerable women, and a loss of reputation and partnership working across the sector, and with government.

7 Compliance Issues:

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

- 7.1.1 The procurement of the DA Hub will support the Council in achieving its Homelessness Prevention Strategy 2017+, and Domestic Abuse Prevention Strategy 2018+ and Putting Prevention First Commissioning and Procurement Strategy.
- 7.1.2 The DA Housing Solution and Support Service contributes towards meeting the following aspects of the City Council Plan 2018-2022:

Outcome 2: Birmingham is an aspirational city to grow up in.

Priority One: We will improve protection of vulnerable children and young people (including those with Special Educational Needs and Disability). By the time they reach adulthood, more than 1 in 5 children in the city will have experienced DA at home. Furthermore, DA can have a significant impact on a child's health, education, and well-being. Locally, DA is a major factor for 77% of children needing Local Authority support, care, or protection. The Domestic Abuse Housing Solution and Support service plays a key role in safeguarding vulnerable children from life-threatening situations, and abusive perpetrators. This provision of specialist DA support can improve the outlook and aspirations of children by providing and facilitating access to safety nets when they need it most.

Outcome 4: Birmingham is a great city to live in.

Priority Three: We will work with partners to tackle rough sleeping and homelessness. Once formally commissioned, The DA Housing Solutions and Support Service will offer survivors a right's-based approach to homelessness assistance via a multi-agency pathway and coordinated community response underpinned by the principles of the Domestic Abuse Housing Alliance. Such principles include safety led case management, survivor led support, and perpetrator accountability which includes working in partnership to take legal action or seek civil remedies to support families to remain in their homes when this is a safe appropriate option.

7.2 Legal Implications

- 7.2.1 Section 179 of the Housing Act 1996 provides that a local housing authority must provide or secure the provision of a service, available free of charge to any person in the authority's district, providing information and advice on, preventing homelessness, securing accommodation when homeless, the rights of persons who are homeless or threatened with homelessness.

- 7.2.2 The Council has a statutory duty in relation to the prevention and relief of homelessness under Part VII of the Housing Act 1996 as amended.
- 7.2.3 The Homelessness Act 2002 requires local authorities to develop homelessness strategies to support the prevention of homelessness in their districts.
- 7.2.4 Under S. 111 Local Government Act 1972 the Council has power to power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions
- 7.2.5 The Council's obligations for this service under the General Data Protection Regulation (GDPR) will be met by commissioned arrangements.

7.3 Financial Implications

- 7.3.1 The service is and will continue be funded via the Homeless Prevention Grant, and this will be reflected in any tender documents with precise and unequivocal review clauses, which may include price revision clauses, or additional options relevant to the nature of funding and the contract.
- 7.3.2 Funding has already been ringfenced from the Homeless Prevention Grant for the continuation of current provision until 31 March 2023, the annual cost of this provision currently stands at £535,156.

7.4 Procurement Implications

- 7.5 This cabinet report is accompanied by a waiver request highlighting the Breach in respect of the original advice and authorisation route around a Single Contract Negotiation and PPAR as the service looks to immediately commence a full tender exercise via an open procurement route with contracts arranged and services due to start from 01 June 2023. This information is detailed in the Planned Procurement Activity Report to Cabinet.

7.6 Human Resources Implications (if required)

- 7.6.1 There are no anticipated HR implications for Birmingham City Council as a result of any future commissioning and procurement exercise, both HR and Procurement will provide advice on issues relating to TUPE.

7.7 Public Sector Equality Duty

- 7.7.1 As BSWAID offer gender specific provision, the current DA Housing Solution and Support service does not allow full access for transgender women, or males. It is anticipated that any future commissioned service will need to take account of both the support needs of male and transgender victims of domestic abuse and that all should receive the same level of service regardless of sex or gender reassignment.

8 Appendices

Appendix A- Waiver Request

Appendix A

WAIVER FORM

PROJECT / CONTRACT TITLE	The Domestic Abuse Housing Solution and Support Service	
PROJECT / CONTRACT REFERENCE NUMBER	N/A	
DESCRIPTION OF CONTRACT (GOODS / SERVICES PROVIDED)	Specialist HRA provision for survivors of domestic abuse in accordance with the Housing Act 1996 as amended by the Homelessness Reduction Act 2017, and Domestic Abuse Act 2021.	
SUPPLIER (where relevant)	Birmingham and Solihull Women's Aid	
CONTRACT PERIOD	contract from 01 December 2021 until 31 May 2023	
VALUE (£/p)	Up to £1,158,687.83	
FUNDING SOURCE	Homeless Prevention Grant	
DIRECTORATE	City Housing	
SERVICE AREA	Housing Solutions and Support	
SERVICE LEAD	Debbie Parkes	
DIRECTOR/ ASSISTANT DIRECTOR	Gary Messenger	
HEAD OF SERVICE	Stephen Philpott	
Please indicate the justification for a Waiver to the Procurement and Contract Rules		
i. Efficiency / expediency in relation to process: Following the Rules in whole or part would not add value to the intended outcomes and would significantly impact the delivery of the Council Plan and priority outcomes. A Waiver would not compromise transparency and accountability.		
ii. Increased cost / loss of income: Following the Rules in whole or part would likely result in increased costs or loss of opportunity.		
iii. Time constraints beyond the control of the Council: Following the Rules in whole or part would create unreasonable time pressures to deliver outcomes required. In such cases this must not be through poor planning or lack of action by the Council to have created the time constraint.		

iv. Avoidance of reputational damage: Failure to act promptly would have a serious, damaging and long-term impact on the reputation of the Council, that from a time perspective the Council cannot afford to be mitigated through a formal tendering process.	
v. Request for noting for transparency as a formal Breach of the Rules: Noting outcome of formal Breach investigation and seeking to note in line with Waiver Approval procedure.	X
Please provide details on reasons for applying for a Waiver	
<p>In February 2019, having acted as partner consultees with Adults Social Care and in support of the Putting Prevention First: Commissioning and Procurement Strategies for Vulnerable Adults Housing & Wellbeing Support, the Neighbourhoods Directorate (Now City Housing) piloted a specialist domestic abuse housing solutions and support service in partnership with BSWAID. Acting in good faith it was envisaged that this pilot would be formalised by way of a contract variation to the Adult Social Care commissioned DA Wellbeing Hub.</p> <p>A tender process followed for the DA Wellbeing Hub for the period of 4 years between December 2020 to November 2024 and a contract awarded to BSWAID. The advert and procurement documentation clearly stated the possibility of HRA activities being included after the award with the associated funding and contract variation. ASC and procurement were of the opinion it was not possible to line up timescales for a joint commissioning and tender exercise.</p> <p>A subsequent cost appraisal of the HRA activities undertaken by BSWAID identified that the costs amounted to more than 50% of the DA Wellbeing Hub and so the HRA element could not be added on to that existing contract.</p> <p>In February 2021, discussions took place and initial procurement advice was that Housing Solutions needed to go out for a tender process in respect of the HRA element. However it was believed by Housing Solutions that this was contrary to the intended delivery model of an inclusive well-being hub; Housing Solutions believed that BSWAID would be the only likely organisation who can deliver the HRA element. The initial legal view from the then City Solicitor was that BCC could apply the COVID 19 flexibilities afforded to the Council to issue a direct award based on an increase in domestic violence as a result of the pandemic. This decision covered payment for services provided by BSWAID between April 2020 to March 2021. Following this initial view, legal advice was requested from Legal Services but in the meantime the decision was confirmed at a meeting of the Strategic Cell on 9th March 2021 with a recommendation that further advice be sought in terms of contract arrangements going forward.</p> <p>During late 2021, through to March 2022, discussions took place with Legal Services as regards whether or not the ongoing work undertaken by BSWAID could be procured using the Single Contractor Negotiated [SCN] process.</p> <p>A draft proposal/business case was shared with Legal Services and during February 2022, advice was provided that the business case did not support the SCN process and thus did not satisfy the provisions of the Public Contract Regulations 2015 and the Procurement Procedure Rules as drafted in the Council's Constitution at that time.</p>	

In response, Housing Solutions instructed Legal Services that it had made the case for BSWAID to be the sole supplier and in effect chose not to comply with the advice provided.

Nevertheless, Housing Solutions and Support made a commitment to continue the DA Housing Solutions and Support Service until 31 March 2023 however this may need extending to June 2023 to allow for the re-procurement of the service. The service is currently being funded through the Homelessness Prevention Grant and this spend has Cabinet approval. As such, in accordance with the Councils constitution a retrospective waiver to the procurement rules is being sought as a request for noting for transparency as a formal Breach of the Rules whilst City Housing seeks to tender for the DA Housing Solutions and Support Service via a compliant open procurement route.

Which part(s) of the Procurement and Contract Governance Rules are being sought to be waived?

The requirement to secure a competitive procurement for these services during the financial year end 2022-2023.

What implications, risk(s) or consequences would apply if a Waiver is not approved?			
The main risks will be a failure to meet obligations of the Homelessness Reduction Act, a level of unmet need amongst vulnerable women and children, and a loss of reputation and partnership working across the sector, and with government. In addition, the council could be open to legal challenge for failing to pay for services already provided.			
What longer terms plans are in place to ensure compliant contractual arrangements will be established prior to the end of the contract awarded under Waiver?			
A new contract will be advertised in Find a Tender, Contracts Finder and www.finditinbirmingham.com and a tender process will be commenced using the open procurement route.			
Other Comments			
It is recommended that training is delivered via procurement and finance concerning the new spend protocols, procurement regulations, and spend authorisation limits.			
DECLARATIONS			
I (the undersigned) declare that I have no conflicts of interest which would otherwise prevent my signature to this Waiver.			
Directorate Service Lead		Date	
Corporate Procurement Comments			
Name / Title		Date	

AUTHORISATIONS			
	DIRECTORATE SIGN OFF	CORPORATE SIGN OFF	Date
Over £5,000 up to £100,000	Assistant Director or Head of Service (in line with the Scheme of Delegations)	Relevant Head of Category (Corporate Procurement Service)	
Comment (if required)			
Name / Title			
Over £100,000 to £200,000	Assistant Director	Assistant Director (Procurement)	
Comment (if required)			
Name / Title			
Over £200,000 to £500k (revenue) or to £1million (capital)**	Director	Section 151 Officer in conjunction with Cabinet Member (Finance)	
Comment (if required)			
Name / Title			

**** Above these levels and/ or Key Decision and/ or where deemed required by the Cabinet Member formal sign off is required at Cabinet.**