

## Birmingham Audit

### Final Audit Report

### Waste Costs charged to the Housing Revenue Account

### Place Directorate

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**15 March 2019**

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## **1. Introduction**

- 1.1 During the waste dispute in 2017 and in the immediate aftermath of the Grenfell Tower fire, arrangements were made with the Housing Repairs contractors to collect waste from BCC Tower Blocks to address Health & Safety concerns regarding accumulating waste being a fire risk.
- 1.2 Costs of this service totalled £0.8m and were accounted for in the Housing Revenue Account (HRA) in 2017/18.
- 1.3 A senior councillor has made a public statement that charging the costs to the HRA was unlawful.

## **2. Objective and Scope**

Objective of Review: To establish if the costs can be justified as remaining in the HRA

Scope of Review: We obtained information relevant to the service provided to BCC tower blocks during the 2017 waste dispute. We reviewed financial reports, e-mails and materials relating to the Housing Revenue Account.

### 3. Executive Summary

Councillor Sir Albert Bore raised at Resources Overview and Scrutiny Committee that he was concerned that money from the Housing Revenue Account was used to pay contract refuse collectors last year and that this would be an illegal use of those monies.

BCC tower blocks receive 2 or 3 waste collections per week. During the 2017 strike, Housing Repairs contractors were asked to remove waste on the days that normal collections were not scheduled for, generally 2 collections per week during August, September and October. In July at the start of the industrial action the housing repairs contractors reacted to requests regarding overflowing bins, accumulations from bin rooms and within chutes where they had backed-up and by August had put a regular collection rota in place to keep combustible materials at acceptable levels.

There is no evidence that non-BCC housing or tower blocks were included in this arrangement although there is a report that local residents became aware of the collections and added to the fire risk by dumping their rubbish at the base of the blocks as a means of getting their own rubbish removed.

A review of legislation and guidance around the HRA has found no direct reference to these costs being allowable within the statutory ring-fence or otherwise. There is a degree of discretion within the costs chargeable by the Council in the discharge of its landlord function and where the

costs can be demonstrated as representing an additional service to the benefit of tenants, they can be legitimately charged to the HRA. Several London Borough Councils charge some waste collection and/or waste disposal to the HRA.

A case could be made for some of the costs to be complaint with the statutory ringfence but not all. The level of reimbursement to the HRA is likely to be immaterial in the context of S114 or prior year adjustments to the accounts.

The top issues for management are:

- The Directorate should evidence the additionality of the service from the standard refuse collection service and if this action needs to recur, ensure works orders are transparent and specify health and safety.
- The Directorate should consult tenants as part of rent consultation to formalise the arrangement in future.
- The Directorate should consider reimbursing the HRA with a sum equivalent to the savings accruing to the General Fund from the strike action in relation to non-collection from tower blocks.
- Feedback should be provided to Resources Overview and Scrutiny Committee and / or Audit Committee.

#### 4. Interviews

No	Interview	Summary	Evidence Ref.
4.1	Meeting with Finance Business Partner GO  21 November 2018	<p>GO provided background as to what is allowable to be charged to the HRA and pointed to circular 8/95 as still relevant. He felt it would be difficult to justify charging waste collection and provided a month 9 monitoring report where this had been pointed out to Housing Management Team.</p> <p>GO confirmed the housing repairs contracts are written widely enough to cover the inclusion of waste collection and there would not therefore be a procurement issue. The Head of Service (East/ South) would have raised the job and given instructions to contractors.</p>	W1
4.2	Meeting with Head of Service (East / South) MT and Head of Housing Management TR  7 December 2018	<p>TR confirmed that waste is collected from tower blocks by different crews to the ones that do wheelie bins because they need a different mechanism to lift the paladin bins. Initially FWM put a temporary provision in place for hot spots including high rise properties but it wasn't working 100% and there was a high level of concern from tenants. Grenfell fire happened on 14 June 2017 and the waste dispute started 30 June. TR clarified that while some waste bins are outside, others are in locked rooms under blocks and caretakers provide access to the waste crews. When these are not collected, waste backs up in the chutes. Tenants will leave waste in communal areas when the chutes are blocked and this is another fire risk.</p> <p>MT said that his role had been to arrange for the housing repairs contractors to clear the rubbish. E-mails dated between July and August 2018 show that this was at short notice and there were some initial issues with contractors not having the appropriate equipment and having to sub-contract.</p> <p>MT had referred all costs to the Directors of Housing and Waste Management to get the go-ahead. He had not considered the funding source to be his decision.</p>	W2

No	Interview	Summary	Evidence Ref.
4.3	Meeting with Head of Service North / West (JJ)  7 December 2018	<p>JJ said that his and MT's roles involved managing 2 of the 4 contract areas plus specialisms. MT and TR led on tower block health and safety. He would argue as a responsible landlord, immediately after Grenfell, that the response put in place was reasonable to ensure the safety of tenants.</p> <p>The Cost Collection workbook was the most obvious vehicle for paying the contractors. <i>(This means that the costs default to the HRA and a conscious decision to move them would have to have been made).</i></p> <p>Initially very reactive. Housing Management were monitoring missed collections and requesting contractors (via JJ and MT) to collect the following day.</p> <p>JJ did not recollect discussion of the M9 budget monitoring report but confirmed that it would normally be discussed at Housing Management Team.</p>	W2b
4.4	Meeting with Rob James  14 December 2018	<p>Rob said his responsibilities were clear and as a landlord we could not see combustible materials mount up, especially when the tenants were at a high level of concern about fire two weeks after Grenfell. Rob had expected the costs to be recharged to waste. Rob had sent the final costs to Jacqui Kennedy in April 18 for her to make a decision but did not think that she had replied.</p> <p>Rob was confident that there would be support if there was the need to consult residents about these recharges. He also suggested that Housing Associations would have put similar measures in place and only had rents to fund such costs from.</p>	W3

## 5. Documentary/System Evidence

No.	Documentation /System	Summary	Evidence Ref
5.1	Financial Performance Report December 2017/18 (Month 09)	<p>Finance drew attention to the funding of the refuse collection costs in their financial monitoring reports. Month 9 contained the final costs:</p> <p>“Due to the Refuse Collection dispute, additional costs have been incurred in clearing rubbish from Multi-Storey properties to reduce fire risks in light of the Grenfell Tower fire earlier this year. The current year end projection of £0.8m is based on costs to date, and assumes no further costs are incurred for the rest of the financial year.</p> <p><b>“Whilst these costs have currently been charged to the HRA, it is unclear how this can be demonstrated as compliant with the statutory ring-fence. Consideration should be given to alternative funding arrangements for these costs.”</b></p>	S1
5.2	Cabinet Report 24 August 2017 – Appendix 1	<p>Estimated weekly costs are quoted</p> <p>Costs Funded by General Fund 235.8</p> <p><b>Costs Funded by HRA (housing External contractors &amp; staff) 82.1</b></p> <p>Table and note produced by AD Place Finance ref SK4779a</p>	S2
5.3	e-mail summarising contractors quoted rates	<p>MT e-mailed the reponses from the housing contractors before collections commenced to Acting Director of Waste Management and asked if he was comfortable with the proposals. The implication is that at the outset the expectation is that Waste would pick up the costs.</p>	S3

No.	Documentation /System	Summary	Evidence Ref
5.4	e-mail summarising final costs 27/3/2018  "Bin Collection cost for City Wide"	MT confirmed the final costs to Head of Housing Management (TR) and Acting Director Waste Management (DS ) as follows:  East £131,097.24 West £134,000 North £42,000 South £510,883.25  TR forwarded the e-mail to Rob James and DS "I assume that you are both dealing with this?" and Rob James replied "Yes I am discussing with Jacqui"	S4
5.5	Circular 8/95	This circular is still the relevant advice for local authorities.	S5
5.6	Implementing Self-Financing for Council Housing, CLG, Feb 2011	"5.1 Local authorities will still be required to account to their tenants for income from and expenditure to council housing separately from income and spending on other functions and services. This ensures that council taxpayers do not subsidise services specifically for the benefit of tenants and that rent is not used to subsidise functions which are for the benefit of the wider local community. 5.2 In line with our emphasis on localism we do not intend to issue new guidance on the operation of the ring-fence. We expect local authorities to take their own decisions, rooted in the principle that 'who benefits pays'."	S6
5.7	Review of the Recharging Arrangements between the General Fund and Housing Revenue	"The charges for refuse storage and collection reflect the cost of additional services to housing estates over and above the standard collection service. These include the provision and maintenance of refuse containers, the delivery of black refuse sacks, multilevel collections and additional collections requested by estate managers. This is a legitimate HRA charge and reflects contract costs" – Grant Thornton review Oct 2011	S7

No.	Documentation /System	Summary	Evidence Ref
	Account – London Borough of Southwark		
5.8	Schedules of flats issued to contractors	Variety of e-mails between Housing Repairs contractors and Housing Management detailing the properties to be collected from and the normal collection days which the contractors were to avoid. Periods cover ad hoc arrangements in July and at the start of August with more regularised arrangements from early to mid-August 2017. All properties are BCC tower blocks.	S8

## 6. Conclusions

6.1 There is sufficient discretion within HRA guidance to make a case for exceptional health and safety works to be a valid HRA expense. Had this been the intention from the outset, the Finance team and Housing Management could have worked together to look at the limitations and risks of the funding source.

Our detailed review of this case, and discussions with operational managers, concludes that the focus of Housing was on minimising fire risk, and operational managers understood that funding decisions were being referred to the Strategic Director. The costs defaulted to the HRA due to the lack of any instruction to move them. **Some of the costs are potentially non-compliant with the statutory ringfence.**

6.2 Certain costs, as far as they are additional to the universal refuse service, can be legitimately charged to the HRA. However, there was no consultation with rent payers and a lack of clarity in the way the services were procured insofar as the instructions did not refer to them being essential health and safety works.

6.3 The overriding principle behind the HRA ring-fence is that **there should be no cross-subsidisation of General Fund services**. The provision of the service in the later months of the strike was less of a reactive service and had more elements of a replacement waste service. If there were savings



to the General Fund over these months as a result then reimbursement should be made from the Waste budget to the HRA. The nature of the dispute (working to rule / striking for a few hours a day) makes arriving at a General Fund saving more complex to calculate.

- 6.4 A number of London boroughs charge an element of refuse collection to their HRA. A Grant Thornton report concluded that they are legitimate HRA charges as long as they are over and above the standard refuse collection service. It is clear that BCC tower blocks received a more regular service than the standard during the industrial action (given that the standard service resulted in thousands of reports of missed collections) but it is unclear what that level of service would have been if alternative arrangements had not been made with Housing Repairs contractors.

## **7. Recommendations**

- 7.1 The Directorate should review the level of additionality provided between July 2017 and October 2017 compared to the Council Tax funded service received by other Birmingham households. Costs that cannot be justified as additionality or exceptional health and safety works should be reimbursed to the HRA.
- 7.2 The Directorate may wish to consider formally consulting on the HRA funding waste costs of an exceptional nature during the next rent consultation.
- 7.3 Orders for health and safety works should be more specifically worded and an audit trail should be preserved that will back up and justify exceptional costs. The Finance team need to be robust in challenging compliance with the statutory ringfence.
- 7.4 It would be advisable to commission a review of all HRA recharges from the General Fund to gain a definitive view on current practice. This review should cover direct charges and internal recharges.