

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:	4986
Author:	Raina Mason
Department:	Finance and Resources
Contact:	Raina Mason (Job Title: Solicitor, Email: raina.mason@nottinghamcity.gov.uk, Phone: 01158764394)
Subject:	Housing disrepair claims - locum support
Total Value:	£411,543.60 (Type: Revenue)
Decision Being Taken:	<ol style="list-style-type: none">1. Extend engagement of three current locum disrepair Solicitors for a further period of 12 months and engage a fourth locum solicitor for the same period, with the cost to be charged to the HRA;2. To seek to secure the engagement under a call-off from a compliant framework.
Reasons for the Decision(s)	<p>Disrepair case numbers have increased over a short period of time and continue to rise due to the area being the focus of "volume" litigation from law firms nationally. A lack of fixed costs regime being in place for legal costs in these claims to date has exacerbated this. Fixed costs may be introduced in future, as part of the judicial process, but fixed costs have been postponed for a further 2 years at least, so volumes are not likely to reduce until then. On that basis, we require:</p> <ol style="list-style-type: none">1. Extension of current locums (3 full time) for 12 months - this is required, with the full costs to be met by the HRA, to regularise the position on current locums. The locums work on purely housing disrepair cases so the work is directly related to social housing costs.2. New (fourth) locum - to be funded from the HRA - to resource the team appropriately and meet workload demands. Currently the team is only resourced by 2 permanent solicitors and 2 legal assistants, which is inadequate. The position will be regularly reviewed and if additional permanent vacancies can be recruited to and this leads to less locum provision being needed, locum reliance can be reduced.
Other Options Considered:	<ol style="list-style-type: none">1. Use of external law firms to deliver this work - this option has been discounted due to the much higher cost per case and the unpredictability of case values and numbers, so this is an unquantifiable option and risk;2. To increase permanent staffing even further - whilst we will still try to recruit to vacancies in the team, increasing that further would not be appropriate because after 2 years, fixed costs may be introduced resulting in a reduction in the number of claims potentially.

Background Papers: DDM 4695, Disrepair locum - for information and not for publication

Unpublished background papers: DDM 4695.pdf

Published Works: DDM 4695

Affected Wards: Citywide

Colleague / Councillor Interests:

Any Information Exempt from publication: Yes

Exempt Information:

Description of what is exempt: Background reasons, case details and numbers, and information regarding the types of claims received.

An appendix (or appendices) to this decision is exempt from publication under the following paragraph(s) of Schedule 12A of the Local Government Act 1972

5 - Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. The public interest in maintaining the exemption outweighs the public interest in disclosing the information because it relates to current specific legal proceedings and tactics relating to housing disrepair.

Documents exempt from publication: Disrepair locum - for information not for publication.pdf

Consultations: Those not consulted are not directly affected by the decision.

Crime and Disorder Implications: None

Equality: EIA not required. Reasons: The decision does not include any new or change in policy, service or function.

Decision Type: Portfolio Holder

Subject to Call In: Yes

Call In Expiry date: 20/07/2023

Advice Sought: Legal, Finance, Procurement, Human Resources

Legal Advice: This decision seeks authority to extend the current locums for a period of 12 months and retain a fourth locum to cover work that cannot be covered by existing resources, including the extended locums. The funding is to be sourced from the Housing Revenue Account as the locums will be working purely on housing disrepair cases directly related to social housing costs. The proposal raises no significant legal issues. The proposal will mitigate the legal risks faced by the Council linked to potential claims based on housing disrepair. The use of a complaint framework to engage the locums will ensure a compliant route to market in accordance with the relevant legal requirements and the Council's constitution.

Advice provided by Anthony Heath (Contracts and Commercial) - 03/07/2023.

Finance Advice:

The original DDM from August 2022 requested an additional £182,000 for the appointment of additional, permanent legal resource to handle housing disrepair claims. The majority of these posts have now been appointed to, however, the scale of claims being made against the Council continues to increase and outstrips current the resources ability to process them.

As a result, a further £411,541 is being sought to add further flexible resource to manage this service, through the appointment of an additional locum solicitor, as well as the extension of the three existing locum solicitors for a period of 12 months.

Whilst this is a significant sum, the risks to the Council and the HRA, both reputationally and financially, are even greater. At present there are circa 600 cases outstanding, all of which have the potential to attract a £250 fee if cases are not dealt with promptly. This is in addition to the unquantifiable costs of external legal fees payable to those firms bringing cases against the council, were they not successfully defended. These legal fees, until the introduction of the fixed fee limit, can be at present unlimited. There are also the further risks of not being able to negotiate a reasonable time period to undertake repairs, leading to further potential legal claims and costs, as well as the cost of compensation to tenants where cases are not defended successfully.

The additional resource requested clearly mitigates to some degree all of these risks, however it is not possible to determine exactly the amount.

The request for additional legal resource to handle disrepair claims relates purely to the repair and maintenance of Council Housing Stock, and therefore is to be funded wholly from the HRA.

Advice provided by Sam Davidson (Senior HRA Accountant) on 13/07/2023.

Procurement Advice:

There are no procurement implications with the recommendations set out in the report, as long as the engagement/s of locums is via a compliant framework or openly tendered inline with Public Contract Regulations.

Advice provided by Sue Oliver (Category Manager - Procurement) on 06/07/2023.

HR Advice:

Proposal seeks to extend current agency arrangement and increase capacity through an additional appointment to meet current demand in casework.

It is recognised that workers engaged for more that 14 weeks will qualify for a number of employment rights having worked over 14 weeks. (Including comparable holiday/overtime entitlement). These rights do not include entitlement to redundancy so extending the arrangement into a second year for agency workers currently engaged would not result in a redundancy liability.

Continuing to extend the agency arrangement has the potential to impact NCC employees working alongside the role who may perceive a 2 tier workforce. Recruitment strategies should continue to be explored to appoint to the role on NCC terms and conditions at the earliest opportunity, this could include consideration of a market supplement.

Advice provided by Andrew Griffiths (Service Redesign Consultant) on 07/07/2023.

Signatures

Jay Hayes (Portfolio Holder for Housing)
SIGNED and Dated: 13/07/2023
Sajeeda Rose (Corporate Director of Growth & City Development)
SIGNED and Dated: 13/07/2023