

Report to: **STRATEGIC COMMISSIONING BOARD**

Date: 20 February 2018

Officer of Strategic Commissioning Board Sandra Whitehead Assistant Executive Director Adult Services

Subject: **HOUSING MANAGEMENT AGREEMENTS SUPPORTED HOUSING SCHEMES**

Report Summary:

The Council has previously entered into a number of leases or management agreements with Registered Social Landlords to secure properties where people with disabilities can reside outside a formal care home setting. These are now in need of review.

In the Comprehensive Spending Review in November 2015, the Government outlined their plans to extend Local Housing Allowance (LHA) to social landlords. Local Housing Allowance is a method by which local authorities identify how much housing benefit a claimant is entitled to, that supports them in paying the rent/accommodation charge and eligible service charge. The risks of these changes was presented to Board in February 2017 however the Government has decided not to implement the proposed reforms across supported housing schemes thus reducing the financial impact originally reported.

Despite the retraction of the LHA cap there are still elements of risk in terms of supported housing provision that need highlighting in terms of due diligence and the integration agenda. The specific risks relate to additional costs incurred such as meeting fire regulations, voids and rent guarantees with housing providers and the robustness of the agreements that are in place with landlords. It is essential that we enter into management agreements with Registered Social Landlords to ensure that arrangements are robust going forward and that risk is shared and reduced.

The actual amount of Housing Benefit paid to tenants to assist with rental costs is £1.6 million per annum, and this is managed by the housing management function of Adult Services.

Recommendations: To acknowledge the potential risks as detailed in the report and to authorise the expenditure from pooled funding resources if called upon.

Financial Implications:
(Authorised by the statutory Section 151 Officer & Chief Finance Officer)

ICF Budget	£'000
TMBC – Adult Services Section 75 Strategic Commissioning Board	1,600
Additional Comments Housing benefit payments to the associated tenants to assist with their rental costs for supported housing equate to £1.6 million per annum.	

It is essential that housing management agreements provide clarity regarding the responsibilities of all parties and their liabilities to ensure future risks are managed. Examples include meeting the requirements of fire regulations or agreement around adaptations to properties.

**Legal Implications:
(Authorised by the Borough
Solicitor)**

The Council has for several years operated sheltered housing accommodation involving several registered social landlords. These arrangements are in need of review to ensure they remain current with legislation and the rights and obligations of each party is agreed and documented.

Under the existing and proposed arrangements, the Council is required to guarantee rent payments. Rent on let accommodation is generally and currently funded by housing benefit with the Council retaining the risk of voids.

Upon completion of the management agreements the service needs to work with the RSL to ensure that appropriate and robust tenancy agreements are put in place to regularise occupation.

**How do proposals align with
Health & Wellbeing Strategy?**

This proposal is about ensuring that the organisation and tenants are adequately protected in terms of housing management and that adequate controls are in place to manage future risk.

**How do proposals align with
Locality Plan?**

This proposal is about ensuring that the organisation and tenants are adequately protected in terms of housing management and that adequate controls are in place to manage future risk.

**How do proposals align with
the Commissioning
Strategy?**

This proposal is about ensuring that the organisation and tenants are adequately protected in terms of housing management and that adequate controls are in place to manage future risk.

**Recommendations / views of
the Health and Care Advisory
Group:**

Not applicable.

**Public and Patient
Implications:**

To ensure service users in supported housing and supported accommodation are protected in terms of increased costs associated with housing legislation and guidance.

Quality Implications:

To ensure that service users who live in supported housing and supported accommodation have accessible, safe and affordable housing options.

**How do the proposals help
to reduce health
inequalities?**

Through the provision of safe and affordable housing options to support individuals living in the community. Housing is a key determinant in terms of health and wellbeing.

**What are the Equality and
Diversity implications?**

To ensure that individuals have access to safe and affordable housing.

**What are the safeguarding
implications?**

None identified.

**What are the Information
Governance implications?
Has a privacy impact
assessment been
conducted?**

All information contained in agreements will be stored in a secure manner in line with information management and governance.

Risk Management:

Robust management agreements are necessary to provide a structure in terms of duties and responsibilities across RSL's and the Council in terms of supported housing schemes. The primary areas are:

- To detail mutually agreed duties and responsibilities across partner organisations.
- To provide structure in terms of funding.
- To address appropriate procedures in terms of rent guarantee and voids management.
- To agree mechanisms for rent reviews.

The fundamental function of the agreements are to help manage current and future risk.

Access to Information :

The background papers relating to this report can be inspected by contacting Mark Whitehead (Head of Operations)



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1. INTRODUCTION

- 1.1 The Council has previously entered into a number of leases or management agreements with Registered Social Landlords to secure properties where people with disabilities can reside outside a formal care home setting. In most cases accommodation is shared with a number of other people and support is provided by either the Council itself through the Homemaker Service or via external service providers.
- 1.2 Most lease arrangements and management agreements came to an end a number of years ago, with the exception of a lease with New Charter Housing Trust Limited for various plots of land and properties in Tameside. The Council and Registered Social Landlords have continued to operate the arrangements broadly in accordance with their terms however there is a need to review these arrangements and ensure that robust documentation is in place to safeguard the continued availability of properties for the future.
- 1.3 This report follows the February 2017 report which highlighted the Governments proposals for welfare reform and specifically proposed the introduction of the LHA rent cap across supported housing schemes which would have had a significant impact on individual's housing benefit levels. This would have resulted in reduced income as tenants are unable to meet their liability to fund housing rents and associated housing related costs across supported housing schemes, due to the shortfall in housing benefit payments. This has since been retracted by Government however one key recommendation raised within the report was to jointly develop robust management agreements with Registered Social Landlords to ensure appropriate legal arrangements are in place defining roles and responsibilities of all parties.
- 1.4 Supported housing is of vital importance to vulnerable people who live within the community, and usually consists of the provision of housing and support to individuals to maintain their accommodation and exercising their rights to live within the community as citizens of that community. Supported housing was the response to "care in the community" and supported the closure of long-stay hospitals and hostels which used to provide more institutional support to vulnerable people. The supported housing programme assists in providing housing options to people resettling back to the Tameside area from out of area placements and also assisted in rehousing people who lived in long-stay hostels within the borough. Supported housing now forms the main community based accommodation option for younger adults who have disabilities.

2. SUPPORTED HOUSING IN TAMESIDE

- 2.1 Supported housing can be described as any housing scheme where housing, support and sometimes care services are provided to help people to live as independently as possible in the community.
- 2.2 Supported housing users include those who would otherwise be homeless (including those at risk of domestic abuse); older people and people with disabilities (many of whom would otherwise be living in long-term residential care or hospital settings).
- 2.3 In Tameside we provide a wide range of supported housing services within the community. The report relates directly to the risk posed by the changes to adults who have learning disabilities, mental ill health, and/or disabilities living within supported housing schemes. These services are provided across a range of accommodation options including houses and flats across the borough. In many instances 24 hour staffing support is provided to individuals due to their support needs and vulnerability. Housing is provided by a range of providers including Registered Social and private landlords. It is because of these specific needs and supports costs that supported housing rent and housing related support costs are higher than the general population.

- 2.4 Services currently support individuals to claim Housing Benefit to cover the rental costs of accommodation and to also cover service costs in terms of providing certain housing related functions around the individual's tenancy. In some instances Adult Services act as a third party agent in the tenant landlord relationship and will administer and process Housing Benefit and rent payments to landlords on behalf of the tenant. In other instances, the Council has taken a lease of the property and primarily acts as landlord. The Council's role is often to facilitate the landlord/tenant relationship because the individual tenant may lack the mental capacity to carry out this function independently. This property management function includes annual rent reviews and landlord liaison around housing standards, health and safety and maintenance of the property. This function / relationship should be formalised through management agreements between the Council and landlords which clearly defines duties and responsibilities of both parties and ensures that the requirements of housing benefit regulations are complied with.
- 2.5 Adult Services currently manage:
- 61 properties providing housing for 297 people who have learning disabilities. (This includes the Intensive Support Service for 8 individuals and Lomas Court for 24 individuals who have physical disabilities).
 - 6 supported accommodation schemes housing 67 people who have mental ill health.
- 2.6 Actual Housing Benefit paid to tenants in receipt of these services equates to £1.6 million per annum.

3. CURRENT ARRANGEMENTS WITH REGISTERED SOCIAL LANDLORDS

- 3.1 The Council has a mixed portfolio of properties with Registered Social Landlords which comprise one of the following:-
- 3.2 **Leases.** The Council entered into several leases with different Registered Social Landlords:

New Charter – The Council entered into a lease with New Charter Housing Trust Limited on 31 May 2002 concerning various plots of land and premises in Tameside. This relates to 6 actual properties for a term of 99 years for an annual rent of £45,000 per year. The lease includes a rent review provision where rent is reviewed every three years based upon changes to the Retail Price Index between the commencement date of the lease and the rent review date. In 2012 the Council surrendered two properties upon the payment of a premium payment of approximately £100,000. New Charter have refrained from triggering the rent review provision but have indicated that its exercise remains an option if the Council is unwilling to agree the terms for a new management agreement.

Regenda - The Council entered into several lease agreements with West Pennine Housing Association Limited (now Regenda) for several properties. These were for a term of 15 years all of which have now ended. Since this time we have continued with the previous lease arrangements. Under the terms of the lease the Council can only allow the properties to be used for the Permitted Use (which does not appear to be defined) for a maximum number of occupants.

Lease agreements with other RSL's namely **Mosscares Housing Group, Great Places Housing Group** and **Progress Housing Group** have lapsed lease agreements which currently roll over until we agree new management agreements as part of this process.

- 3.3 **Management or Support Agreements.** The Council entered into a support agreement with West Pennine Housing Association Limited (now Regenda) on 7 August 1997 in relation to several properties under which the RSL would grant a tenancy to people nominated by the Council and NHS Trust. This agreement has no set end date but is now wholly out of date.

As stated above Mosscares Housing Group, Great Places Housing Group and Progress Housing Group all have lapsed lease agreements which will need replacing by new management agreements as part of this renewal process.

- 3.4 **Informal arrangements.** A number of properties and arrangements have been operated by the Council on an informal basis, some of which derive from when the Council owned its own housing stock. Whilst the property transferred to an RSL, the Council has continued to provide housing management services and/or the provision of care and support to meet individual occupants assessed social care need.
- 3.5 Housing benefit is usually currently claimed by each tenant. The properties are exempt accommodation for the purposes of the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 i.e. that the accommodation is provided by a non-metropolitan county council in England within the meaning of section 1 of the Local Government Act 1972, a housing association, a registered charity or voluntary organisation where that body or a person acting on its behalf also provides the claimant with care, support or supervision and are therefore not subject to benefit caps or rent level restrictions.
- 3.6 The management agreement with each RSL will continue until vacant possession of the last property is given up. With the exception of the New Charter agreement which requires the vacant possession of a number of linked properties (those being formerly leased) the Council can sever individual properties upon 6 months' notice to the landlord. Each agreement shall/does include provision to terminate in the event of welfare reforms which adversely affect the financial viability of the agreement

4. REVIEW OF THOSE ARRANGEMENTS AND PROPOSED DOCUMENTATION

- 4.1 The Council has been approached by several Registered Social Landlords who wish to ensure appropriate and robust documentation is in place. The Council is also keen to address these concerns and also to resolve the ambiguity with the rent review provisions in the lease with New Charter who have agreed to the surrender of the lease. The Council has reached the following position with the respective Registered Social Landlords:
- 4.2 **New Charter** - Under the management agreement the existing arrangements involving tenants will remain unchanged. In the case of a vacancy at any property, the Council through the Accommodation Options Group will nominate an individual to become a tenant of New Charter. Where there is a void, the Council is required to pay the rent. The schedule of properties is split in two, those properties which were formally leased and those currently on informal arrangements. The Council can hand back individual properties when no longer required, with the exception of the formerly leased properties where the Council is required to give vacant possession of all four properties. Discussions have taken place with New Charter who acknowledge the risks posed by welfare reform and have agreed to include provision in the management agreement to renegotiate it in the event of cuts to benefit.
- 4.3 **Regenda** – Under the management agreement the existing arrangements involving tenants will remain unchanged.
- 4.4 **Guinness** – We have exchanged drafts of the agreements with Guinness and are currently finalising detail.
- 4.5 Lease agreements with other RSL's namely **Mosscares Housing Group, Great Places Housing Group** and **Progress Housing Group** have lapsed lease agreements which currently roll over until new management agreements are agreed as part of this process.
- 4.6 The status of individual services users at the properties, with the exception of one is not as clear as it could be. There appears to be limited formal documentation in place between the

Registered Social Landlord/Council and individual and the capacity of each individual does not appear to have been fully considered. The Council has in most cases assisted the individual to claim housing benefit and has received the payment on their behalf before paying the Registered Social Landlord. On this basis each individual is likely to hold a periodic tenancy. The tenancy lasts from week to week, or month to month and so on until determined by a notice to quit given by either the landlord or the tenant. The notice must expire at the end of a relevant period and where the tenant lacks capacity and does not have an appointee then an order of court may be required to bring the tenancy to an end. A periodic tenancy can be created by express agreement or, in the absence of an express agreement, may be inferred where there is a landlord and tenant relationship and rent is demanded and paid by reference to a particular time period.

5. POTENTIAL RISK / IMPACT

- 5.1 There are significant risks not having robust management agreements in place defining and mutually agreeing duties and responsibilities across partner organisations. Lack of clarity does lead to unnecessary 'conflict' between the Council and some housing providers when work is required on properties as all organisations struggle with reduced finances to fund such works. Management agreements will provide structure and process to addressing such issues.
- 5.2 Under some schemes the Council provides a rent guarantee to landlords and therefore the risk of none payment, either through meeting the additional cost on the individuals behalf or through property voids presents a risk that will need addressing through the management agreement process.
- 5.3 A further risk is that we as a Council are acting in the tenants best interests particularly where the tenant lacks the mental capacity to make informed decisions. We have to ensure that where necessary we conduct mental capacity assessments and best interest assessments and where appropriate apply to the court of protection to ensure we are complying to the Mental Capacity Act and subsequent guidance to ensure the individuals human rights are upheld.
- 5.4 We need to ensure that mechanisms are in place through the agreements to ensure that rents are reviewed and that appropriate rent rates are set for tenants.

6. FINANCIAL CONTEXT

- 6.1 Housing benefit payments to the tenant to assist with their rental costs to cover supported housing amount to £1.6 million per annum. Rents are reviewed and agreed annually to ensure that rents are within agreed parameters although there are variances between landlords. The management agreements should provide clarity regarding the responsibilities of all parties and where liabilities should fall. Examples include meeting the requirements of fire regulations or agreement around adaptations to properties.

7. CONCLUSION

- 7.1 Prior to entering into future management agreements it is essential that senior leaders are aware of the potential risks going forward particularly in light of the risk share and due diligence process that is required for integration. Housing can have a significant draw on resources particularly when resources are limited and new reforms require increased investment in supported housing schemes to meet requirements.

- 7.2 To mitigate risk management agreements have been developed jointly with housing providers and this report seeks authorisation to incur expenditure to progress with signing and finalising these agreements to provide a legal structure to protect all parties within the relationship.

8. RECOMMENDATIONS

- 8.1 As set out on the front of the report.