

# COMMISSIONERS' INDIVIDUAL DECISION MAKING

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Wednesday, 16 September 2015

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Commissioners' Decision Log No. 28


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1. **REQUEST TO COMMISSIONERS TO DELEGATE DECISIONS IN  
RELATION TO INCENTIVE PAYMENTS (Pages 1 - 14)**

If you require any further information relating to this meeting, would like to request a large print, Braille or audio version of this document, or would like to discuss access arrangements or any other special requirements, please contact: Matthew Mannion, Democratic Services  
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# Agenda Item 1

<b>Individual Commissioner Decision</b>  Decision Log No: 028	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Aman Dalvi, Corporate Director, Development & Renewal	<b>Classification:</b> Unrestricted
<b>Request to Commissioners to delegate decisions in relation to incentive payments</b>	

<b>Is this a Key Decision?</b>	No
<b>Decision Notice Publication Date:</b>	Not required
<b>General Exception or Urgency Notice published?</b>	Not required
<b>Restrictions:</b>	None

## EXECUTIVE SUMMARY

This paper is seeking the Commissioners' agreement to delegate authority to the Corporate Director, Development and Renewal (or his nominee), to agree one-off incentive payments for Assured Short-hold tenancies brokered by the Council to prevent homelessness/cease the Council's homelessness duty by way of a Private Rented Sector Offer and financial incentives for accommodation portfolio holders to offer multiple properties for use as temporary accommodation.

Full details of the decision sought, including setting out the reasons for the recommendations and/or all the options put forward; other options considered; background information; the comments of the Chief Finance Officer; the concurrent report of the Head of Legal Services; implications for One Tower Hamlets; Risk Assessment; Background Documents; **and other relevant matters are set out in the attached report.**

## DECISION

The Commissioners are recommended to:

1. Agree to delegate authority to the Corporate Director, Development and Renewal (or his nominee), to decide one-off incentive payments for Assured Short-hold tenancies brokered by the Council to prevent homelessness/cease the Council's homelessness duty by way of a Private Rented Sector Offer; and

2. Agree to delegate authority to the Corporate Director, Development and Renewal (or his nominee), to decide financial incentives for accommodation portfolio holders to offer multiple properties for use as temporary accommodation.

## APPROVALS

1. **(If applicable) Corporate Director proposing the decision or his/her deputy**

I approve the attached report and proposed decision above for submission to the Commissioners.

Signed .....  ..... Date ..... 15/9/15

2. **Chief Finance Officer or his/her deputy**

I have been consulted on the content of the attached report which includes my comments.

Signed ..... B. Smith ..... Date ..... 15/9/15

3. **Monitoring Officer or his/her deputy**


I have been consulted on the content of the attached report which includes my comments.

~~(For Key Decision only - delete as applicable)~~

~~I confirm that this decision:-~~

~~(a) has been published in advance on the Council's Forward Plan OR~~

~~(b) is urgent and subject to the 'General Exception' or 'Special Urgency' provision at paragraph 18 or 19 respectively of the Access to Information Procedure Rules.~~

Signed .....  ..... Date ..... 16/9/15

4. **Commissioner**

I agree the decision proposed in paragraph above for the reasons set out in section 1 in the attached report.

Name ..... MAY CAWSE ..... Signed .....  .....

Date ..... 16/9/15

Name ..... Signed .....


Date .....

Name ..... Signed .....

Date .....

Name ..... Signed .....

Date .....

<b>Commissioner Decision Report</b> 14 September 2015	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Aman Dalvi Corporate Director Development & Renewal	<b>Classification:</b> Unrestricted
<b>Request to Commissioners to delegate decisions in relation to incentive payments</b>	

<b>Originating Officer(s)</b>	Lorraine Douglas
<b>Wards affected</b>	All
<b>Key Decision?</b>	No
<b>Community Plan Theme</b>	<b>A Great Place to Live</b>

### Executive Summary

This paper is seeking the Commissioners' agreement to delegate authority to the Corporate Director, Development and Renewal (or his nominee), to agree one-off incentive payments for Assured Short-hold tenancies brokered by the Council to prevent homelessness/cease the Council's homelessness duty by way of a Private Rented Sector Offer and financial incentives for accommodation portfolio holders to offer multiple properties for use as temporary accommodation.

### Recommendations:

The Commissioners are recommended to:

1. Agree to delegate authority to the Corporate Director, Development and Renewal (or his nominee), to decide one-off incentive payments for Assured Short-hold tenancies brokered by the Council to prevent homelessness/cease the Council's homelessness duty by way of a Private Rented Sector Offer; and
2. Agree to delegate authority to the Corporate Director, Development and Renewal (or his nominee), to decide financial incentives for accommodation portfolio holders to offer multiple properties for use as temporary accommodation.

## **1. REASONS FOR THE DECISIONS**

- 1.1 The Council is required to provide accommodation to eligible homeless households who have a priority need as defined by Part VII of the Housing Act 1996 and the Homelessness Act 2002.
- 1.2 88% of all homeless households are accommodated in privately rented accommodation. 52% are in self-contained properties that have been procured from private landlords under a head licence held by the Council (ie the Council takes on the tenancy of the property, which is then sub-let to the homeless household). These are known as Private Licenced Accommodation (PLA).
- 1.3 In addition the Council has the power to broker direct tenancies in the private rented sector for people who are threatened with homelessness, or for whom a homeless duty has been accepted and a Private Rented Sector Offer (PRSO) is made to discharge that duty.
- 1.4 The Council also exercises its power to broker PRSOs for single, non-priority homeless applicants in certain circumstances.
- 1.5 The Council has been unable to procure sufficient suitable accommodation to fulfil its statutory duties under sections 188 and 193 of the Housing Act 1996 for over two years.
- 1.6 This is due to the Council's inability to match market rents at a time when the subsidy for temporary accommodation has been frozen since January 2011, having been cut in April 2010.
- 1.7 Since early 2013 the number of families accommodated in bed & breakfast hotels contrary to the Council's legal duties has steadily increased, such that the Council has had to increase its fees for temporary accommodation and to identify other ways to incentivise private landlords to supply their properties.
- 1.8 The Council has for many years provided financial incentives to private landlords to supply properties to the Housing Options Service which can be used to either prevent a homelessness application being made or, once a homelessness duty has been accepted, as a private rented sector offer that can discharge the Council's homelessness duty. In these circumstances the tenancy agreement is between the Tenant and landlord; the Council makes one-off incentive payments currently set at between £1,500 and £4,000 depending on the size and location of the property and length of tenancy

agreement.. This is in accordance with the Council's published incentive scheme for landlords offering assured shorthold tenancies. The Council also refunds the Accreditation fee of £89.90 per attendee if an accredited, registered landlord subsequently offers properties to the Council.

- 1.9 On 24 March 2015 the Corporate Management Team agreed a report from the Head of Housing Options which included a proposal to commence the payment of incentive payments for temporary accommodation which the Council takes on a Head Licence and then sub-lets to homeless households, provided the landlord supplies more than one property at a time for a minimum period of two years. These incentives are currently capped at £500 per property for out of London properties and £1,000 for those within London.
- 1.10 Since that time some accommodation suppliers have provided multiple properties in expectation of receiving the agreed incentive payment. Those payments are currently held up pending their approval. Another provider has 20 properties in the pipeline, six due to be delivered in the next few weeks. It is therefore urgent that approval is granted and that delegation is confirmed, as it is necessary to agree terms without delay or risk losing the properties.
- 1.11 There are risks of reputational damage if payments are delayed, which in turn further undermines the Council's ability to procure accommodation.
- 1.12 Agreeing the incentive payments provides better value for money than bed and breakfast accommodation, and also minimises the risk of challenge where families are accommodated in bed and breakfasts for more than six weeks.

## **2. ALTERNATIVE OPTIONS**

- 2.1 If delegating authority is not agreed the incentive schemes will become unviable as it will not be possible to obtain agreement for these payments quickly enough to secure the properties, unless the Council agrees to pay for the void periods in full pending confirmation of the payments from the Commissioners.
- 2.2 The alternative is to continue to accommodate increasing numbers of families unlawfully as many families are accommodated in bed and breakfast in excess of 6 weeks;
- 2.3 To pay even higher rents to the landlords



- 2.4 To use high numbers of social housing voids as temporary accommodation, but this would reduce the number of properties available to provide permanent offers to homeless households, and to other people in severe housing need.

### **3. DETAILS OF REPORT**

- 3.1 The Council is required to provide suitable temporary accommodation in accordance with its statutory duties to homeless households under Part VII of the Housing Act 1996. The Housing Options Service employs a range of mechanisms to procure accommodation for the prevention and relief of homelessness.
- 3.2 The Suitability of Accommodation (England) (Order) 2003 prohibits local authorities placing families with dependent children or a pregnant woman into bed & breakfast hotels, or other accommodation with shared facilities, except in an emergency, and then only for a maximum of six weeks.
- 3.3 The crisis in supply of temporary accommodation resulted in the number of families accommodated unlawfully in hotel accommodation peaking at 243 on 6 July 2015.
- 3.4 The Council has for many years entered into agreements with private and social landlords for the use of properties for the prevention and relief of homelessness. Agreement on what should be paid for the use of those properties is ordinarily delegated to the Head of Service for the Housing Options Service.
- 3.5 This includes determining the value of financial incentives to private sector landlords to provide properties to prevent the need for a homelessness application to be made, for use as temporary accommodation and to enable the Council to discharge its statutory duties to homelessness households.
- 3.6 All properties are procured from accredited, registered landlords who are required to attend the landlord accreditation course run in accordance with the London Landlord Accreditation Scheme and are subject to a range of checks to satisfy the Council they are fit and proper persons to act as private landlords before any properties are accepted.
- 3.7 All properties are required to meet a set of standards to ensure they are legally compliant and suitable. Properties taken as temporary accommodation are managed by the Council and are subject to inspection. Properties taken as PRSOs are normally inspected before they are offered in discharge of the Council's homelessness duties or the exercise of its powers.

- 3.8 A Team Manager or Team Principal is responsible for passing individual payments for processing once all necessary checks have been carried out. Payments are authorised by the Service Manager, under the delegated authority of the Corporate Director, Development and Renewal.
- 3.9 Once a property has been offered and accepted for use by the Council it is essential that it is let and any payments associated with the procurement are processed without delay in order to secure the property for use, ensure it is not offered elsewhere and create the conditions for sustained supply. Delays in lettings of even a few days results in properties being withdrawn by landlords anxious to minimise their rent loss and deters them from offering properties to the Council in the future.
- 3.10 Homelessness Grant funds the cost of the PRSO incentives and refunds of the landlord accreditation fee. Expenditure in 2014/15 was in the region of £200,000.
- 3.11 The costs of incentives for PLAs will be recovered from the rent charged to the homeless applicant that incorporates an Admin fee of, typically, £30 or £40 per week to recover the costs of procuring and managing temporary accommodation. The net weekly cost will vary depending on the length of time the property is used by the Council, but will not exceed £4.81 per property per week if out of London, or £9.62 if in London on the current incentive levels.
- 3.12 Financial incentives have been included on the corporate grant list and this paper is seeking the Commissioners' agreement to agree to delegate authority to the Corporate Director, Development and Renewal or his nominee, to agree one-off incentives to facilitate the procurement of properties for the prevention and relief of homelessness.

#### **4. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 4.1 Due to a combination of the increasing numbers of applications to the homelessness section, the scarcity of available temporary accommodation and the high levels of rent charged to the Council, significant service delivery and budgetary pressures are being faced by the Housing Options section, particularly in respect of the increasing need to utilise bed and breakfast accommodation.
- 4.2 A previous report sought the approval of the Commissioners to the making of specific individual incentive payments to various landlords to secure the supply of short-term accommodation. This further report seeks approval to

delegate the authority to make future payments under this initiative to the Director or their nominee?

- 4.3 The incentive payments take the form of “one-off” premium payments, and vary in amount depending on the size of the property and the length of the tenancy agreement. Similar payments have been made to landlords over recent years to ensure that properties are made available in order to discharge the Council’s homelessness duty and in particular, to relieve the necessity to place families in bed and breakfast accommodation.
- 4.4 As outlined in the report, landlords often require urgent decisions to be made by the Council on whether it wishes to utilise a property, with the risk that if decisions are not made in a timely manner the property will be withdrawn (paragraph 3.9). Delegation of the approval for incentive payments to the Corporate Director, Development & Renewal or his nominee should speed the decision making process and will mean that this risk will be reduced.
- 4.5 Discretionary payments are made in accordance with the advertised Council scheme, and are funded within existing Homeless Services temporary accommodation budgets. These budgets are supported by Homelessness Prevention Grant that is received from the Department for Communities, Localities and Culture (DCLG). The cost of incentive payments is estimated at approximately £200,000 per annum.
- 4.6 On receipt of the incentive payment, the landlord will enter a statutory Assured Shorthold Tenancy agreement for a specified time period. As well as protecting the tenant, this ensures that the Council will have legal recourse if an incentive payment is made but the property is not made available for its intended use.

## **5. LEGAL COMMENTS**

- 5.1. The power of the commissioners to make decisions in relation to grants arises from directions made by the Secretary of State on 17 December 2014 pursuant to powers under sections 15(5) and 15(6) of the Local Government Act 1999 (the “Directions”). Paragraph 4(ii) and Annex B of the Directions together provide that, until 31 March 2017, the Council’s functions in relation to grants shall be exercised by appointed Commissioners, acting jointly or severally. This is subject to an exception in relation to grants made under section 24 of the Housing Grants, Construction and Regeneration Act 1996, for the purposes of section 23 of that Act (disabled facilities grant). Para 4(iii) of the Directions provides that the Council shall comply with any instructions of the Commissioners in relation to the exercise of the functions listed in

paragraph B which includes the making of grants. The Council shall also provide such information and assistance as the Commissioners may require for the purposes of exercising these functions. It is therefore open to the Commissioners to make arrangements for the decisions regarding these grants to be taken by the Corporate Director, Development and Renewal or his nominee.

- 5.2. The Council has duties under the Housing Act 1996 to secure that accommodation is available for eligible applicants who are homeless, in priority need and not intentionally homeless.
- 5.3. The Council has a specific duty under section 188 Housing Act 1996 to provide interim temporary accommodation if there is reason to believe that an applicant may be homeless, eligible for assistance and has a priority need. Pending a decision of that duty the authority must secure accommodation for their occupation.
- 5.4. Once the Council is satisfied that a housing duty is owed, it may discharge its duties by making
  - (a) an offer of suitable accommodation under section 193 of the Housing Act 1996;
  - (b) a final offer of suitable accommodation by way of allocation through Part 6 Housing Act 1996; or
  - (c) an offer of an assured shorthold tenancy with a private landlord
  - (d) referring the applicant to another local housing authority
- 5.5. The Homelessness (Suitability of Accommodation) Order 1996 specifies that when discharging a housing function the accommodation must be suitable, which includes taking into account whether or not the accommodation is affordable
- 5.6. Further, the Homelessness (Suitability of Accommodation) (England) Order 2003 provides that B&B accommodation is not to be regarded as suitable for an applicant with family commitments i.e applicants who are pregnant or applicants whose dependent children reside or might reasonably be expected to reside with them. Where no accommodation other than B&B accommodation is available for occupation by an applicant with family commitments the applicant should not occupy the B&B accommodation for a period, which exceeds 6 weeks.
- 5.7. By virtue of section 111 of the Local Government Act 1972, the Council has power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. This may involve expenditure, borrowing or lending of money or the acquisition or disposal of

any property or rights. This incidental power may support some grants in relation to preventing and/or relieving homelessness of those referred to in the body of the report.

- 5.8. The Council has a published financial incentive scheme, titled the 'Private Sector Access Scheme', which has been in existence for a number of years. The scheme assists the Council in discharging its statutory duty by offering cash payments to landlords who provide assured shorthold tenancies for persons nominated by the Council who may otherwise be considered homeless and to whom it may have a duty outlined in the comments above. The payments range from £1,500 to £4,000 per property offered and the details of the published scheme are attached to this report.
- 5.9. When considering whether or not to delegate authority to the Corporate Director, Development and Renewal (or his nominee), consideration should be given to the arrangements in place to ensure that the power is exercised consistent with its best value arrangements. The Council is obliged as a best value authority under section 3 of the Local Government Act 1999 to "make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness" (the Best Value Duty). The proposal that the power to make decisions be delegated will enable the Council to respond promptly thus securing much needed properties.
- 5.10. Part of complying with the Council's Best Value duty is ensuring that the Council obtains value for money. The report confirms that the effect of the grant scheme is to assist the Council in securing accommodation which is considered to be better value for money than bed and breakfast accommodation..
- 5.11. When discharging its housing functions, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't (the public sector equality duty). Although being homeless or at risk of becoming homeless is not a protected characteristic under the Act, paragraph 6.2 confirms that BME and single parent families are disproportionately represented within the group for whom the temporary accommodation is suitable.

## **6. ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1. When exercising its functions, including housing functions , the Council has a duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination and advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. This proposal involves the Council's exercise of its powers to acquire property for the purposes of providing for homeless persons. The allocation and use of accommodation for homeless households is determined in accordance with the statutory requirements to provide such accommodation, based on a number of relevant factors including priority need and suitability of accommodation. Reinstating the delegated authority to the Head of Service will, in accordance with the legal requirements, largely be of benefit to children who will otherwise spend extended periods in bed & breakfast accommodation or otherwise unsuitably housed.

## **7. BEST VALUE (BV) IMPLICATIONS**

- 7.1 Incentive payments have been an important tool in procuring accommodation for the prevention and relief of homelessness by way of an offer of accommodation in the private rented sector. The recent introduction of incentive payments for multiple properties offered as temporary accommodation has also resulted in some larger portfolio holders offering several properties at a time, thereby increasing the supply of self-contained properties and reducing numbers in bed & breakfast accommodation. The properties must be offered on licence to the Council for a minimum of two years, at Private Licenced Agreement rates which are typically 30% cheaper than nightly paid rates for self-contained properties, with even higher savings on bed & breakfast costs. An increase in the supply of self-contained properties and reduction in B&B placements also reduces the risk of legal challenge to the Council with associated costs and reputational damage.

## **8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 8.1 Not applicable

## **9. RISK MANAGEMENT IMPLICATIONS**

- 9.1 This proposal is intended to mitigate the risks associated with the unlawful accommodation of homeless households in B&B accommodation, and in otherwise unsuitable housing by incentivising private landlords to supply properties to the Council for use as temporary accommodation.
- 9.2 Those risks include the reputational damage and financial costs associated with legal challenges by way of judicial review and S204 Appeals, and complaints to the Local Government Ombudsman.

## **10. CRIME AND DISORDER REDUCTION IMPLICATIONS**

10.1 Not applicable.

## **11. SAFEGUARDING IMPLICATIONS**

11.1 Shared accommodation is not suitable for families with children which is why its use except in an emergency for a maximum of six weeks is unlawful. The Council has been unable to comply with its legal requirements in this respect for some time. Increasing the supply of self-contained accommodation will assist the Council to comply with its legal obligations.

11.2 There are serious safeguarding concerns with children being placed for extended periods in hotel accommodation, including the harm to children's development if spending lengthy periods in cramped, overcrowded accommodation with insufficient space to play and study. Further concerns arise from the need to share cooking, bathroom and toilet facilities with other households, including in some cases, vulnerable single adults.

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### **Linked Reports, Appendices and Background Documents**

#### **Linked Report**

- Individual Mayoral Decision - Vantage House report – 2/7/15 – partially exempt

#### **Appendices**

- As above

#### **Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012**

- None

#### **Officer contact details for documents:**

Lorraine Douglas, 020 7364 7082

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