The law and practice concerning the contracting out of housing allocations and homelessness functions

10 April 2014
CIH Housing Advice Conference
Many local housing authorities choose to contract out the performance of their statutory responsibilities set-out in Part’s 6 and 7 of the Housing Act 1996. There are a variety of arrangements currently in place, including contracting out of:

- Housing allocations functions only.
- Homelessness functions only.
- Both housing allocations and homelessness functions.
- Reviews of decisions made about allocation of housing accommodation and homelessness functions, when these functions have already been contracted out and when they haven’t.

When a local housing authority chooses to contract out the operation of these functions, they remain responsible for all decisions made, including any error made on the part of the contractor.

Any complaints about the service that is contracted out should be made to the contracting local housing authority, if someone is still not satisfied then a further complaint can be made to the Local Government Ombudsman.
Examples of existing contracted out arrangements

- Housing Review Ltd operating housing allocations and homelessness functions pertaining to reviews for 45 local authorities
- New Charter Housing Trust operating housing allocations and homelessness functions for Tameside Metropolitan Borough Council and homelessness functions for Knowsley Metropolitan Borough Council
- New Progress Housing Association operating homelessness functions pertaining to out of hours emergencies for three local authorities
- Now Medical operating housing allocations and homelessness functions pertaining to medical aspects for over 100 local authorities
- Orchard and Shipman operating homelessness functions pertaining to temporary accommodation for 11 local authorities
- RMG Ltd operating housing allocations and homelessness functions for Westminster City Council
- St. Basils operating homelessness functions pertaining to young people for Birmingham City Council
- Salford City Council operating housing allocations and homelessness functions for Trafford Metropolitan Borough Council
- Women’s Aid operating homelessness functions pertaining to domestic violence for Birmingham City Council
Principle legislation

• The key pieces of legislation pertaining to contracting out are:
  – The Local Authorities (Contracting Out of Allocation of Housing Accommodation and Homelessness Functions) Order 1996.
Contractual requirements

• Where a contract has been agreed it must not be for any longer than 10 year, furthermore a contractual agreement must include a clause that allows for the arrangement to be terminated by either the local housing authority or the relevant Secretary of State.

• The contract must clearly state the responsibilities the local housing authority will retain. Furthermore the contract must state what will occur if the contractor breaches the contract terms or if they commit a criminal offence.
Requirements of local housing authorities

• If a local housing authority decides to contract out some or all of its allocation of housing accommodation and homelessness functions then it must have regard to the law and the Homelessness Code of Guidance for local authorities, published by the UK Government in 2006.

• Sensibly local housing authorities should include both penalties and rewards in any contracts they agree with contractors, furthermore effective break clauses should also be included in any contracts agreed.

• Irrespective of whether a local housing authority retains the management and/or ownership of its housing dwellings, it continues to be responsible for:
  – Having housing allocations schemes.
  – Nominating applicants for housing accordingly to private registered providers as per agreements made.
  – Determining if someone is making an application for homelessness assistance.
  – Take an application if there is a reason to believe someone is homelessness or threatened with homelessness.
  – Deciding what duty, if any is owed to homeless applicants.
  – Satisfactorily fulfilling any duties owed to homeless household.
Requirements of private registered providers

• Any private registered provider that operates the allocation of housing accommodation or homelessness functions under contract is doing so outside of statutory duty it may have to assist local housing authorities in the performance of its statutory duties under Part’s 6 and 7 of the Housing Act 1996. Furthermore private registered providers will also be required to have their own polices for the allocations of its stock, which can exist separately from those of local authorities (although in practice many local housing authorities and private registered providers have adopted joint housing allocation policies).

• The Regulatory Code for private registered providers, published by the Homes and Communities Agency in 2012, requires social landlords to cooperate and assist local housing authorities with:
  – Fulfilling their strategic duties to satisfy housing needs.
  – Performance of homelessness duties as described in nominations agreements.
  – Participate in local choice based lettings schemes, or set out reasons for not doing so.
  – Allow an agreed portion of its dwellings to be allocated via nominations from the local housing authority in accordance with its housing allocations policy.
Specifics of contracting out housing allocations functions

• Overall decisions about a local housing authority’s housing allocations policy remains the responsibility of local authorities. Case law (Ahmed v Newham Council, 2009) asserts that persons with expert knowledge of local housing needs should assist politicians to determine the following matters:
  – Whether or not to offer choice of preference to applicants registered for re-housing.
  – Whether or not to offer additional preference to certain applicants types and if so under what terms.
  – How applicants owed a reasonable preference will be prioritised between each other.
  – Whether or not applicants with a local connection or whom are making a valuable contribution to the community will be prioritised over other applicants.

• A local housing authority can contract out the following functions, but remains liable for them:
  – Taking applications.
  – Giving information on applying for housing.
  – Providing advice and assistance with applying for housing.
  – Processing applications.
  – Deciding whether to accept the applicant on the housing register.
  – Making an allocation of a dwelling to an applicant.
  – Nominating an applicant to a private registered provider.

• A local housing authority cannot contract out the following functions:
  – Devising a housing allocations scheme.
  – Allocating dwellings in accordance with the chosen scheme policy.
  – Ensuring the local allocations policy is available for anyone to view.

• If the contractor makes a decision about the allocation of housing accommodation that is irrational, illegal, or fails to follow public law procedure requirements then the local housing authority is culpable and not the contractor.
Specifics of contracting out homelessness functions

• A local housing authority remains responsible for the ensuring a review of homelessness is carried out at least every five years, with the conclusions being used to formulate a homelessness strategy. Local authorities can contract out then act of undertaking a homelessness review and the production of a homelessness strategy.

• A local housing authority cannot contract out the following functions:
  – Powers to award grant funding of financial gifts, to individuals or organisations for purpose of providing information and advice on homelessness.
  – Powers to provide commercial and/or residential dwellings, or other materials plus local government personnel to individuals or organisations for purpose of providing information and advice on homelessness.
  – Powers to provide money, people or materials to voluntary organisations for the purpose of tackling homelessness.
  – Provide assistance, when reasonable to do so, to another local housing authority in the performance of its statutory homelessness functions.
  – Ensuring that any accommodation secured to fulfil interim or main housing duties is suitable.
  – Ensuring that all decisions made are rational, legal, and have followed public law procedural requirements.

• There has been some uncertainty as to whether reviews of homelessness decisions can be contracted out. Recent case law (De-Winter Heald v Brent, 2010) has clarified that this, concluding that local authorities can indeed contract out this function. Where local authorities choose to contract out this function it must be clearly stipulated in any contractual documents agreed between a local housing authority and the contractor.

• Section 206, Part 7, of the Housing Act 1996 regulates the contracting out of supplying accommodation to homeless households. This allows local housing authorities to source or secure accommodation from private registered providers, private landlords, or even family and friends of a homeless applicant. Furthermore it allows for homeless applicants to obtain their own accommodation. It remains the responsibility of the local authority to ensure
Appraising options for contracting out

• Prior to committing to contracting out the allocation of housing accommodation and homelessness functions, local authorities are encouraged to consider advice from the Audit Commission (Housing after Transfer; The Local Authority Role, 2002) and The Office of the Deputy Prime Minster (Housing Allocations, Homelessness and Stock Transfer; a guide to the key issues, 2004). Particular attention should be paid to the following principle recommendations:
  – Undertake a scrutiny report or best value review.
  – Consult with service users.
  – Consider a range of service providers.
  – Consider the impact of contracting out the functions.
  – Ensure there are detailed service standards.
  – Adopt specific performance measurements and monitoring arrangements.
  – Periodically review the suitability of any contract adopted.
  – Enable any contract agreed to be altered when necessary.
  – Ensure there is a clause for the contract to be terminated by local authority.
Evidence of contracting out

• There is limited independent evidence on the success of contracting out allocation of housing accommodation and homelessness functions; no academic research has been carried out to date.

• There is no official record of how many local housing authorities have contracted out either or both of these functions. Furthermore there is no intelligence that captures which organisations are operating these functions under contract.

• Recent research carried out by Neil Morland Housing Consultant Ltd on behalf of Cheshire Countywide Homelessness Forum (assessment of market opportunities for outsourcing or establishing shared housing options services, 2013), concluded there was no qualitative or quantitative advantage to contracting out nor retaining in the allocation of housing accommodation and/or homelessness functions.

• 20 organisations participated in the research
  – 14 local authorities
  – 3 private registered providers
  – 1 arms length management organisation
  – 1 limited company
Evidence of contracting out

• The research concluded that decisions as to contract out were primarily driven by political ideology. There was no evidence to show that contracted out services performed better than those retained by local housing authorities, nor is there any proof that one option offered better value for money than another.

• There are plenty of examples whereby local housing authorities have successfully contracted out services to private registered providers, limited companies and neighbouring local housing authorities. Furthermore there are examples of where local housing authorities have terminated arrangements for contracting out and returned to operating the functions themselves.

• The majority of local housing authorities haven't contracted out their allocation of housing accommodation and homelessness function, many of which hadn't ever considered doing so.

• There was evidence that establishing shared services across three or more local authority areas would allow saving to be achieved without compromising the quality or effectiveness of services provided. Three or more local housing authorities could be accomplish by jointly:
  – Contracting out their functions to one contractor.
  – Establishing a joint venture company or special purpose vehicle to operate the functions.
  – Agreeing for one local housing authority to operate the functions on behalf of the other local housing authorities.
Key steps for contracting out

• Seek advice from a housing lawyer as what functions can be contracted.

• Ensure complete compliance with legislation on contracting out.

• Check proposed contract terms comply with regulatory requirements.

• Be clear about which persons will undertake the functions that must be retained by the local housing authority.

• Issue advice to private register providers reminding them about their regulatory obligations to assist local housing authorities in the discharge of their allocation of housing and homelessness functions.

• Make sure any contract issued to a service provider to perform allocation of housing accommodation and/or homelessness functions shows clearly what is being contracted out and what cannot and will not be contracted out.
Key steps for contracting out

• Robustly challenge assumption made by elected members and chief officers for either contracting out or retaining functions in-house.

• Decide what type of service is required:
  – Cheap and fast
  – Fast and good
  – Good and cheap
## Outcome based commissioning framework

<table>
<thead>
<tr>
<th>Resources</th>
<th>Activities</th>
<th>Results</th>
<th>Outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>What will be needed to deliver our desired change</td>
<td>The things that will be done, and the people that will be involved, to achieve our desired change</td>
<td>How we will measure our progress towards our desired change</td>
<td>The change (difference) we want to achieve</td>
</tr>
<tr>
<td>Money</td>
<td>Services</td>
<td>Quantity</td>
<td>Organisation</td>
</tr>
<tr>
<td>People</td>
<td>Providers</td>
<td>Quality</td>
<td>Customer</td>
</tr>
<tr>
<td>Materials</td>
<td>Strategies</td>
<td>Effort</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Commissioners</td>
<td>Effect</td>
<td></td>
</tr>
</tbody>
</table>
## Housing options service costs versus customer demand

<table>
<thead>
<tr>
<th></th>
<th>Universal Information</th>
<th>Personalised Advice</th>
<th>Para-Legal Assistance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cost of providing</strong></td>
<td>Low</td>
<td>Medium</td>
<td>High</td>
</tr>
<tr>
<td><strong>Capacity to supply</strong></td>
<td>High</td>
<td>Medium</td>
<td>Low</td>
</tr>
<tr>
<td><strong>Customer demand</strong></td>
<td>Low</td>
<td>High</td>
<td>Medium</td>
</tr>
</tbody>
</table>
Housing options systems process map

First contact and screening

Triage of needs and duties

Inquires and casework

Accommodation brokerage
Accommodation brokerage schemes

- **Making best use of existing supply**
  - Social rented housing
    - Allocation policy
    - Tenancy strategy
    - Lettings schemes
  - Private rented housing
    - Landlord incentives
    - Social lettings agency
  - Supported housing
    - Central/single access gateway/point
  - Affordable homeownership
    - Help to buy – equity loans and mortgage guarantee
    - Shared ownership
    - NewBuy
    - Right to buy and right to acquire
Specialist advice on homelessness, housing needs and lettings

T: 0781 693 5620
E: neil@neilmorland.co.uk
W: www.neilmorland.co.uk