

Report of Chief Officer, Property and Contracts

Report to Director of Resources and Housing

Date: 12 April 2017

Subject: Appointment of Michael Parrett Associates, to provide Expert Witness and Training services for Housing Leeds

Are specific electoral wards affected? If relevant, name(s) of ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<p>Appendix 1 to this report has been marked as exempt under Access to Information Procedure Rules 10.4 (3) on the basis that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information) which, if disclosed to the public, would, or would be likely to prejudice the commercial interests of that person or of the Council. The information is exempt if and for so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. In this case the report author considers that it is in the public interest to maintain the exemption.</p>		

Summary of main issues

1. Over the past two years the number of Disrepair claims has steadily risen month on month. This is part of a national trend, seen by social housing providers in England.
2. To mitigate such a rise, a Disrepair strategy has been implemented. One strand of that Strategy is to improve the knowledge of damp amongst surveying staff within the Property and Contracts. Another strand has been to improve the quality of Expert Witnesses, so that the council is better prepared to defend its court cases.
3. This report is to seek the approval of the Director of Resources and Housing to waive Contracts Procedure Rules 9.1 and 9.2 to appoint Michael Parrett Associates to undertake the role of Expert Witness and waive Contracts Procedure Rules 8.1 and 8.2 to undertake training services. Michael Parrett Associates are the industry leaders in this field to undertake services to be an Expert witness and undertake a training

programme for staff. The result would improve the quality of service that tenants and leaseholders receive in Leeds. As a result it is anticipated that the costs of compensation and legal costs would be reduced.

Recommendations

The Director of Resources and Housing is asked to approve:

- A) The wavier of CPR 9.1 and 9.2 to enable the commission and appointment of Michael Parrett Associates to undertake Expert Witness services
- B) The wavier of CPR 8.1 and 8.2 to enable the commission and appointment of Michael Parrett Associates to undertake a training program for staff

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1 Purpose of this report

1.1 This report seeks the approval from the Director of Resources and Housing to:

1.1.1 waive Contracts Procedure Rule 9.1 and 9.2 to appoint Michael Parrett Associates to provide Expert Witness;

1.1.2 waive Contracts Procedure Rule 8.1 and 8.2 for Training services for Housing Leeds in relation to disrepair works

2 Background information

2.2 When a Tenant or Leaseholder lodges a disrepair case against the council under s11 the Landlord and Tenant Act 1985, officers from Property and Contracts will investigate the claim and defend the case in court if required. Surveyor's evidence is a key part of the Council's response to claims. Presently, only a very small number (circa 2%) of all disrepair cases result in court cases that need an appearance in court.

2.3 Over the past 4 years the Council has seen an increase in the number of Disrepair claims, as the claims management industry has been increasingly targeting social housing tenants with aggressive marketing tactics, encouraging them to make claims which are then sold on to law firms. This trend is not unique to Leeds. Many other local authorities and Registered Providers have seen sudden increases in the number of disrepair claims.

2.4 Council Officers led by Director Housing and Resources have adopted a Disrepair Prevention Strategy.

2.5 The Strategy is focused on the following areas

- Improve the extent of available resources to lead to more effective management of the case load;
- Improve technical response to building defects;
- Focus investment on prevention;
- Ensure a coordinated Housing Leeds approach to property defects.

2.6 In order to develop this strategy, the Council has identified that external support is required to provide training and Expert Witness surveying services.

3 Main issues

3.1 When the Council receives a disrepair claim officers will undertake a survey, and respond appropriately. Remedial repairs may be undertaken to the Claimant's home. Compensation may also be payable depending on the existence of a period of default by the Council. If the repairs or the compensation cannot be agreed then the claimant's lawyers may pursue a claim through the County Court. In order to defend its position in Court, the Council will need to appoint an Expert Witness at this stage.

- 3.2 To date the Council has utilised its own technical surveying staff to undertake the role of Expert Witness in court cases for disrepair. However, it has been observed that Leeds is disadvantaged as Expert Witnesses engaged by the Claimants are more highly qualified and have a greater level of experience compared to Leeds staff. They also have the appearance of independence which Leeds' directly employed experts cannot have.
- 3.3 In order to provide the most effective response to claims, the Council has prepared a specification of services for an Expert Witness covering Technical Services and Experience and Qualifications and Skills. A copy of the specification is enclosed within Appendix 1.
- 3.4 The Council via the framework manager for Yorconsult has approached all eligible organisations on this Framework. Five consultant organisations responded that they could meet the stated criteria. As a result, using the 'call off' arrangements, based upon a rotation basis, the Council approached one of these consultants to explore commissioning. However, that consultant was assessed as not meeting the specification drawn up for the service.
- 3.5 As a result, Officers have undertaken research and sought additional expertise from within the market. Michael Parrett Associates (MPA) meets the specification of services as drafted and is recommended by another Yorkshire based large urban local authority as a leading authority on the issues which are central to most disrepair claims.
- 3.6 Michael Parrett Associates (<http://michaelparrett.co.uk/>) are the leading consultancy firm in building pathology. Michael Parrett is a building pathologist, Fellow of the Royal Institution of Chartered Surveyors (RICS), Fellow of Chartered Building Surveyor, Fellow of Chartered Building Engineers, a chartered building consultant and chartered scientist with vast experience and knowledge of building pathology and diagnosing building failures relating to dampness. Michael has produced a comprehensive critically acclaimed six part video series on building pathology with worldwide distribution and in 2003 his best-selling co-authored book Diagnosing Damp, the first independent practitioners' guide on dampness, was published by RICS Books.
- 3.7 Housing Leeds is seeking Michael Parrett Associates to undertake the following services:
- 3.7.1 A) Provide Expert Witness services
- 3.7.2 B) Training services. To train both surveyors from within Property and Contracts so that they may be able to diagnose types and causes of damp in properties so remedial action can be undertaken before a disrepair claim is lodged against the Council. In addition, colleagues in Legal Services would also be trained. The aim would be to ensure that surveyors have greater skills to consider the legal aspects and that lawyers or para lawyers have a greater understanding of construction and practical remedies.
- 3.8 Expert Witness

3.8.1 Michael Parrett Associates have quoted costs to undertake this service. The costs are stated in appendix 1, which is the confidential. The overall budget that is sought is £115,000 for 2017/18. This is based upon the current number of known cases, and the quote received from Michael Parrett Associates on a cost per case basis. Housing Leeds has negotiated a price reduction of over 50% of each case due to issues cases on a bulk basis.

3.8.2 Michael Parrett Associates have confirmed that they have the resource to undertake the number of cases that Leeds requires support. MPA has confirmed they can commence in May 2017

3.9 Training Services

3.9.1 Michael Parrett Associates have a number of 'off the shelf' training packages. Housing Leeds is seeking to commission the Advanced Level Package that involves 2 day training. The training would occur in Leeds. Each training session would have a maximum of 20 delegates. There are c80 – 90 officers that would benefit from training from within Property and Contracts and Legal Services. Delegates would receive video and comprehensive training packs. Housing Leeds would source the venue using council premises. Housing Leeds would also administer the training arrangements. The Training would be delivered by Michael Parrett himself.

3.9.2 A budget to provide the training would be £22,000 including travel and accommodation costs for the trainer.

3.9.3 The training would be undertaken in May and June 2017. Michael Parrett has already stated his availability for then.

3.9.4 An appropriate Contract Management Plan will be developed, based on the professional services that Michael Parrett Associates will provide. The contract will be managed by the Principal Legal Officer in the Disrepair team in Housing Leeds.

3.10 The appointment would be under the NEC Consultant's form of appointment or similar standard form of appointment.

3.11 The appointment will be reviewed once expenditure has reached £30k. The evaluation will assess whether the appointment is achieving the outputs in Appendix A

4 Corporate considerations

4.1 Consultation and engagement

4.1.1 The Chief Officer for Property and Contracts has been consulted on this proposal, as has the Major Projects and Procurement Unit. Both Officers and Major Projects and Procurement unit support such a commission and Waiver of the CPRs.

4.2 Equality and diversity / cohesion and integration

4.2.1 The Equality, Diversity, Cohesion and Integration Screening document has been considered and completed (appendix 2). No adverse or otherwise impacts have been identified.

4.3 Council policies and best council plan

- 4.3.1 The delivery of this service will ensure that tenants/ leaseholders in Leeds “live in decent homes” and “providing homes of a high standard”.

4.4 Resources and value for money

- 4.4.1 The quotes from Michael Parrett Associates for both Expert Witness and training services are comparable in the market for such services. The total costs of the proposed commission will be £120,000 for Expert Witness services and £22,000 for the training programme.
- 4.4.2 Michael Parrett Associates are being sought as they are the market leaders in this field. They have been recommended by other Local Authorities.

4.5 Legal Implications, access to information and call In

- 4.5.1 The Council’s Legal Services support Housing Leeds improving the calibre of expert witnesses for housing disrepair matters. Moreover, their staff will receive training as part of this commission.
- 4.5.2 This report is a Significant Operational Decision, as the costs of the services are greater than £100,000. As this report is not a Key Decision is not eligible for Call In, or being placed on the Register of Forthcoming Decisions.
- 4.5.3 The report does not contain confidential or exempt information Therefore there are no grounds for treating the contents of this report as confidential within the Council’s Access to Information Rules. However, Appendix 1 does contain confidential information, and is exempt from publication under the Access to Information Rule 10.4 (3) as it contains cost quotes for the services.
- 4.5.4 Awarding this contract directly to Michael Parrett Associates in this way could leave the Council open to a potential claim from other suppliers to whom this contract could be of interest that it has not been wholly transparent. In terms of transparency, it should be noted that case law suggests that the Council should always consider whether contracts of this value could be of interest to suppliers. It is up to the Council to decide what degree of advertising is appropriate. In particular, consideration should be given to the subject-matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices, etc.) and the geographical location of the place of performance.
- 4.5.5 The Director of Resources and Housing has considered the nature of the service proposed to be delivered by Michael Parrett Associates and is of the opinion that Michael Parrett Associates is best placed to provide the service, along with the relatively low value of this contract, is satisfied that this opportunity would not be of interest to providers.
- 4.5.6 There is a risk of an ombudsman investigation arising from a complaint that the Council has not followed reasonable procedures, resulting in a loss of opportunity. Obviously, the complainant would have to establish maladministration. It is not

considered that such an investigation would necessarily result in a finding of maladministration however such investigations are by their nature more subjective than legal proceedings.

- 4.5.7 Although there is no overriding legal obstacle preventing this waiver the above comments should be noted. In making their final decision, the Director of Resources and Housing should be satisfied that the course of action chosen represents best value for money.

4.6 Risk management

- 4.6.1 As part of the contract management of this contract, all associate risk will be documented. There are currently no high level risks.

5 Conclusions

- 5.1 Over the past two years the number of Disrepair claims has steadily risen month on month. This is part of a national trend, seen by social housing providers in England. To mitigate such a rise, a Disrepair strategy has been implemented. One strand of that Strategy is to improve the knowledge of damp amongst surveyor staff within Property and Contracts. Another strand has been to improve the quality of Expert Witnesses, so that the council is better prepared to defend its court cases. The appointment of Michael Parrett Associates, the industry leaders in this field would improve the quality of service that tenants and leaseholders receive in Leeds. As a result it is anticipated that the costs of compensation and legal costs would be reduced.

6 Recommendations

- 6.1 The Director of Resources and Housing is asked to approve:
- 6.2 the wavier of CPR 9.1 and 9.2 to enable the commission and appointment of Michael Parrett Associates to undertake Expert Witness services.
- 6.3 the wavier of CPR 8.1 and 8.2 to enable the commission and appointment of Michael Parrett Associates to undertake a training program for staff.

7 Background documents¹

- 7.1 Appendix 1 - Quotes for the service. Confidential
- 7.2 Appendix 2. Equality, Diversity, Cohesion and Integration Screening

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.