

SUPPLEMENTARY A4

Executive Decision Report

Decision maker and date of Leadership Team meeting or (in the case of individual Lead Member decisions) the earliest date the decision will be taken	Leadership Team Date of decision (i.e. not before): 6 th February 2018 Forward Plan reference: 05189/18/K/A	 THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA
Report title	FUTURE RELATIONSHIP WITH THE KENSINGTON AND CHELSEA TENANT MANAGEMENT ORGANISATION AND DECISION OF THE KCTMO TO HAND BACK SERVICES TO THE COUNCIL	
Reporting officer	Doug Goldring, Director of Housing Management	
Key decision	<i>Yes or No</i>	
Access to information classification	<i>public</i>	

1. SUMMARY

- 1.1 This report is to supplement the report seeking authority to vary the MMA and to deal with other matters flowing from the decision of the KCTMO board to hand back management services to the Council. This supplementary report is necessary to update Members on changes to the proposed Deed of Variation to the MMA.
- 1.2 On 29 January 2018 the Council received a letter from Unison attaching a letter to the KCTMO alleging that the process adopted by the KCTMO in relation to the TUPE transfer of its staff to the Council had breached the TUPE regulations. While it is not accepted that there has been a breach of the regulations officers have listened to the concerns of the Union and staff and agreed the best way forward is to delay the TUPE transfer to 1 March. This will enable the KCTMO to

comply with its TUPE obligations.

- 1.3 The KCTMO board insists that the Council take on legal responsibility for the service by 7 February. In order to, reconcile this with concerns of the KCTMO staff it has been agreed that Deed of Variation will be completed as soon as possible after the Leadership Team meeting but it will now have an "effective date" of March.
- 1.4 On 1 March the MMA the KCTMO will hand back all management services to the Council and the staff employed by the KCTMO will TUPE transfer to the Council.
- 1.5 For the intervening period from the date that the Deed of Variation is sealed until the effective date the Council will give the KCTMO and each member of its board of directors an indemnity from claims arising out of the KCTMO's performance of its functions under the MMA. This is provided KCTMO and the board to mitigate any losses including claiming under any relevant insurance policy.
- 1.6 In addition, from the sealing date to the effective date the KCTMO shall only carry out its functions under the MMA in accordance with the instructions of the Council. The Council will have full managerial control.
- 1.7 There is 1 further change to the report. It was originally intended that Chris Buss, the Director of Finance be appointed as a director of Repairs Direct. It is now proposed that another officer be appointed. This is to comply with the Council's Financial Regulations which state that to avoid a potential conflict of interest the Chief Financial Officer should not be a director of a trading company.
- 1.8 In recognition of these issues the recommendations are updated as set out below.

2 RECOMMENDATIONS

- 2.1 That the Director of Housing Management following consultation with the Deputy Leader and Lead Member for Grenfell Recovery, Housing and Property has the authority to finalise the terms and complete a Deed of Variation of the MMA and Deed of Covenant to enable the KCTMO to hand back housing management services to the Council on 1 March 2018.
- 2.2 That it be noted that with effect from the 1 March 2018 all KCTMO employees save those retained by the KCTMO will become employed by the Council, under TUPE Regulations.

- 2.3 That the Council indemnify the KCTMO between the date the Deed of Variation is sealed and the 1 March for any claims arising out of the KCTMO `s performance of its functions under the MMA.
- 2.4 That the Director of Law in consultation with the Director of Housing Management has authority to conclude novation agreements in respect of any contracts between the KCTMO and suppliers under which the Council will replace the KCTMO in those third-party contracts.
- 2.5 That the Director Housing Management has authority to complete the necessary agreements with the KCTMO for the purchase of shares in the company called Kensington and Chelsea TMO Repairs Direct Limited (known as Repairs Direct) for £1 and thereby enable the Council to become its sole shareholder.
- 2.6 That Sue Harris, Executive Director of Environment, Leisure and Resident Services and Debbie Morris, Director of Human Resources be appointed as Directors of Repairs Direct as the existing board members propose to retire on the conclusion of the share purchase agreement.
- 2.7 That authority be delegated to the Chief Executive of the Council to appoint a third director and any further directors as may be required from time to time to the board of Repairs Direct.
- 2.8 That authority be delegated to the Director of Finance to agree a revised financial settlement with the KCTMO.
- 2.9 That authority be delegated to the Director of Housing Management to make such other decisions and execute such other documentation as may be necessary for the orderly transition of the housing management services from the KCTMO to the Council.
- 2.10 Note that the Modular Management Agreement between the Kensington and Chelsea Council and the Kensington and Chelsea Tenant Management Organisation will continue but will be varied to take account of the decision of the KCTMO to hand back the management services whilst retaining certain functions.
- 2.11 Note that the KCTMO will continue to exist as a separate legal entity and will remain independently accountable in all the legal processes including the criminal investigation and the public inquiry.

Doug Goldring
Director of Housing Management

Local Government Act 1972 (as amended) – Background papers used in the preparation of this report