

Worcestershire County Council

Agenda

Cabinet

Thursday, 9 December 2021, 10.00 am
County Hall, Worcester

This document can be made available in other formats (large print, audio tape, computer disk and Braille) on request from Democratic Services on telephone number 01905 846621 or by emailing democraticServices@worcestershire.gov.uk

Find out more online:
www.worcestershire.gov.uk

DISCLOSING INTERESTS

There are now 2 types of interests:
'Disclosable pecuniary interests' and **'other disclosable interests'**

WHAT IS A 'DISCLOSABLE PECUNIARY INTEREST' (DPI)?

- Any **employment**, office, trade or vocation carried on for profit or gain
- **Sponsorship** by a 3rd party of your member or election expenses
- Any **contract** for goods, services or works between the Council and you, a firm where you are a partner/director, or company in which you hold shares
- Interests in **land** in Worcestershire (including licence to occupy for a month or longer)
- **Shares** etc (with either a total nominal value above £25,000 or 1% of the total issued share capital) in companies with a place of business or land in Worcestershire.

NB Your DPIs include the interests of your spouse/partner as well as you

WHAT MUST I DO WITH A DPI?

- **Register** it within 28 days and
- **Declare** it where you have a DPI in a matter at a particular meeting
 - you must **not participate** and you **must withdraw**.

NB It is a criminal offence to participate in matters in which you have a DPI

WHAT ABOUT 'OTHER DISCLOSABLE INTERESTS'?

- No need to register them but
- You must **declare** them at a particular meeting where:
You/your family/person or body with whom you are associated have a **pecuniary interest** in or **close connection** with the matter under discussion.

WHAT ABOUT MEMBERSHIP OF ANOTHER AUTHORITY OR PUBLIC BODY?

You will not normally even need to declare this as an interest. The only exception is where the conflict of interest is so significant it is seen as likely to prejudice your judgement of the public interest.

DO I HAVE TO WITHDRAW IF I HAVE A DISCLOSABLE INTEREST WHICH ISN'T A DPI?

Not normally. You must withdraw only if it:

- affects your **pecuniary interests OR** relates to a **planning or regulatory** matter
- **AND** it is seen as likely to **prejudice your judgement** of the public interest.

DON'T FORGET

- If you have a disclosable interest at a meeting you must **disclose both its existence and nature** – 'as noted/recorded' is insufficient
- **Declarations must relate to specific business** on the agenda
 - General scattergun declarations are not needed and achieve little
- Breaches of most of the **DPI provisions** are now **criminal offences** which may be referred to the police which can on conviction by a court lead to fines up to £5,000 and disqualification up to 5 years
- Formal **dispensation** in respect of interests can be sought in appropriate cases.

Cabinet

Thursday, 9 December 2021, 10.00 am, County Hall

Membership: Cllr Alan Amos, Cllr Marc Bayliss, Cllr Matt Dormer, Cllr Simon Geraghty (Chairman), Cllr Adrian Hardman (Vice Chairman), Cllr Marcus Hart, Cllr Adam Kent, Cllr Karen May, Cllr Tony Miller and Cllr Andy Roberts

Agenda

Item No	Subject	Page No
1	Apologies and Declarations of Interest	
2	Public Participation Members of the public wishing to take part should notify the Assistant Director for Legal and Governance in writing or by e-mail indicating both the nature and content of their proposed participation no later than 9.00am on the working day before the meeting (in this case Wednesday 8 December 2021). Further details are available on the Council's website. Enquiries can also be made through the telephone number/e-mail address listed in this agenda and on the website.	
3	Confirmation of the Minutes of the previous meeting The Minutes of the meeting of 18 November 2021 have been previously circulated.	
4	Fair Funding for Schools 2022/23 - National and Local Funding Arrangements for Schools	1 - 12
5	Policy and process for the determination of penalties under the Tenant Fees Act 2019 and associated legislation	13 - 36
6	Waste Management Service Contract The enclosed report refers to an appendix which contains exempt information and may not be discussed in public. If the Cabinet needs to consider this in detail, then it may resolve to exclude the public and press from the meeting.	37 - 62

Agenda produced and published by Abraham Ezekiel, Assistant Director for Legal and Governance County Hall, Spetchley Road, Worcester WR5 2NP

To obtain further information or a copy of this agenda contact Sheena Jones, Democratic Governance and Scrutiny Manager, 01905 846011 DemocraticServices@worcestershire.gov.uk on 01905 846011, sjones19@worcestershire.gov.uk

All the above reports and supporting information can be accessed via the Council's website

Date of Issue: Wednesday 1 December 2021



CABINET
9 DECEMBER 2021

**FAIR FUNDING FOR SCHOOLS 2022-23 –
NATIONAL AND LOCAL FUNDING ARRANGEMENTS FOR
SCHOOLS**

Relevant Cabinet Members

Councillor M J Hart

Relevant Chief Officer

Director of Children's Services

Recommendation

1. **The Cabinet Member with Responsibility for Education recommends that Cabinet:**

- (a) **has regard to the information provided to schools on 29 September 2021;**
- (b) **notes the Department for Education policy for school and Local Authority funding for 2022-23 detailed in Appendix 1;**
- (c) **notes the involvement of the Worcestershire Schools Forum members and schools during the engagement process;**
- (d) **notes the views of the Worcestershire Schools Forum on the Local Schools Funding Formula issues for 2022-23 and other matters which are outlined in Appendix 2;**
- (e) **approves the Local Schools Funding Formula for Worcestershire mainstream schools from April 2022 to apply for 2022-23 and other matters as detailed in paragraphs 32 to 42, to include the DfE Minimum Funding Levels (MFL's) for Primary £4,265; Key Stage 3 £5,321; Key Stage 4 £5,831; Secondary £5,525 having regard to feedback from schools and the views of the Worcestershire Schools Forum in Appendix 2, to be based as far as is practicable and affordable upon the Department for Education (DfE) National Funding Formula (NFF) parameters; and**
- (f) **authorises the Director of Children's Services in consultation with the Cabinet Member with Responsibility for Education to make the required submission to the national executive body, the Education and Skills Funding Agency (ESFA) by 21 January 2022 for the approved Local Schools Funding Formula for 2022-23 taking account of any impact and change on the**

approved units of resource, Minimum Funding Guarantee and capping arrangements in paragraph 33 as a consequence of the October 2021 census and other 2021 data changes and the final 2022-23 Dedicated School Grant (DSG).

Background

2. The Council receives funding for schools and designated central services through the Dedicated School Grant (DSG). This is a ring-fenced grant and is allocated by the Department for Education (DfE) in 4 blocks – Schools, Central School Services, High Needs and Early Years. This is based on the DfE’s National Funding Formula (NFF) arrangements.
3. The majority of the Schools Block DSG is delegated to mainstream schools – Local Authority (LA) maintained and Education and Skills Funding Agency (ESFA) academies – through Worcestershire’s Local Schools Funding Formula (LSFF). The amount remaining not delegated is centrally retained to provide a Pupil Growth Fund to support the revenue costs of the County Council’s basic needs requirements.
4. The Government made significant changes to the funding formula factors for schools from April 2013. The changes have had an impact both for the schools and designated central services. Cabinet has resolved each year between 2012 and 2020 to introduce a Local Schools Funding Formula (LSFF) for mainstream schools for 2013-14 through to 2021-22.
5. The Council is required to consult the Worcestershire Schools Forum (WSF) on any changes to the LSFF to comply with the national requirements for school and LA funding with the need to inform Governing Bodies of the consultation. However, the Council has always chosen to expand this requirement to consult with all schools, governing bodies and other interested parties to inform Cabinet’s ultimate decision in recognition that changes could potentially impact upon the quality of education provision in schools.
6. From 2018-19 for the 4-year period 2018-19 to 2021-22, the Government introduced their National Funding Formula (NFF) arrangements for the DSG. Within this period Local Authorities (LA’s) were still able to set a local LSFF or consider moving to the NFF parameters. Following a detailed consultation and correspondence with schools in the Autumn Terms 2017, 2019 and 2020, Cabinet on 14 December 2017, 20 December 2019 and 10 December 2020, approved the LSFF for this to be based as far as practicable and affordable upon the DfE NFF parameters.
7. It was anticipated that a fully DfE prescribed NFF i.e. a ‘hard’ formula for schools would be in place for 2022-23. However, the DfE confirmed that LA’s would continue to be able to set a LSFF for 2022-23 within their policy parameters. Given the previous approvals, the WSF at its meeting on 23 September 2021, endorsed and approved the continuation of the current funding arrangements for 2021-22 into 2022-23. Consequently, a further local consultation was not required for the LSFF and other matters. On 29 September 2021, schools were provided with the details of the DfE’s policy for 2022-23 and that it was proposed to continue with the current arrangements for 2021-22 into 2022-23. As part of this schools were given the opportunity to comment on the proposals and there have been no contra indications received from schools on the continuation of the existing arrangements for a further year.

8. The Spending Review 2021 confirmed at a high level an additional £4.1bn by 2024-25 for the schools core budget, this includes public sector compensation for employer costs of Health and Social Care Levy (NICs).

DfE Policy Decisions for School Funding 2022-23

9. On 8 July 2021, the Department for Education (DfE) issued a consultation detailing the next stages for implementing their National Funding Formula (NFF). The details are contained in the attached link: -

https://consult.education.gov.uk/funding-policy-unit/completing-our-reforms-to-the-nff/supporting_documents/Fair%20Funding%20For%20All%20Consultation.pdf

10. Details of the arrangements are summarised at **Appendix 1** and confirm that although the DfE have issued a stage 1 consultation document regarding their move to a 'hard' NFF, there is no significant change proposed by the DfE for 2022-23.

11. Also, the previous policy announcement made in October 2019 detailing the provisional 3-year Dedicated Schools Grant (DSG) for 2020-21 to 2022-23, would continue. That announcement confirmed year 3 of that settlement and funding will continue to be distributed to LAs using the DfE's Schools and High Needs National Funding Formulae (NFF). Also, both the DfE and ESFA have published several operational guidance and technical documents to support the national policy. These confirmed the national policy direction for the DSG and other funding matters for 2022-23.

12. In September 2021 schools, , were provided with details of the key headline issues confirmed in the ESFA statements. The School Funding Settlement 2022-23 will be announced later in December 2021 using the October 2021 and other 2021 data sets.

13. Beyond 2022-23, the DfE have indicated they will consult further at stage 2 on their NFF policy from 2023-24, as they move towards a 'hard' NFF for schools.

14. The Council in conjunction with all its key partners, particularly the F40 Group representing the lowest funded LA's, and the Society of County Treasurers, continues to lobby central Government for a fairer allocation of the total national allocation of funding as part of the continuing NFF process.

Consideration of Issues for 2022-23

15. In respect of proposed formula development for 2022-23, there was a balance of considerations between the need for stability given the number and scale of changes since 2012-13, the desire for a LSFF that can appropriately serve all schools in Worcestershire and the impact of the DfE NFF proposals.

16. Stability continues to provide a period of no change for individual schools, apart from the impact of changes in mix and number of pupils per school, other data changes and the continuing impact of the Minimum Funding Guarantee (MFG) and capping together with any other DfE prescribed policy changes.

17. LA's are required to consult on their LSFF and proposals for centrally retained services but given there is no local change proposed for 2022-23, it was agreed through the WSF to notify schools of this intention to continue with the existing arrangements.

18. As part of the provisional 2022-23 announcement, the DfE has continued its policy of making a significant change to the funding of the Central Services Schools Block (CSSB). Consequently, all LA's have seen a further reduction of 20% in their allocations for Historic Commitments. For Worcestershire this element provides funding for the Early Intervention Family Support Service (EIFS) and this funding has reduced from £1.5m in 2019-20 to £1.2m in 2020-21 to £0.96m in 2021-22 and to £0.768m in 2022-23. This will continue to result in significant operational and service delivery issues due to changes to the funding support arrangements given by the EIFS to schools. This will continue to be addressed through the budget process in 2022-23 to ensure any impact on services are fully understood and a longer-term sustainable solution is implemented.

Local Engagement with Schools for 2022-23

19. At its meeting on 23 September 2021, the Worcestershire Schools Forum (WSF) discussed in detail the DfE policy for 2022-23, LSFF issues including any potential for change together with decisions required on de-delegated and centrally retained services. The WSF concluded that stability was in the best interest of schools, so the current LSFF based upon the NFF should continue together with the current arrangements for de-delegated and centrally retained services. By doing this the Council and schools will be able to move more readily into the DfE's 'hard' NFF when it is fully implemented in the future.

20. As part of the national policy for 2022-23, the ESFA have confirmed that their NFF unit of resource rates will increase with the Average Weighted Pupil Unit (AWPU) rates Primary £3,217, Key Stage 3 £4,536 and Key Stage 4 £5,112.

21. Also, the DfE have confirmed that although in 2022-23 LA's are still able to continue to set their own LSFF, their parameters for the sector Minimum Funding Levels (MFL's) for Primary £4,265, Key Stage 3 £5,321, Key Stage 4 £5,831 and Secondary £5,525 will continue to be compulsory in LA's LSFF. The following table shows the required MFL's since the introduction of the DfE's NFF together with the amount of Schools Block DSG allocated:

Table: DfE MFL's and Schools Block Funding

MFL Rate Per Pupil	2018-19	2019-20	2020-21	2021-22 Note 2	2022-23	% Increase on 2021-22
Primary £	£3,300	£3,500	£3,750	£4,180	£4,265	2%
KS3 £	£3,950 Note 1	£4,600	£4,800	£5,215	£5,321	2%
KS4 £	N/A	£5,100	£5,300	£5,715	£5,831	2%
Secondary £	£4,600	£4,800	£5,000	£5,415	£5,525	2%
Schools Block DSG Allocated Note 4	£314.6m	£321.6m	£339.7m	£369.5m	£380.1m Note 3	2.86%

Notes

1. KS3 in Middle Schools; no separate rate for KS4.
 2. Includes effect of the mainstreaming of the former pay and pension grants – primary £180 per pupil; secondary £265 per pupil.
 3. Final allocation to be confirmed late December 2021.
 4. Excludes Pupil Growth Fund.
22. For the LSFF key considerations include:
- The potential impact and affordability of the DfE NFF in terms of DSG and individual school allocations for LA's and schools.
 - The current policy of LSFF stability apart from annual data changes.
 - The Minimum Funding Guarantee (MFG) having to be set between +0.5% per pupil and +2.0% per pupil to be determined locally.
 - The continuing impact of budget and funding pressures for all schools.
 - The NFF policy from 2023-24 not yet being confirmed and how the NFF policy might or could change is unclear at this stage.
 - Although the NFF provides an increase in funding for the High Needs Block this area continues to be under significant pressure in terms of commissioned places, top up funding, post 16, post 19 and out County/Independent provision. To support this, the High Needs Block DSG will increase further in 2022-23 as part of the DfE's 3-year settlement and the DfE are continuing to allow LA's to consider transferring up to 0.5% of the Schools Block to High Needs (for the County Council approximately £1.9m). A transfer of up to 0.5% requires WSF approval but if the WSF do not approve the transfer LA's can apply for a disapplication to Secretary of State for Education. This also applies if LA's want to transfer more than 0.5%.
23. Given all the above DfE requirements and issues and in line with the previous policy of LSFF stability, the Council, the WSF and schools are all supportive to continue for a further year with the NFF as far as is practicable and affordable as the Council LSFF in 2022-23, together with the existing arrangements for no transfer of Schools Block DSG, de-delegated and centrally retained services.
24. The final allocations for schools in 2022-23 for individual schools will be affected and differ from the existing 2021-22 allocations and the DfE 2022-23 exemplifications due to:
- Data not yet available from the October 2021 data sets that must be used for the 2022-23 formula allocations.
 - Any MFG per pupil and associated capping calculation for 2022-23 having to be based upon this revised data.
 - For some academies the ESFA will use a different 2021-22 baseline for the calculation of the MFG and capping.
 - The final Schools Block DSG for 2022-23 will be based upon the October 2021 pupil numbers and NFF arrangements.
 - The final Schools Block DSG quantum for 2022-23 which will not be notified by the DfE until late December 2021.
25. A communication detailing the proposal to retain the continuing arrangements for 2021-22 into 2022-23 was circulated on 29 September 2021 to all schools and other key

stakeholders. There have been no contra indications received to this proposed policy direction.

Recommendations for the Worcestershire Local Schools Funding Formula (LSFF) for Mainstream Schools and Other Statutory Matters for 2022-23

26. The County Council recognises the diverse range of schools in the county and Cabinet has previously discussed the issues in endeavouring to have a LSFF that is appropriate for all schools. Having considered the issues, the views of the WSF in **Appendix 2** and Cabinet's strategic view, it is recommended that approval be given to continue as far as is practicable and affordable to use the DfE NFF parameters as the LSFF for 2022-23.

27. This approach will also continue to support the DfE intention to move to a prescribed 'hard' NFF in the future. The LSFF will then continue to be based as far as is practicable and affordable on the NFF parameters. In doing this it is recognised that applying all the NFF parameters will depend upon the amount of Schools Block DSG available in 2022-23, which will impact on how the NFF can be applied in the LSFF. The affordability or otherwise of the NFF will depend upon the impact of:

- The DfE mandatory sector mandatory Minimum Funding Levels (MFLs).
- The requirements for a minimum per pupil increase of up to 2%.
- The potential need to set a cap for gaining schools for affordability purposes.

28. Implementation of the NFF parameters as the LSFF may require a funding cap if the DSG quantum is not be able to fund the full NFF in 2022-23. Consequently, the DfE have indicated LA's can apply a cap, not part of their NFF, which can continue to be higher than the cash amount required for the MFG for the LSFF to be contained within the Schools Block DSG available.

29. On the potential to transfer Schools Block funding to support High Needs, Cabinet is conscious of the previous significant feedback from schools on this extremely important issue. Notwithstanding the significant budgetary pressures for High Needs the issues previously raised by schools are key to Cabinet in making its decision on a potential Schools Block transfer. It is imperative that the County Council and schools are united in continuing to make the case for increased high needs funding as well as developing changes in practise and collaborative working as part of the high needs' recovery programme over the next 3-5 years.

The Role of the Worcestershire Schools Forum (WSF)

30. As required, the WSF continues to fulfil its statutory role as the principal consultation body for matters relating to school funding. There is a statutory requirement to consult them on these funding proposals.

31. The WSF has met on 23 September 2021 and 18 November 2021. These meetings formally endorsed the formal recommendation for the LSFF for 2022-23 together with their approvals for the required statutory decisions on no transfer of Schools Block DSG, de-delegated and centrally retained services.

32. Details of these discussions and outcomes at the meetings are attached at **Appendix 2**.

Cabinet's Detailed Approvals

33. Approve for 2022-23 the LSFF as supported by the WSF to continue to be based as far as is practicable and affordable on the DfE NFF parameters, with the **estimated** units of resource detailed below.

34. Approve the following as the factors for inclusion in the LSFF for Council mainstream schools – LA maintained and ESFA academies – to be based upon required DfE data sets from the October 2021 and other 2021 DfE data sources, including any in year or prior year changes and the final DSG for 2022-23 when this is confirmed.

35. Approve the model to contain from April 2022, the following formula factors and **estimated** units of resource using the prescribed DfE data sets from the October 2021 and other DfE 2021 data sources, including any in year or prior year data changes, and estimated data as required for schools changing their age range from September 2022:

Age Weighted Pupil Unit (AWPU): [The same per pupil amount for the following age groups]

Primary £3,217; Key Stage 3 £4,536; Key Stage 4 £5,112

Sector Minimum Funding Levels (MFL's)

Primary £4,265; Key Stage 3 £5,321; Key Stage 4 £5,831; Secondary £5,525

Deprivation:

Free School Meals (FSM) Annual: Primary £470; Secondary £470

Free School Meals (FSM) Ever 6: Primary £590; Secondary £865

Income Deprivation Affecting Children Index (IDACI) [6 bands A to F]:

Primary £640; £490; £460; £420; £270; £220

Secondary £890; £700; £650; £595; £425; £320

Low Cost/High Incidence Special Educational Need (SEN) – Low Prior Attainment:

Primary £1,130

[Combination of Early Years Foundation Stage Profile – New Profile % to be determined; Old Profile 78 Points];

Secondary £1,710

[Not achieving level 4 Key Stage 2 English or Maths]

English as an Additional Language (EAL) – maximum of 3 years:

Primary £565; Secondary £1,530

[Pupils with a first language other than English]

Lump Sum for Every School:

All School Phases £121,300

Sparsity based on a NFF or tapered approach:

Primary £55,000; Secondary £80,000

Split Site:

An individual school cash sum allocated via the approved 2022-23 formula with schools having to meet the qualifying criteria

Rates:

Actual Costs individual to each school to be directly funded by the ESFA direct to the relevant rating authority

Private Finance Initiative (PFI):

Agreed Costs for those schools in the PFI contract

Exceptional Premises Costs:

An individual school cash sum for those qualifying schools as approved by the ESFA

Minimum Funding Guarantee (MFG):

+2% per pupil in each year on a formula as prescribed by the ESFA

Capping:

At the required % level, if required, to scale back gains for some schools to fund the LSFF using the NFF parameters prescribed by the ESFA

[The final % rate, if required, is to be determined following the School Block DSG settlement for 2022-23 using a scaling factor of 100%].

36. Approve that the current **estimated** LSFF units of resource as detailed above and **estimated** MFG and capping % can be adjusted in January 2022, as required, to take account of the impact of the:

- October 2021 census and requirements including use of estimated data for changes in school age ranges if required.
- Other DfE prescribed 2021 data and changes including those from prior years.
- Final Schools Block DSG for 2022-23.
- Statutory requirements relating to the MFG/Capping and/or the School and Early Years Finance (England) Regulations.

37. Approve not to transfer Schools Block Funding to support High Needs.

38. Approve the initial delegation of the following centrally retained services for all mainstream schools in 2022-23 as in 2021-22:

FACTOR	SERVICE
Basic Per Pupil	School Specific Contingencies (not Early Years) Staff Costs Supply Cover
Deprivation (Free School Meals)	FSM Eligibility
EAL	Support for Minority Ethnic Pupils
Low Prior Attainment	Support for Underachieving Groups

39. Approve the decision of the WSF maintained mainstream school members to continue in 2022-23 the delegation and de-delegation (centrally retained) of the above services for LA maintained mainstream schools only by phase:

Phase/Service	Primary Delegation	Primary De-delegation
School Specific Contingency	No	Yes
Support for Schools in Financial Difficulty	Yes	No
14-16 Practical Learning Options	N/A	N/A
Behaviour Support Services	N/A	N/A
Schools Insurance	Yes	No

Support for Minority Ethnic Pupils or Underachieving Groups – EAL	No	Yes
Support for Minority Ethnic Pupils or Underachieving Groups – Travellers Children	No	Yes
Free School Meal Eligibility	No	Yes
Staff Costs Supply Cover – Civic Duties	No	Yes
Staff Costs Supply Cover – Trade Union Duties	No	Yes
Staff Costs Supply Cover – HR Related Duties	No	Yes
School Improvement	No	No
Former General Duties ESG	N/A	No
Phase/Service	Secondary Delegation	Secondary De-delegation
School Specific Contingency	No	Yes
Support for Schools in Financial Difficulty	Yes	No
14-16 Practical Learning Options	Yes	No
Behaviour Support Services	Yes	No
Schools Insurance	Yes	No
Support for Minority Ethnic Pupils or Underachieving Groups – EAL	No	Yes
Support for Minority Ethnic Pupils or Underachieving Groups – Travellers Children	No	Yes
Free School Meal Eligibility	No	Yes
Staff Costs Supply Cover – Civic Duties	No	Yes
Staff Costs Supply Cover – Trade Union Duties	No	Yes
Staff Costs Supply Cover – HR Related Duties	No	Yes
School Improvement	No	No
Former General Duties ESG	N/A	No

40. Approve for those services subject to de-delegation using the formula factors by reducing the formula amounts in 2022-23 for LA maintained mainstream schools only on the basis detailed above.

41. Approve the decision of the WSF to the continued central retention in 2022-23 of the centrally retained services as detailed below either limited to the 2017-18 budget level or as prescribed by the DfE (indicative budgets are shown either limited to previous year levels or **estimated** with final funding subject to clarification and change) for:

- Copyright Licensing Agency (CLA) and Music Publishers Association (MPA) licences (subject to DfE prescription) – £0.41m **estimated**.
- Contributions to Combined Services – the Early Intervention Family Support (EIFS) service budget – £0.768m **actual** (reflecting the 2021-22 amount being reduced by a further 20% because of the DfE reduction to all LA's Central Services Schools Block DSG).
- Co-ordinated admissions scheme – £0.60m **estimated**.
- Servicing of the Schools Forum – £0.06m **estimated**.
- Services previously funded by the retained rate of the Education Services Grant – £1.26m **estimated**.

42. The final LSFF units of resource and capping for 2022-23 are subject to final confirmation with the ESFA and may change when the impact of the October 2021 and other 2021 DfE data and prior year data changes and the final Schools Block DSG for 2022-23 are confirmed.

43. As in previous years the LSFF for 2022-23 will **not** include factors for:
- Pupil Mobility – although part of the DfE NFF this is not deemed to be a significant issue.
 - Looked After Children (LAC) – not part of the DfE NFF and previous funded reflected in the previous increase in the separate LAC Pupil Premium Grant.
 - Higher Teacher Costs – only applies to London fringe LA's.

Legal, Financial and HR Implications

44. The Council is required to adhere to the DfE prescribed arrangements for school and LA funding in 2022-23. These will be contained within the yet to be published School and Early Years Finance (England) Regulations 2022. It is anticipated these will be laid before Parliament in early 2022.

Joint Equality, Public Health, Data Protection and Sustainability Impact Assessments

45. Not applicable in this case.

Risk Implications

46. Given the recommendations in 2022-23 for the LSFF, Schools Block DSG and the arrangements for de-delegated and centrally retained services are made based upon the existing approved local policy for 2021-22 there are no such implications.

Equality and Diversity Implications

47. Given the recommendations in 2022-23 for the LSFF, Schools Block DSG and the arrangements for de-delegated and centrally retained services are made based upon the existing approved local policy for 2021-22 there are no such implications.

Supporting Information (available electronically)

- **Appendix 1** – DfE confirmed funding arrangements for 2022-23 – summary of Issues (electronic only)

- **Appendix 2** – Fair Funding Discussions 2022-23 Worcestershire Schools Forum Issues, Decisions and Recommendations 23 September and 18 November 2021 (electronic only).

Contact Points

County Council Contact Points

County Council: 01905 763763

Specific Contact Points for this report

Phil Rook, Director of Resources, Worcestershire Children First

(01905) 846300

Email: prook@worcschildrenfirst.org.uk

Sarah Wilkins, Director of Education and Early Help, Worcestershire Children First

(01905) 846082

Email: swilkins@worcschildrenfirst.org.uk

Background Papers

In the opinion of the proper officer (in this case the Director of Children's Services) the following are the background papers relating to the subject matter of this report:

Fair Funding Communication Document to Schools – September 2021

Agenda and background papers for the meetings of the Cabinet held on 18 October 2012, 7 November 2013, 16 October 2014, 15 October 2015, 17 November 2016, 14 December 2017, 20 December 2019 and 10 December 2020 [Browse meetings - Cabinet - Worcestershire County Council \(moderngov.co.uk\)](#)

This page is intentionally left blank

CABINET

9 DECEMBER 2021

POLICY AND PROCESS FOR THE DETERMINATION OF PENALTIES UNDER THE TENANT FEES ACT 2019 AND ASSOCIATED LEGISLATION

Relevant Cabinet Member

Councillor Karen May, Cabinet Member with responsibility for Health and Wellbeing

Relevant Officer

Dr Kathryn Cobain, Director of Public Health
Simon Wilkes, Head of Worcestershire Regulatory Services

Recommendation

- 1. The Cabinet Member with Responsibility for Health and Wellbeing recommends that Cabinet adopt the attached policy and framework for issuing fixed penalty notices under the Tenant Fees Act 2019.**

Background

2. The Tenant Fees Act 2019 (the Act) places a statutory duty on Worcestershire County Council (the Council), as the local weights and measures authority, to enforce this legislation in its area. It is an addition to the many statutory duties already held by the Council under various consumer and business regulation.
3. The phrase “local weights and measures authority” is used in legislation to demonstrate where the functions being passed down should sit. For example, the Trade Descriptions Act 1968 and its successor, the Consumer Protection from Unfair Trading Regulations 2008 both designate the enforcement authority as the “local weights and measures authority”, although neither is a provision of weights and measures law.
4. Whilst the Council is not a housing authority, it already has a number of duties that impact on the way properties are marketed. As the local weights and measures authority, it is responsible for elements of enforcement in the Estate Agents Act 1977. The Consumer Protection from Unfair Trading Regulations 2008 also provides controls on the descriptions applied to properties that are marketed. Furthermore, under separate legislation, it is responsible for the provisions around the use and content of energy certificates that must accompany every property marketed for sale or rent. Whilst the Council is not responsible for housing standards, it does have legal duties around the way property is marketed. This is the likely reason for tenant fees being added to this broad portfolio.

Tenant Fees Act 2019

5. In two tier areas, the County Councils have been given the statutory duty to enforce the new provisions, but the Act also empowers district councils to adopt them for use alongside their role as the local housing authority. Whether district councils adopt the provisions or not, the role of regulating the way in which properties are marketed for rental will mean that the Trading Standards team will be liaising more closely than previously with district council housing colleagues, particularly Environmental Health Housing standards teams. Identifying and pursuing landlords that fail to meet their obligations will be part of both areas of business.

6. Those in rented accommodation can be some of the most vulnerable people in society. It has long been noted that the fee structures around renting have been difficult to interpret and on numerous occasions, people have discovered themselves having to pay significantly more than anticipated. Government has enacted the legislation to clarify what fees can be charged and to tackle the myriad ways in which the marketing of properties has led to overcharging of tenants when they enter into contracts.

7. The Act came into force in June 2019 and prohibited the charging of fees in respect of a tenancy other than those which are specifically permitted. It amended a range of other legislation to support the enforcement of these provisions to ensure protections for those renting. The law should now give clarity over what agents can charge prospective tenants for and should make costs much clearer to those entering into rental agreements.

Enforcement

8. The Act makes use of a fixed penalty regime as part of its enforcement processes, with the assumption that all initial infringements identified are potentially subject to a fine levied by the local authority of up to £5,000. Where the same offending behaviour is repeated, this constitutes a criminal offence which carries an unlimited fine. As an alternative to prosecution, fixed penalties of up to £30,000 can be levied against the offending business.

9. In order to levy fines, the local authority must develop and approve a policy that outlines what the fines will be for particular forms of offending. This policy should sit alongside the Council's enforcement policy required by the Regulators Code. However, there are no means of calculating the new range of fines available within the statute, therefore higher tier authorities are drafting fining provisions, though the majority of councils are yet to adopt a policy.

10. All fees levied in this way by the enforcing local authority are retained by the Council but must be invested in further work around housing law enforcement.

11. The law includes the provision of a body to provide an enforcement backstop role on occasions where local authorities are unable to pursue serious matters of non-compliance, a 'Lead Enforcement Authority'. At the request of the then Ministry for Housing, Communities and Local Government, now the Department for Levelling up, Housing and Communities (DLUHC,) National Trading Standards commissioned this role from one of the English higher tier authorities and Bristol City Council was awarded the contract to deliver the function. In this role Bristol City Council manages

a separate team that sits alongside its Trading Standards service, providing advice and guidance to local authorities, offering training on enforcement activity and, alongside a similar team established in Powys Council to deal with estate agency, advice on the marketing of properties. This is in addition to taking action if another local authority cannot act on a particular matter. This team is fully funded by a grant from DLUHC.

12. In order to ensure consistency between local authorities and fairness for businesses, the Lead Enforcement Authority has produced a model policy and fines framework that local authorities can adopt for use locally.

13. The model policy is based on the principles found in a wide-ranging review process that Bristol City Council undertook into all of its penalty notice provisions, which being a unitary authority, are quite numerous. The review looked at the proportionality of its various regimes, meaning the broad basis should make the proposed model fit for purpose for all local authorities. DLUHC civil servants have reviewed it and are content with the provisions.

14. The policy and framework attached at **Appendix A** outline the process that will be followed in making decisions around the nature of sanctions to be imposed and the level of fines resulting from the decision-making process.

15. From a financial perspective, whilst the fixed penalty process may lead to some income to Trading Standards, Cabinet Members should not see this as a primary mechanism for supporting the framework. The enforcement policy requires that Trading Standards initially takes steps to bring businesses into compliance before resorting to formal action. In the majority of cases, advice will deliver this, therefore further action will only be taken in a limited number of cases. For the second offences, it may be more appropriate to use criminal sanction rather than a further financial penalty, particularly where there is evidence of the offending being a deliberate action rather than mistake or error.

Legal, Financial and HR Implications

16. There are no HR implications.

17. Although the issuing of a fixed penalty notice does not automatically lead to legal proceedings, it seems reasonable to require that the support of the Council's solicitor is sought as a review process before financial penalties are levied.

18. There are no financial implications arising from this report.

Joint Equality, Public Health, Data Protection and Sustainability Impact Assessments

19. The work undertaken under this legislation will be subject to the limitations on powers in the Consumer Rights Act 2015, the protections in the Police and Criminal Evidence Act 1984, and the process controls in the Criminal Procedure and Investigations Act 1996 and the Regulation of Investigatory Powers Act 2000. All evidence gathered will be subject to the normal evidential controls so there will be no privacy impacts.

20. The work should help to deal with letting agents and landlords who charge fees outside of what is allowed by the new regime. Improvements in behaviour by these regulated entities should lead in the longer term to better letting processes and fewer pressures and costs on people renting. If people can rent better quality properties, there are less likely to be health implications from poor renting practices.

Risk Implications

21. All fixed penalty notices are subject to appeal to the first tier tribunal. This is a civil process not subject to the evidential constraints of the criminal courts. This creates some risk in terms of cases being lost. This risk can be limited by close engagement with the Council's Legal Services team. Legal proceedings cannot be instigated by a Council department without the approval of the Head of Legal Services. A review of case files by the Council's solicitor should limit such risks.

Equality and Diversity Implications

22. An Equality Relevance Screening has been completed in respect of these recommendations. The screening did not identify any potential Equality considerations requiring further consideration during implementation.

Supporting Information

Appendix - Policy and framework for the determination of penalties under the Tenant's Fees Act 2019 and associated legislation

Contact Points

County Council Contact Points

Dr Kathryn Cobain, Director of Public Health

Tel: 01905 845863

Email: kcobain@worcestershire.gov.uk

Specific Contact Points for this report

Simon Wilkes, Head of Worcestershire Regulatory Services

Tel: 01562-738088

Email: simon.wilkes@worcestershire.gov.uk

Background Papers

In the opinion of the proper officer, in this case the Director of Public Health, there are no background papers relating to the subject matter of this report.

Policy and process for the determination of penalties under the Tenant's Fees Act 2019 and associated legislation

Under the Tenant Fees Act 2019 ("the TFA 2019") Worcestershire County Council ("WCC") will use the following policy and process for deciding on a financial penalty amount and determining when it is appropriate to prosecute as an alternative to making a financial penalty.

This Policy should be read in conjunction with the Statutory Guidance for the TFA 2019 which provides greater detail on the processes and rights of representation and appeal.

1. Legal References

The TFA 2019 prohibits the charging of fees in respect of a tenancy other than those which are specifically permitted and amends other legislation as follows:

- a. in respect of the duty of letting agents to publicise fees, etc, under Section 87 of the Consumer Rights Act 2015 (CRA 2015;)
- b. in relation to the duty placed on enforcement authorities to have regard to any guidance issued by the Secretary of State ("the SoS") relating to the enforcement of an order under s83(1) of 84(1) as per Section 85 of the Enterprise & Regulatory Reform Act 2013;
- c. in respect of the duty to enforce being subject to Section 26 of the TFA 2019 under Article 7 of the Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) England) Order 2014;
- d. in relation to the meaning of 'Lead Enforcement Authority'(LEA;) under Section 135 of the (enforcement of client money protection scheme regulations) of the Housing and Planning Act 2016;
- e. in respect of the LEA as an alternative to the SoS where the SoS is not the LEA under Article 7 of the Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) England) Order 2014;

2. Sanctions

The TFA 2019 provides that enforcement authorities may impose financial penalties of up to £30,000 as follows, depending on the nature of the breach:

- a. In respect of Prohibited Payments under ss1& 2 of the TFA 2019 a financial penalty not exceeding £5,000 for a first breach.
- b. Under s 12 of the TFA 2019 a second or subsequent breach within 5 years of the previous breach provides for a financial penalty not exceeding £30,000.00. In relation to second or subsequent breaches, there is also power to prosecute in the Magistrates Court where an unlimited fine may be imposed.

The Council will determine what is the most appropriate and effective sanction, whether it is appropriate to impose a financial penalty or prosecute in any relevant case having due regard to its Trading Standards Enforcement Policy.

In appropriate circumstances consideration will be given to informal action such as warning letters or advice, in an effort to secure compliance, and will be done so in accordance with the enforcement policy.

3. Consequential Amendments brought about by the TFA 2019

Additionally the TFA 2019 amends the legislation referred to in paragraph 1 above, which separately provide that penalties may be imposed as follows. These penalties will also be determined following this policy and process:

i In respect of a failure of Letting Agents to publicise their fees as required by s83(3) of the CRA 2015, a financial penalty not exceeding £5,000.

ii. In respect of a failure by any person engaged in Letting Agency or Property Management work who fails to hold membership of a Redress Scheme as required by Article 3 Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) England) Order 2014 (in respect of Lettings Agency work) or Article 5 (in respect of property management work,) to a financial penalty not exceeding £5,000.

It is not sufficient for businesses to simply register for redress. For compliance the correct category of membership must be obtained depending on the work carried out.

iii. In respect of a failure by a property agent who holds client money to belong to an approved or designated Client Money Protection (“CMP”) Scheme as required by Regulation 3 of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019, a financial penalty not exceeding £30,000.

iv. In respect of a failure to obtain a certificate confirming membership or display that certificate as required or publish a copy of that certificate on the relevant website (where one exists) or produce a copy of the certificate free of charge to any person reasonably requiring it as required by Regulation 4(1) of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019, a financial penalty not exceeding £5,000.

v. In respect of a failure by a property agent to notify any client within 14 days of a change in the details of an underwriter to the CMP scheme or that the membership of the CMP scheme has been revoked as required by Regulation 4(2) of the Client Money

Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019, a financial penalty not exceeding £5,000.

4. Statutory Guidance.

The Ministry of Housing, Communities & Local Government (“MHCLG”) has published the following document:

Tenant Fees Act 2019: Statutory Guidance for enforcement authorities.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819633/TFA_Statutory_Enforcement_Guidance_190722.pdf

Worcestershire County Council has had regard to this guidance in developing this document.

5. Determining the level of the financial penalty

In accordance with the provisions of the TFA 2019, the level of financial penalties for breaches of this and the associated legislation mentioned above will be determined by WCC. The statutory guidance provides limited recommendations as to the factors which may be considered as part of this process, hence the Council will consider the following before making a determination:

- a. The history of compliance/non-compliance
- b. The severity of the breach
- c. Deliberate concealment of the activity and/or evidence
- d. Knowingly or recklessly supplying false or misleading evidence
- e. The intent of the landlord/agent, individual and/or corporate body
- f. The attitude of the landlord/agent
- g. The deterrent effect of a prosecution on the landlord/agent and others
- h. The extent of financial gain as a result of the breach.

The appendices to this policy provide the processes for assessment and levels of fine that the Council will look to impose. It follows the model developed and recommended by the Lead Enforcement Authority, Bristol City Council, which believes this to be a fair, relevant and reasonable model to follow as the documents upon which it is based were widely consulted on with various stakeholders. Worcestershire County Council has therefore used this model to develop its own policy and process.

All stages subsequent to the issue of a Notice of Intent are subject to statutory time limits and the impact off the exercise by the Landlord or Agent of the Appeal process.

Appendix 1– Process for determining the level of penalty to set:

STEP ONE – Determining the offence category

WCC will determine the breach category using only the culpability and category of harm factors below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment. WCC may also apply a discretionary factor in order to reflect consistency across England and may consider decisions in other UK jurisdictions where they contain some relevant and persuasive content.

Culpability

- **Very high:** Where the Landlord or Agent intentionally breached, or flagrantly disregarded, the law or has/had a high public profile⁴ and knew their actions were unlawful
- **High:** Actual foresight of, or wilful blindness to, risk of a breach but risk nevertheless taken
- **Medium:** Breach committed through act or omission which a person exercising reasonable care would not commit
- **Low:** Breach committed with little fault, for example, because:
 - significant efforts were made to address the risk although they were inadequate on the relevant occasion
 - there was no warning/circumstance indicating a risk
 - failings were minor and occurred as an isolated incident

Harm

The following factors relate to both actual harm and risk of harm. Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does.

- **Category 1 – High Likelihood of Harm**
 - Serious adverse effect(s) on individual(s) and/or having a widespread impact due to the nature and/or scale of the Landlord's or Agent's business
 - High risk of an adverse effect on individual(s,) including where persons are vulnerable
- **Category 2 – Medium Likelihood of Harm**
 - Adverse effect on individual(s) (not amounting to Category 1)
 - Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect.
 - Tenants and/or legitimate landlords or agents substantially undermined by the conduct.
 - The Council's work as a regulator is inhibited
 - Tenant or prospective tenant misled

- **Category 3- Low Likelihood of Harm**

- Low risk of an adverse effect on actual or prospective tenants.
- Public misled but little or no risk of actual adverse effect on individual(s)

WCC will define harm widely and victims may suffer financial loss, damage to health or psychological distress (especially vulnerable cases). There are gradations of harm within all of these categories.

The nature of harm will depend on personal characteristics and circumstances of the victim and the assessment of harm will be an effective and important way of taking into consideration the impact of a particular crime on the victim.

In some cases no actual harm may have resulted and enforcement authority will be concerned with assessing the relative dangerousness of the offender's conduct; it will consider the likelihood of harm occurring and the gravity of the harm that could have resulted.

Some offences cause harm to the community at large (instead of or as well as to an individual victim) and may include economic loss, harm to public health, or interference with the administration of justice.

STEP TWO - Starting point and category range

Having determined the category that the breach falls into, WCC will refer to the following starting points to reach an appropriate level of civil penalty within the category range and will then consider further adjustment within the category range for aggravating and mitigating features.

Obtaining financial information

The statutory guidance advises that local authorities should use their powers under Schedule 5 to the CRA 2015 to, as far as possible, make an assessment of a Landlord's or Agent's assets and any income (not just rental or fee income) they receive when determining an appropriate penalty. WCC will use such lawful means as are at its disposal to identify where assets might be found.

In setting a financial penalty, WCC may conclude that the Landlord or Agent is able to pay any financial penalty imposed unless WCC has obtained, or the Landlord or Agent has supplied, any financial information to the contrary. The subject of a Final Notice, or a Notice of Intent where the subject does not challenge it, will be expected to disclose to WCC such data relevant to his/her financial position to facilitate an assessment of what that person can reasonably afford to pay. Where WCC is not satisfied that it has been given sufficient reliable information, WCC will be entitled to draw reasonable inferences as to the person's means from evidence it has received, or obtained through its own

enquiries, and from all the circumstances of the case which may include the inference that the person can pay any financial penalty.

Starting points and ranges

The tables in Appendices 4-10 below give the starting points, minimum and maximum financial penalties for each harm category and level of culpability for each type of breach:

- Appendix 4: First breach in respect of a Prohibited Payment
- Appendix 5: Second & subsequent breach in respect of a Prohibited Payment
- Appendix 6: Breach of Publication of Fees requirements
- Appendix 7: Breach in respect of membership of a Redress Scheme
- Appendix 8: Breach in respect of membership of a Client Money Protection Scheme
- Appendix 9: Breach in respect of certificates in respect of a Client Money Protection Scheme
- Appendix 10: Breach of transparency requirements in respect of a Client Money Protection Scheme

Context

Below is a list of some, but not all factual elements that provide the context of the breach and factors relating to the Landlord or Agent. WCC will identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In particular, any relevant, recent convictions (see appendix 3 below) are likely to result in a substantial upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range but this will not exceed the statutory maximum permitted in any case.

Factors increasing seriousness

Aggravating factors:

- Previous breaches of the TFA 2019
- Previous convictions, having regard to:
 - the nature of the offence to which the conviction relates and its relevance to the current breach; and,
 - the time that has elapsed since the conviction.

Other aggravating factors may include:

- Motivated by financial gain
- Deliberate concealment of illegal nature of activity
- Established evidence of wider/community impact
- Obstruction of the investigation
- Record of poor compliance
- Refusal of advice or training or to become a member of an Accreditation scheme

- Factors reducing seriousness or reflecting personal mitigation
- No previous or no relevant/recent breaches
- No previous convictions or no relevant/recent convictions
- Steps voluntarily taken to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of relationship with tenants
- Self-reporting, co-operation and acceptance of responsibility
- Good character and/or exemplary conduct
- Mental disorder or learning disability, where linked to the commission of the breach
- Serious medical conditions requiring urgent, intensive or long-term treatment and supported by medical evidence

STEP THREE - General principles to consider in setting a penalty

WCC will finalise the appropriate level of penalty so that it reflects the seriousness of the offence and must take into account the financial circumstances of the Landlord or Agent if representations are made by the Landlord or Agent following the issue of a Notice of Intent.

The level of financial penalty will try to reflect the extent to which the conduct fell below the required standard. The financial penalty will seek to meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the breach, working on the principle that it should not be cheaper to breach than to take the appropriate precautions and a fundamental principle involved. There should be no financial gain to the perpetrator from the commission of the breaches.

If issuing a financial penalty for more than one breach, or where the offender has already been issued with a financial penalty, the Council will consider whether the total penalties are just and proportionate to the offending behaviour and will have regard to the factors in STEP EIGHT below.

STEP FOUR- Issue Notice of Intent

WCC will issue a Notice of Intent within 6 months of the enforcement authority having sufficient evidence that the Landlord or Agent has breached the TFA 2019. If the breach is ongoing the 6-month deadline continues until the breach ceases. A Notice of Intent can be served spontaneously.

While there are slight variations in the statutory requirements according to which breach is being addressed, a Notice of Intent will typically contain the date of the Notice, the amount of the proposed penalty, the reason for imposing the penalty and how the recipient can make representations concerning the penalty.

STEP FIVE – Consideration of representations and review of financial penalty where appropriate

Following representations, WCC will review the penalty and, if necessary adjust the initial amount reached at STEP FOUR, and represented in the Notice of Intent, to ensure that it fulfils the general principles set out below.

Any quantifiable economic benefit(s) derived from the breach, including through avoided costs or operating savings, will normally be added to the total financial penalty arrived at in step two. Where this is not readily available, WCC may draw on information available from enforcing authorities and others about the general costs of operating within the law.

Whether the penalty will have the effect of putting the offender out of business will be relevant but in some serious cases this might be an acceptable outcome.

STEP SIX – Reductions

WCC will consider any factors which indicate that a reduction in the penalty is appropriate and in so doing will have regard to the following factors relating to the wider impacts of the financial penalty on innocent third parties; such as (but not limited to):

- The impact of the financial penalty on the Landlord or Agent's ability to comply with the law or make restitution where appropriate
- The impact of the financial penalty on employment of staff, service users, customers and the local economy.

The following factors will be considered in setting the level of reduction. When deciding on any reduction in a financial penalty, consideration will be given to:

- The stage in the investigation or thereafter when the offender accepted liability
- The circumstances in which they admitted liability
- The degree of co-operation with the investigation

The maximum level of reduction in a penalty for an admission of liability will be one-third. In some circumstances there will be a reduced or no level of discount. This may occur for example where the evidence of the breach is overwhelming or there is a pattern of breaching conduct. Any reduction will not result in a penalty which is less than the amount of gain from the commission of the breach itself.

STEP SEVEN - Additional actions

In all cases WCC must consider whether to take additional action. These may include further enforcement action itself or reference to other organisations where appropriate.

STEP EIGHT – Totality of breaching conduct

Where the offender is issued with more than one financial penalty, WCC should consider the following guidance from the definitive guideline on Offences Taken into Consideration and Totality which appears to WCC to be an appropriate reference and guide.

As the total financial penalty is inevitably cumulative WCC will determine the financial penalty for each individual breach based on the seriousness of the breach and taking into account the circumstances of the case including the financial circumstances of the Landlord or Agent so far as they are known, or appear, to the Council.

WCC will add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate total is not just and proportionate WCC will consider how to reach a just and proportionate total financial penalty. There are a number of ways in which this can be achieved.

For example:

Where a Landlord or Agent is to be penalised for two or more breaches or where there are multiple breaches of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious breach a financial penalty which reflects the totality of the conduct where this can be achieved within the maximum penalty for that breach. No separate penalty should be imposed for the other breaches.

Where a Landlord or Agent is to be penalised for two or more breaches that arose out of different incidents, it will often be appropriate to impose separate financial penalties for each breach. WCC should add up the financial penalties for each breach and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the Council should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be imposed.

Where separate financial penalties are passed, WCC will take care to ensure that there is no double-counting.'

STEP NINE – Recording the decision

The officer making a decision about a financial penalty will record their decision giving reasons for coming to the amount of financial penalty that will be imposed.

Appendix 2 – Non exhaustive list of vulnerable people

Young adults and children

Persons vulnerable by virtue of age

Persons vulnerable by virtue of disability or sensory impairment

People on a low income

Persons with a Drug or alcohol addiction

Victims of domestic abuse

Children in care or otherwise vulnerable by virtue of age

People with complex health conditions

People exploited where English is not their first language.

Victims of Trafficking or sexual exploitation

Refugees

Asylum seekers

People at risk of harassment or eviction

People at risk of homelessness.

Appendix 3 – Non exhaustive list of relevant offences /breaches

a. Housing law or landlord and tenant related

Offences under:

- The Public Health Acts of 1936 and 1961
- The Building Act 1984
- -The Environmental Protection Act 1990
- -The Town and Country Planning Act 1990
- The Prevention of Damage by Pests Act 1949
- The Protection from Eviction Act 1977
- The Local Government (Miscellaneous Provisions) Acts of 1982 and 1976
- The Housing Grants, Construction and Regeneration Act 1996
- The Local Government and Housing Act 1989
- The Housing Act 2004

b. Offences involving fraud

Offences in which the victim has been deprived of money, property or other benefit by misrepresentation/deception on the part of the offender including:

- Consumer Protection from Unfair Trading Regulations 2008, regulations 8, 9, 10, 11, 12 and 23.
- Theft
- Burglary
- Fraud
 - Benefit fraud (particularly where tenants are in receipt of Housing Benefit)
 - Conspiracy to defraud
 - Obtaining money or property by deception
- People trafficking
- Being struck off as a company director

c. Offences involving violence

A conviction for the offence of:

- Murder
- Manslaughter
- Arson
- Malicious wounding or grievous bodily harm
- Grievous bodily harm with intent
- Actual bodily harm
- Grievous bodily harm
- Robbery
- Criminal damage where the intent was to intimidate or was racially aggravated
- Common assault
- Common assault which is racially aggravated
- Assault occasioning actual bodily harm
- Possession of an offensive weapon including possession of firearms

d. Offences involving drugs

Consideration should be given to the nature of the offence and what bearing it could have on the Landlord or Agents business activities. The nature, quantity, purity and class of drugs should be taken into account. In addition where an offence of possession with intent to supply is involved regard should be had to the role and importance of, the subject in the supply chain

e. Offences involving sexual offences

An offence contained in schedule 3 of the Sexual Offences Act 2003.

f. Unlawful discrimination

Unlawful discrimination can include findings of an Industrial Tribunal on unlawful employment practice such as discrimination under the Disability Discrimination Act. Consideration should be given to the nature of the unlawful discrimination and what bearing it could have on the management of a licensable property.

g. Other offences

- Modern Slavery/ Human Trafficking

Offences involving the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control of another person, for the purpose of exploitation is likely to attach a lower level of culpability.

APPENDIX 4 – Financial Penalty in the case of a first breach in respect of Prohibited Payments.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
Low Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750

		Range	
Medium Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500

		Range	
High Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250

		Range	
Very High Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	3500	2500	4500
Harm Category 2	3750	3500	4750
Harm Category 1	4000	3000	5000

APPENDIX 5 – Financial Penalty in the case of a second or subsequent breach in respect of Prohibited Payments within 5 years of a previous breach.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £30000.

		Range	
Low Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	3500	2000	8000
Harm Category 2	6500	4000	10000
Harm Category 1	8500	4500	15000

		Range	
Medium Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	6500	4750	17000
Harm Category 2	10500	5000	20000
Harm Category 1	12500	5500	22000

		Range	
High Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	10500	5500	20000
Harm Category 2	15000	6250	24000
Harm Category 1	18000	7000	26000

		Range	
Very High Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	15000	7000	24000
Harm Category 2	17500	7250	28000
Harm Category 1	20000	7500	30000

APPENDIX 6 – Financial Penalty in the case of a breach in respect of Publication of Fees.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
Low Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750

		Range	
Medium Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500

		Range	
High Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250

		Range	
Very High Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	3500	2500	4500
Harm Category 2	3750	3500	4750
Harm Category 1	4000	3000	5000

APPENDIX 7 – Financial Penalty in the case of a breach in respect of Membership of a Redress Scheme.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
Low Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750

		Range	
Medium Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500

		Range	
High Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250

		Range	
Very High Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	3500	2500	4500
Harm Category 2	3750	3500	4750
Harm Category 1	4000	3000	5000

APPENDIX 8 – Financial Penalty in the case of a breach in respect of a failure to obtain membership of a Client Money Protection Scheme

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £30000.

		Range	
Low Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	3500	2000	8000
Harm Category 2	6500	4000	10000
Harm Category 1	8500	4500	15000

		Range	
Medium Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	6500	4750	17000
Harm Category 2	10500	5000	20000
Harm Category 1	12500	5500	22000

		Range	
High Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	10500	5500	20000
Harm Category 2	15000	6250	24000
Harm Category 1	18000	7000	26000

		Range	
Very High Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	15000	7000	24000
Harm Category 2	17500	7250	28000
Harm Category 1	20000	7500	30000

APPENDIX 9 – Financial Penalty in the case of a breach in respect of issues relating to certificates of evidence of Membership of a Client Money Protection Scheme.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
Low Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750

		Range	
Medium Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500

		Range	
High Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250

		Range	
Very High Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	3500	2500	4500
Harm Category 2	3750	3500	4750
Harm Category 1	4000	3000	5000

APPENDIX 10 – Financial Penalty in the case of a breach in respect of transparency issues relating to Membership of a Client Money Protection Scheme.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
Low Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750

		Range	
Medium Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500

		Range	
High Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250

		Range	
Very High Culpability	Starting Point	Min (£)	Max(£)
Harm Category 3	3500	2500	4500
Harm Category 2	3750	3500	4750
Harm Category 1	4000	3000	5000

This page is intentionally left blank

CABINET
9 DECEMBER 2021**WASTE MANAGEMENT SERVICE CONTRACT**

Relevant Cabinet Member
Councillor A P Miller

Relevant Chief Officer
Strategic Director of Economy and Infrastructure and Head of Finance

Local Member(s)
N/A

Recommendation

1. **The Cabinet Member with Responsibility for Environment recommends that Cabinet:**
 - a) **notes that Worcestershire County Council (“WCC”) and Herefordshire Council (“HC”) are parties to a Waste Management Service Contract (“WMSC”) with Mercia Waste Management Ltd (“Mercia”) dated 22 December 1998;**
 - b) **notes the progress in relation to the WMSC since the report to Cabinet in December 2018 (“the 2018 Report”);**
 - c) **authorises the Strategic Director for Economy and Infrastructure in consultation with the Chief Finance Officer, the Assistant Director for Legal and Governance and HC to negotiate the WMSC and enter into a Variation with Mercia to put into effect their proposals for extending the duration of the WMSC for a period of five years until 11 January 2029 (“Mercia’s Proposals”) provided that the Variation complies with:**
 - i. **The Financial Parameters**
 - ii. **The Contractual Parameters; and**
 - iii. **The Technical Parameters**

as set out in the 2018 Report and collectively referred to as “the Parameters”
 - d) **agrees that Mercia’s Proposals represent an acceptable position for the Council to progress the Variation; and**
 - e) **authorises the Strategic Director for Economy and Infrastructure to update the Joint Working Agreement between WCC and HC to reflect the extended term of the WMSC and future arrangements between the Councils.**

Background

2. WCC and HC entered into a contract for an integrated waste management service with Mercia in December 1998. Members are referred to previous reports to Cabinet setting out the detailed history of subsequent developments under the WMSC.
3. Under the Public Contracts Regulations 2015 and the terms of the WMSC, which expires in January 2024, the parties are able to agree an extension.
4. The Cabinet report of December 2018 set out certain Parameters (Financial, Contractual and Technical) which the terms of any proposed extension were required to meet in order to be considered as acceptable to the Council. The original Parameters and the way in which they have been met by Mercia's Proposals are set out in the Appendix.
5. Since the 2018 Report, Officers together with colleagues from HC, have been engaged in negotiation with Mercia to agree terms of a possible extension subject to satisfying the Parameters. As the WMSC expires in January 2024 a decision on whether or not to agree the terms of an extension needs to be made.

Parameters

6. At the Cabinet meeting on 13 December 2018 the Parameters which set out the basis on which any future Variation may be concluded, were agreed. The relevant Parameters to be satisfied are Financial, Contractual and Technical.
7. Officers consider that Mercia's Proposals satisfy the Financial, Contractual and Technical parameters.

.

Legal, Financial and HR Implications

8. The Legal and Financial implications associated with this are set out as part of the Contractual and Financial Parameters and/or in the attached exempt Appendix where such matters are informed by legally privileged advice.
9. Any amendments to the WMSC will be limited to those to give effect to Mercia's proposals and to any benefits the Councils are seeing from the opportunity created by the making of the Variation. There will be a commercial benefit to both the Councils and to Mercia from agreeing the extended duration, but other than that the financial terms are considered to be more advantageous to the Council than those offered by the existing terms. In particular it is important to note that Mercia's rate of return will not be improved as a result of the Variation
10. There are no specific HR implications for the Council as this is a contracted service.

Risk Implications

11. The Financial, Contractual and Technical risks which have been identified are addressed in the Appendix under each of the respective Parameters

Joint Equality, Public Health, Data Protection and Sustainability Impact Assessments

12. The JIA screening did not identify any potential considerations requiring further assessment during implementation.

Supporting Information

- Appendix A - Parameters report
- Appendix B – advice received from external advisors informing the legal and financial implications - exempt
- Appendix C - JIA screening

Contact Points

County Council Contact Points

County Council: 01905 763763

John Hobbs, Strategic Director of Economy and Infrastructure

(01905) 766700

Email: jhobbs@worcestershire.gov.uk

Background Papers

In the opinion of the proper officer (in this case the Strategic Director of Economy and Infrastructure) the following are the background papers relating to the subject matter of this report:

Agenda papers and background documents accessible to the public for the meetings of the Cabinet held on: 12 December 2013 and 13 December 2018 [Agenda for Cabinet on Thursday, 13th December, 2018, 10.30 am - Worcestershire County Council \(moderngov.co.uk\)](#)

This page is intentionally left blank

Waste Management Service Contract Parameters

The Parameters are split into:

- Financial Parameters
- Contractual Parameters; and
- Technical Parameters.

The Parameters

Financial Parameters

In order to satisfy the Financial Parameters agreed in 2018 it is necessary to demonstrate that the terms of the proposed Variations

- (a) are affordable;
- (b) represent value for money; and
- (c) will not burden the Councils with unpredictable costs in the future.

Page 41

Contractual Parameters

In order for the Contractual Parameters agreed in 2018 to be satisfied it is necessary to demonstrate that

- a) there must be no material change in the services and means of delivery compared with that envisaged when the original contract was let other than permitted under Regulation 72 of the Public Contract Regulations; and
- b) if there is any change in the risk/reward share in the original contract, it should not be for the benefit of the contractor.

Technical Parameters

There are also a number of Technical Parameters set out below which include ensuring that the technical performance of EnviRecover is maintained and the operational life of the other facilities is considered

As indicated in the report from 13 December 2018 the Council has obtained advice from appropriately qualified advisors dealing with legal, technical and financial issues (“the Advisors”) in relation to the proposed terms of the variation who each hold the requisite professional indemnity insurances in relation to the advice they give the Councils. The following table has been prepared by internal legal advisors to the Council, following consideration of such external advice where applicable:

Financial Parameters		
<i>Parameter</i>	<i>Status</i>	<i>Commentary</i>
<p>The contract extension represents value for money when assessed:</p> <ul style="list-style-type: none"> a) absolutely in terms of the Contractor's Proposals; b) relatively with the market; and c) in light of the opportunity cost and other disadvantages of alternative options. 		<p>Confirmed.</p> <p>The Council has appraised the offer made by the Contractor in detail and have concluded that it represents value for money on its terms and compared to the risks of reprocurring these services at this time</p> <p>There is a significant degree of uncertainty due to the anticipated impact of the Environment Act when it brought into force. Significant unknowns for the Councils are:</p> <ul style="list-style-type: none"> • the requirement to collect and process food waste separately; • the introduction of a Deposit Return Scheme; • the introduction of Extended Producer Responsibility. <p>All of these have the potential to have an impact on volumes of municipal waste capable of being processed at EnviRecover and volumes of recyclate and agreeing an extension mitigates this risk to the Council</p> <p>The waste management market is experiencing a period of significant volatility. Officers are aware of a number of takeovers or mergers, one of which has so far been referred to the Competition and Markets Authority. The two businesses have been ordered to be kept separate at this time and not integrate business practices. It is considered that this alone may effectively remove two potential bidders from pursuing any interest in any tendering exercise in the near future</p>
The Internal Rate of Return (IRR) over the life of the WMSC shall not exceed the IRR used in the financial model in the original procurement.		Confirmed
DEFRA (WIDP) approve the variation (as required).		Confirmation that DEFRA (WIDP) approval to the Variation is not required has been obtained. The PFI contract will come to an end in January 2024.
The life-cycle costs beyond 2023, especially in relation to EnviroSort, are clear and affordable.		Confirmed. Lifecycle costs until proposed contract expiry date of 11 January 2029 have been agreed. These are considered to be clear and affordable-

Delivery of a revenue saving for the Councils.		Confirmed, a revenue saving will be delivered to the Councils with effect from calendar year 2021 until expiry in January 2029.
Overall Parameter Status		Officers' view is that the Financial Parameters are satisfied

Contractual Parameters		
<i>Parameter</i>	<i>Status</i>	<i>Commentary</i>
There are no alterations to the WMSC, its structure or financial basis, as a result of any extension, save for those:		
a) necessary to give effect to the extension;		Confirmed. The changes to the WMSC which are required shall include variation to the Unitary Payment and payment mechanism, provisions and may require variations to the bond and guarantee and direct agreement. A review of the Maintenance and Exit Plans will also be necessary .
b) bringing the WMSC into compliance with current and foreseeable legislation; and		Confirmed. The WMSC was thoroughly reviewed in 2014 as part of the Variation agreed to construct EnviRecover The Environment Act received Royal Assent on 9 November 2021. It is not possible at this stage to identify any changes which may be required to the WMSC when the Environment Act is brought into force
c) the net effect of which is to deliver a commercial benefit to the Councils.		Confirmed.
External legal advice has been obtained that there is no realistic prospect of a material delay to or cessation of the extension of the contract as a result of challenge on procurement grounds.		Confirmed., relevant advice has been obtained by Officers
Herefordshire Council and Worcestershire County Council have entered into an agreement to extend the Joint Working Agreement insofar as it relates to the extension of the contract.		Negotiations between the Councils are progressing and the revised JWA will be executed simultaneously with other documentation
Overall Parameter Status		Officers' view is that the Contractual Parameters are satisfied

Technical Parameters		
<i>Parameter</i>	<i>Status</i>	<i>Commentary</i>
The Reliability, Availability, Maintainability and Safety (RAMS) and Life Cycle Costs are such that:		
a) the costs in extending the contract are comparable to the market; and		Confirmed
b) the costs of running the facilities are not deflated during the period up to the end of the WMSC at the expense of increased running costs from that point to the end of the design life of the facilities (notably EnviRecover).		Confirmed The terms of the WMSC require the Contractor to <ul style="list-style-type: none"> • maintain EnviRecover in accordance with the manufacturer's recommendations; and • hand back the facilities in a previously agreed condition. These terms are not subject to change as a result of the proposed extension
2. The return condition of the facilities at the expiry of the WMSC, shall be such that they;		
a) are in accordance with the specifications pursuant to which they were procured (save for agreed changes); and		The return condition of the facilities will be in accordance with the contractual provisions which remain unchanged. Condition surveys will be commissioned at appropriate times to ensure that this will be the case.
b) are in a condition consistent with proper use up to that point in time; and		See above
c) are capable of being operated for the remainder of their design life; and		See above

d) are likely to be capable of being re-financed at commercial rates; and		The return condition of the facilities will be in accordance with the contractual provisions which remain unchanged. Condition surveys will be commissioned at appropriate times to ensure that this will be the case.
3. Any prescriptive specification items required by the Councils have been incorporated in the specification.		Not relevant to proposed extension. There are no prescriptive specification items to consider
4. Any operating restrictions required by the Councils have been incorporated in the operating requirements.		Not relevant to proposed extension. There are no operating restrictions required by the Councils to consider
5. Any major component warranties required by the Councils have been requested in Mercia's contract documents for the facilities.		Not relevant to proposed extension. The Councils' requirements for major component warranties have already been addressed and warranties provided
Overall Parameter Status		Officers' view is that the Technical Parameters are satisfied

By virtue of paragraph(s) 3, 5 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank