

**Time and Date**

2.00 pm on Tuesday, 15th July, 2014

**Place**

Council Chamber - Council House

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1. **Apologies**
2. **Minutes of the Meeting held on 24th June 2014** (Pages 5 - 14)
3. **Coventry Good Citizen Award**  
To be presented by the Lord Mayor and Judge Griffith-Jones, Honorary Recorder
4. **Correspondence and Announcements of the Lord Mayor**
5. **Petitions**
6. **Declarations of Interest**

**Matters Left for Determination by the City Council/Recommendations for the City Council**

7. **Youth Justice Plan - Requirement under the Crime and Disorder Act 1998 Part III 40-(1)** (Pages 15 - 82)  
From the Joint Cabinet Members Meeting (Children and Young People) and (Policing and Equalities), held on 1<sup>st</sup> July 2014.

**It is anticipated that the following matters will be referred as Recommendations from Cabinet, 8th July 2014. In order to allow Members the maximum opportunity to acquaint themselves with the proposals, the reports are attached. The relevant Recommendations will be circulated separately.**

8. **Warwick District Council New Local Plan - Publication Draft** (Pages 83 - 102)  
Report of the Executive Director, Place
9. **Coventry and Solihull Waste Disposal Company - Revised Articles of Association and Memorandum of Understanding** (Pages 103 - 190)  
Report of the Executive Director, Place

10. **Establishment of Cabinet Committee - Children's Services** (Pages 191 - 198)

Report of the Executive Director, Resources

**Item for Consideration**

11. **Ricoh Arena Judicial Review** (Pages 199 - 250)

Report of the Assistant Director for Legal & Democratic Services and Monitoring Officer

**Other Business**

12. **Question Time**

- (a) Written Questions – There are no written questions
- (b) Oral Questions to Chairs of Scrutiny Boards/Chair of Scrutiny Co-ordination Committee
- (c) Oral Questions to Chairs of other meetings
- (d) Oral Questions to Representatives on Outside Bodies
- (e) Oral Questions to Cabinet Members and Deputy Cabinet Members on any matter

13. **Statements**

14. **Debates**

- 14.1 To be moved by Councillor Birdi and seconded by Councillor Taylor

“When determining strategic housing needs and before publishing its local plan, Coventry City Council will:

i) Consult with and take into consideration the views of all interested parties.

ii) Engage with and give material consideration to Residents' Groups and local Parish Councils to ensure that their views are fairly represented in the plan.

iii) Continue the principle of developing appropriate Brownfield sites before any urban sprawl into the Greenbelt.

iv) Appreciate the significant difference between urban, semi-rural and rural living and have a differential policy regarding housing densities depending on their designation.

v) Ensure that executive and aspirational housing developments (houses in the higher tax bands) are given priority because of the shortage of such housing stock in the City

vi) Introduce a policy to support an Article 4 Direction to control on an area by area basis the number of Houses in Multiple Occupation (HIMOs)”

14.2 To be moved by Councillor Maton and seconded by Councillor Abbott

“This Council notes that:

By supporting the Yes to Homes campaign we show that we are committed in Coventry to building more of the right type of homes, in the right place, at the right price to meet the increasing demand and need for our growing City.

It is vitally important we create more homes for local people to buy or rent. The city is facing a housing crisis, we have low wages and high house prices, 14,000 people on the waiting list, the population is growing faster than anywhere outside of London, and the cost of living is going up. People are finding it incredibly difficult to get on the housing ladder. We need to build more affordable homes, in particular so younger people can afford to move out of their parents' houses and live in a flat or house in their own city.”

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Chris West, Executive Director, Resources, Council House Coventry

Monday, 7 July 2014

Note: The person to contact about the agenda and documents for this meeting is Carolyn Sinclair/Suzanne Bennett 024 7683 3166/3072

Membership: Councillors F Abbott, N Akhtar, M Ali, A Andrews, M Auluck, R Bailey, S Bains, L Bigham, J Birdi, J Blundell, R Brown, K Caan, D Chater, J Clifford, G Crookes, G Duggins, C Fletcher, D Galliers, D Gannon, A Gingell, M Hammon (Deputy Chair), L Harvard, P Hetherington, D Howells, J Innes, L Kelly, D Kershaw, T Khan, A Khan, R Lakha, R Lancaster, J Lepoidevin, A Lucas, K Maton, J McNicholas, C Miks, K Mulhall, J Mutton, M Mutton, H Noonan (Chair), J O'Boyle, E Ruane, R Sandy, T Sawdon, B Singh, D Skinner, T Skipper, H Sweet, K Taylor, R Thay, S Thomas, P Townshend, S Walsh and D Welsh

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language please contact us.

**Carolyn Sinclair/Suzanne Bennett**  
**024 7683 3166/3072**

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## MINUTES OF THE MEETING OF THE CITY COUNCIL OF THE CITY OF COVENTRY

Held on 24<sup>th</sup> June 2014, in the Council House, Coventry

### PRESENT

Lord Mayor (Councillor Noonan)  
Deputy Lord Mayor (Councillor Hammon)

Councillor Abbott	Councillor A Khan
Councillor Akhtar	Councillor Lakha
Councillor Andrews	Councillor Lepoidevin
Councillor Bailey	Councillor Mrs Lucas
Councillor Bains	Councillor McNicholas
Councillor Mrs Bigham	Councillor Maton
Councillor Birdi	Councillor Mrs Miks
Councillor Blundell	Councillor J Mutton
Councillor Caan	Councillor M Mutton
Councillor Chater	Councillor O'Boyle
Councillor Clifford	Councillor Ruane
Councillor Crookes	Councillor Sandy
Councillor Duggins	Councillor Sawdon
Councillor Fletcher	Councillor Singh
Councillor Galliers	Councillor Skinner
Councillor Gannon	Councillor Skipper
Councillor Gingell	Councillor Mrs Sweet
Councillor Harvard	Councillor Taylor
Councillor Hetherton	Councillor Thay
Councillor Howells	Councillor Thomas
Councillor Innes	Councillor Townshend
Councillor Kelly	Councillor Walsh
Councillor Kershaw	Councillor Welsh

Honorary Alderman

Present:

Mr J Gazey  
Mrs J Wright

Apologies: Councillor Ali  
Councillor Auluck  
Councillor Brown  
Councillor T Khan  
Councillor Lancaster  
Councillor Mulhall

## Public Business

### 16. Minutes

The minutes of the Annual Meeting held on 5<sup>th</sup> June 2014 were signed as a true record.

### 17. Exclusion of Press and Public

**RESOLVED** that under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the item of business indicated below on the grounds that it involve the likely disclosure of information defined in the specified Paragraph(s) of Schedule 12A of the Act as it contains information relating to the financial or business affairs of any particular person (including the authority holding that information) and that in all of the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Minute No	Subject	Relevant Paragraph(s) of Part 1 of Schedule 12A
35	European Regional Development Fund (ERDF) Open Call for Projects	3

### 18. Coventry Good Citizen Award – Mr David Shortland

On behalf of the Council, the Lord Mayor presented Mr David Shortland with the Coventry Good Citizen Award. His citation read:

*“David Shortland has made his mark on the city and its landscape having dedicated countless hours of his time to the regeneration and development of Coventry.*

*A Chartered Surveyor with nearly 40 years development experience, he has carved out a name for himself as a high profile business leader in the city. The Good Citizen Award recognises a great range of attributes and characteristics and of note is David’s drive and desire to make a difference to the landscape of this city.*

*As an advisor on many leading development schemes including Belgrade Plaza, Priory Place and Electric Wharf, and many other locations across Warwickshire David has a fantastic CV to reflect on.*

*He founded Shortland Horne in 1995 and is now Chair of Shortland Horne, Shortland, Penn and Moore, and Bluemark Projects Limited. David recently retired from being Chairman of the Belgrade Theatre and having been a Director since 2002 is now Honorary Ambassador to the Belgrade Theatre and remains as Director of Belgrade Production Services. His many roles on boards for Coventry University Business School, the Place Board for Coventry and Warwickshire Champions and Chairman of the Associate Directors Group at*

*Coventry City Football Club set him apart. David is a man with boundless energy and commitment to the city and is a fitting recipient of the Coventry Good Citizen Award. David has made a significant, personal financial contribution to the Belgrade Theatre”*

## 19. **Birthday Honours**

The Lord Mayor referred to the awards made to the following people associated with the City in the recent Queen's Birthday Honours List:

- **MBE:** Amrik Singh Bhabra, Managing Director of ADECS and former President of Coventry & Warwickshire Chamber of Commerce, for his services to business and the community.
- **CBE:** Professor Nicholas Crafts, lecturer at the University of Warwick, for his services to economic policy.

Members noted that letters of congratulations had been sent, on behalf of the City Council, to both recipients.

## 20. **Congratulations on Awards**

The Lord Mayor referred to two awards won at the Royal Town Planning Institute (RTPI) West Midlands Centenary Ball on 13<sup>th</sup> June, attended by Councillor Sweet, Chair of Planning Committee.

Coventry Cathedral was awarded the Centenary Project Award as a clear example of a building which has a symbolic role for the city and the nation.

Ben Simm was awarded RTPI West Midlands Young Planner of the Year and considered an excellent role model.

In addition, Friargate was highly commended for the Regional Award for Planning Excellence losing out to the New Birmingham Library.

Congratulations were conveyed to all recipients.

## 21. **Petitions**

**RESOLVED** that the following petitions be referred to the appropriate City Council body:

- (1) **Request for additional safety measures on Swan Lane – 429 signatures – presented by Councillor Welsh.**
- (2) **Request for parking dispensation permits for householders in Aldrin Way – 9 signatures – presented by Councillor Blundell.**
- (3) **Request for a residents only parking permit scheme in Ellys Road – 29 signatures – presented by Councillor M Mutton.**

- (4) **Request to tidy up former car park on corner of Hill Street and Bond Street – 229 signatures – presented by Councillor O’Boyle.**
- (5) **Request for action be prevent illegal biking along Thompsons Road – 7 signatures – presented by Councillor Galliers.**
- (6) **Request the Council to look into missed refuse collections on Seymour Close – 42 signatures – presented by Councillor Bailey.**

## **22. Declarations of Interest**

The Lord Mayor, Councillor Noonan declared an interest (under the category of “Other Relevant Interest”) in the matter referred to in Minute 26 below (Coventry and Warwickshire Gateway – Section 106 Planning Agreement). She withdrew from the meeting during consideration and voting on this matter. The Deputy Lord Mayor, Councillor Hammon, took the Chair for this item.

## **23. Local Government Pension Scheme - Statement of Policy**

Further to Minute 173/13 of the Cabinet, the City Council considered a report of the Executive Director, Resources, which sought approval of the Council’s statement of policy on the discretions contained within the Local Government Pension Scheme Regulations.

Due to changes within the Local Government Pension Scheme Regulations 2013, the Council was required to formulate and publish a Statement of Policy in respect or the Local Government Pension Scheme. The report stated that particular attention needed to be drawn to the discretionary elements available to the Council.

The Policy Statement had been revised to reflect the changes to the Regulations. The main changes to the policy were set out in the report and, in summary, related to the following clauses:

- Clause 1 (Regulation 30)
- Clause 2 (TP Regulations 1(1) of Schedule 2)
- Clause 3 (Regulation 31)
- Clause 4 (Regulations 16(2)e and 16(4)d)
- Clause 6 (Regulation 17)
- Clause 7 (Regulation 16)
- Clause 9 (Regulation 100)
- Clause 10 (Regulation 9(3))
- Clause 11 (Regulations 91-95)
- Clause 12 (Regulation 72)

The Local Government Pension Scheme Regulations Statement of Policy would be effective from 1<sup>st</sup> July 2014.

**RESOLVED that the City Council approve the Local Government Pension Scheme Regulations Statement of Policy attached at Appendix 1 of the report.**

## 24. Pay Policy Statement 2014/15

Further to Minute 172/13 of the Cabinet, the City Council considered a report of the Executive Director, Resources, which set out the Council's annual Pay Policy Statement.

Local authorities were required by sections 38 and 39 of the Localism Act 2011 to produce an annual Pay Policy Statement, which must articulate the Council's policies towards a range of issues relation to the pay of the workforce, particularly the most senior staff (or chief officers) and the relationship of their pay to the lowest paid employees. The proposed annual Pay Policy Statement for 2014/15 was attached as an appendix to the report submitted.

**RESOLVED that the City Council approve the 2014/15 Pay Policy Statement attached at Appendix 1 of the report.**

## 25. 2013/14 Revenue and Capital Financial Outturn

Further to Minute 4/14 of the Cabinet, the City Council considered a report of the Executive Director, Resources, which set out the final revenue and capital outturn position for 2013/14, reviewed the treasury management activity during the year and set out the final 2013/14 Prudential Indicators reported under the Prudential Code for Capital Finance.

The balanced revenue position incorporated a £4m dividend from the Council's investment in Birmingham Airport plus and underlying underspend of £7.2m across all service areas. It was proposed that this £11.2m be set aside to apply to fund proposals coming out of the Council's recent Ofstead report and a range of other proposals that would increase the long-term resilience of the Council's financial position.

There had been two broad headline areas of overspending in 2013/14 in relation to looked after children and adult social care budgets.

In addition to the proposed contributions proposed, the outturn position also included a previously budgeted contribution of £4m into reserves in relation to Business Rates. This would help protect the Council from future Business Rate volatility and enable the release of ongoing revenue expenditure budgets in this area. In total, reserve balances would increase from £74m to £83m.

At their meeting, Cabinet had approved

- a) The final revenue outturn position balanced to budget.
- b) The final capital expenditure and resourcing position, incorporating expenditure of £54.5m against a final budget of £64.7m, reflecting £10.2m expenditure rescheduled into 2014/15 as set out in section 2.5 and Appendix 5 of the report.
- c) The outturn Prudential Indicators position as set out in section 2.6 and Appendix 6 of the report.

**RESOLVED that the City Council approve the proposed contributions of £11.2m into reserves and to fund capital expenditure incorporated within this position as outlined in Section 2.3 of the report.**

## 26. **Coventry & Warwickshire Gateway - Section 106 Planning Agreement**

Further to Minute 6/14 of the Cabinet, the City Council considered a report of the Executive Director, Place, which sought approval to enter into a Section 106 Planning Agreement in respect of the Coventry Gateway development.

In October 2012, the Council approved the disposal of land around Coventry Airport to form part of a development scheme known as Coventry Gateway. A condition of the disposal required the developer to secure an acceptable planning consent for the proposed commercial development. An outline planning application for the proposed development was submitted by Coventry and Warwickshire Development Partnership LLP to Warwick District Council and Coventry City Council as the scheme covered both administrative areas. At their respective planning committees, both authorities resolved their intention to grant consent.

The Secretary of State for the Department for Communities and Local Government called in the application and a planning inspector was appointed to hold a public planning enquiry which commenced on the 21st April 2014 and was scheduled to last for 15 days. The evidence heard at the public inquiry is currently being considered by the inspector. As a number of significant impacts of the proposed development are mitigated by a section 106 planning agreement, a completed agreement would have a strong bearing on the Inspector's recommendation to the Secretary of State and on the Secretary of State's decision on the outline planning applications.

Planning requirements proposed by the local planning authority, sought to impose obligations on the landowners, of which Coventry City Council is one. These obligations would require certain relevant works to be carried out and financial payments to be made during the development and prior to occupation of the development. These obligations were to be secured and documented by way of a legally enforceable section 106 planning agreement.

The report submitted outlined the financial liability potentially being imposed on Coventry City Council and how the liability was intended to be indemnified by the Coventry & Warwickshire Development Partnership as developer for the scheme, underwritten by a bank guarantee and to be documented as part of the land agreement.

### **RESOLVED that the City Council:**

- 1. Approve that the Council, acting as landowner, enter into the Coventry and Warwickshire Gateway Section 106 Planning Agreement with Warwickshire County Council and Warwick District Council, provided that all the financial liabilities imposed on the Council in that agreement are indemnified by the Developer in the land agreement and backed by a bank guarantee.**
- 2. Delegate authority to the Executive Director, Resources, and the Executive Director, Place, in consultation with Cabinet Member (Business Enterprise and Employment), to negotiate the final terms of the Section 106 Planning Agreement, the indemnity from the Developer and the Bank Guarantee and to conclude all necessary legal documents in relation to the Section 106 Planning Agreement.**

(Note: The Deputy Lord Mayor, Councillor Hammon, Chaired the meeting for consideration of this item).

## **27. European Regional Development Fund (ERDF) Open Call for Projects**

Further to Minute 7/14 of the Cabinet, the City Council considered a report of the Executive Director, Resources, which set out proposals for the submission of a bid to the European Regional Development Fund (ERDF) Open Call for Projects.

A corresponding private report, detailing the confidential financial details of the proposal, was also submitted to the meeting for consideration (Minute 35 below refers).

Coventry and Warwickshire have been very successful in the current round of ERDF in attracting external funding to the area. Under the ERDF Sustainable Urban Development Programme, Coventry & Warwickshire received a notional allocation of £12.5m and over the course of the programme, through demonstrating a clear understanding of ERDF priorities and an ability to deliver on time, to budget and profile, the Council have doubled that allocation and now have circa £25million of ERDF money committed to the area. There was now an opportunity to bid for further funds, primarily aimed at existing projects.

The Coventry and Warwickshire Local Enterprise Partnership (CWLEP) partners had looked at the opportunity to bid for further funds and as a result the Council has submitted a number of proposals seeking ERDF funding.

It was anticipated that the bidding round would be highly competitive and the Council was entering the process knowing that it was unlikely that it will be successful with all its proposals. However, building on its previous success and the Council's extensive knowledge of ERDF gained over many years, the Council had positioned Coventry and Warwickshire with the Department for Communities and Local Government (DCLG) as a place that can deliver.

Decisions by DCLG on which projects and programmes across the West Midlands area have been successful in securing further funds will be made by 20th June 2014. Spend and delivery would need to have been made by 31st December 2015.

The report submitted was in advance of knowing the outcome of bids from DCLG, so that if the Council were successful in securing ERDF, it could quickly move to become the accountable body for the additional ERDF, contract and mobilise the workforce accordingly to ensure delivery by 31 December 2015. It was noted that any delay in the decision making process would jeopardise the Council's ability to deliver the schemes within the timeframes set.

### **RESOLVED that:**

- 1. The City Council approve the following, noting that all decisions are subject to the Council being notified that it has been successful in securing additional ERDF:**
  - (i) Authorise the City Council to act as guarantor and delegate authority to the Executive Director, Place, in conjunction with the Executive Director,**

**Resources, to enter into grant aid agreements with DCLG on ERDF terms and conditions for the following individual projects if they are successful in securing ERDF: Gosford Street/University and Canal Basin/Bishop Street as set out in appendix 4 of the report.**

- (ii) Delegate authority to the Executive Directors, Resources & Place to agree the terms of contracts of the public realm works under recommendation (i) above.**
- (iii) Approve the addition of relevant schemes to the Capital Programmes for 14/15 and 15/16.**

## **28. Scrutiny Annual Report 2013/14**

The City Council noted the Scrutiny Boards' Annual report to the City Council for 2013/14 which highlighted examples of the wide-ranging scrutiny work undertaken during the year across all the Scrutiny Boards and the Scrutiny Co-ordination Committee.

## **29. Community Governance Review**

The City Council considered a report of the Executive Director, Resources, in respect of a petition, received by the Council on 3<sup>rd</sup> December 2013 and signed by 711 people, requesting the creation of a parish council in the Finham area of the City. In accordance with the Local Government and Public Involvement in Health Act 2007, the Council was now required to conduct a Community Governance review for this area.

**RESOLVED that the City Council approve the terms of reference of the review and agree the required consultation process and timetable.**

## **30. Annual Report from the Leader to the Council on Key Decisions made under Special Urgency**

The City Council noted a report of the Executive Director, Resources, regarding decisions made in the previous year where the special urgency provisions were used. This applied where it had not been practicable to give notice at least 5 clear days in advance of a key decision being made. The report stated that there were no such cases in the past year.

## **31. Serious Case Review into the Death of Daniel Pelka – Progress Report from the Education and Children’s Services Scrutiny Board**

The City Council considered a progress report from the Education and Children’s Services Scrutiny Board in respect of Serious Case Review (SCR) report published on Tuesday 17th September 2013 on the death of Daniel Pelka.

In line with statutory guidance a SCR was commissioned to investigate and analyse the circumstances into Daniel’s abuse and death. A SCR is held whenever a vulnerable child dies or is seriously injured or impaired and abuse or neglect is known or suspected to have been a factor.



The SCR report made 15 recommendations to local partners, covering domestic abuse, referral and assessment processes, training of staff, practice in schools and health as well as the requirement to disseminate messages to the Children’s Workforce.

The Extra-ordinary meeting of the Council which took place on 10<sup>th</sup> October 2013 passed a resolution requesting that it receive a 6 monthly update report from Education and Children’s Services Scrutiny Board (2) on delivery against the multi-agency action plan agreed through the independent Local Safeguarding Children Board.

**RESOLVED that the City Council note the work of the Education and Children’s Services Scrutiny Board (2) carried out to date and endorse proposed future action.**

**32. Question Time**

The following Members answered oral questions put to them by other Members as set out below, together with supplementary questions on the same matters:

<b>No</b>	<b>Question Asked By</b>	<b>Question Put To</b>	<b>Subject Matter</b>
1	Councillor Blundell	Councillor Lucas	Consultation on the Local Development Plan
2	Councillor Skinner	Councillor A Khan	50m Swimming Pool
3	Councillor Crookes	Councillor Maton	Development in the City

**33. Statements**

**(a) Statement by the Cabinet Member (Children and Young People)**

The Cabinet Member (Children and Young People), Councillor Ruane, made a statement in respect of the “Children’s Services Improvement Plan”.

Councillor Lepoidevin responded to the statement.

**(b) Statement by the Leader**

The Leader of the Council, Councillor Lucas, made a statement in respect of her “Vision for the municipal year”.

Councillor Blundell responded to the statement.

**34. Debate – Foodbanks**

Councillor Gannon moved the following Motion which was seconded by Councillor A Khan:

““This Council notes that:

1. The number of people using Foodbanks provided by the Trussell Trust alone has increased from 41,000 in 2010 to more than 500,000, of whom one third are children;
2. Over the last three years, prices have risen faster than wages;
3. The assessment of the Trussell Trust that the key factors in the increasing numbers of people resorting to Foodbanks are rising living costs and stagnant wages, as well as problems including delays to social security payments and the impact of the under-occupancy penalty

and Council calls on the Government to take action to reduce dependency on Foodbanks”

**RESOLVED that the Motion be unanimously adopted.**

### **35. European Regional Development Fund (ERDF) Open Call for Projects**

Further to Minute 27 above and Minute 13/14 of the Cabinet, the City Council considered a private report detailing the confidential financial matters in relation to the proposals to submit a bid to the European Regional Development Fund (ERDF) Open Call for Projects.

**RESOLVED that the City Council approve the following, noting that all decisions are subject to the Council being notified that it has been successful in securing additional ERDF:**

- (i) **Authorise the City Council to act as guarantor and delegate authority to the Executive Director, Place in conjunction with the Executive Director, Resources to enter into grant aid agreements with DCLG on ERDF terms and conditions for the following individual projects if they are successful in securing ERDF: Gosford Street/University and Canal Basin/Bishop Street as set out in Appendix A.**
- (ii) **Authorise the City Council to enter into a joint working legal agreement with Coventry University to deliver the Gosford Street Scheme.**
- (iii) **Delegate authority to the Executive Director, Resources and Executive Director, Place to agree the terms of contracts of the public realm works under recommendation (ii) above.**
- (iv) **Approve the addition of relevant schemes to the Capital Programmes for 14/15 and 15/16.**

(Meeting closed at 4.10 pm)

# Agenda Item 7

**Council – 15<sup>th</sup> July 2014**

**Recommendation from Joint  
Cabinet Members (Children and  
Young People) and Policing and  
Equalities) - 1<sup>st</sup> July 2014**

**Minutes of the Meeting of Joint Cabinet Members (Children and Young  
People) and (Policing and Equalities) held at 2.00pm on Tuesday, 1<sup>st</sup> July,  
2014**

Present:

Cabinet Members: Councillor Ruane (Cabinet Member (Children  
and Young People))  
(Policing and Councillor Townshend (Cabinet Member  
Equalities))

Apologies: Councillor Andrews (Shadow Cabinet Member  
(Policing and Equalities)  
(Policing Councillor Fletcher (Deputy Cabinet Member  
and Equalities)  
Member Councillor Lepoidevin (Shadow Cabinet  
(Children and Young People)

Other Members Present: Employees (by Directorate):  
People: M. Godfrey, G. Kell, A. Parkes  
Resources: S. Bennett

Public Business

**3. Youth Justice Plan – Requirement Under the Crime and Disorder Act  
1998  
Part III 40-(1)**

The Cabinet Members considered a report of the Executive Director,  
People, which indicated that Youth Offending Teams were established  
under the Crime and Disorder Act 1998. The functions assigned to the

Youth Offending Service include the duty upon the local authority under the Children Act 1989 to take all reasonable steps to encourage children not to commit offences. The Act imposed a duty on each local Authority, acting in co-operation with statutory partners (Police, Health and probation) to ensure that all youth justice services are available in their area to such an extent as is appropriate.

The Crime and Disorder Act also imposed a duty on each Youth Offending Team to complete and submit a Youth Justice Plan each year. The Plan, which was attached as an appendix to the report, provides an overview of the Coventry Youth Offending Service, achievements against key indicators, plans and targets, and identifies the key strategic actions for the next 12 months.

The Youth Justice Plan has been agreed and signed off by the statutory partners – Police, Health, Probation and the Local Authority, represented by the Deputy Director, Early Intervention and Social Care, People Directorate.

The Cabinet Members congratulated all those involved in the formulation of the Plan and requested that a visit be arranged to enable them to see at first hand the work carried out by the Youth Offending Teams.

**RESOLVED:-**

- 1) That the City Council be recommended to endorse the Youth Justice Plan, as appended to the report submitted, the Plan then to be submitted to the Parliamentary Library in line with the requirements of the Crime and Disorder Act, 1998.**
  
- 2) That the Cabinet Members request that Joint Cabinet Members (Children and Young People) and (Policing and Equalities) Meetings be held on a quarterly basis to receive a report against the following three national indicators, together with any other matters which need to be brought to the Cabinet Members attention:-**
  - i) Reducing the number of young people entering the Youth Justice System as First Time Entrants (FTE)**
  
  - ii) Reducing re-offending**
  
  - iii) Reducing the use of Custody for young people**

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**Joint Cabinet Members (Children and Young People) and  
(Policing and Equalities)**

1 July 2014

**Council**

15<sup>th</sup> July 2014

**Name of Cabinet Members:**

Cabinet Member (Children and Young People) Councillor Ruane  
Cabinet Member (Policing and Equalities) Councillor Townshend

**Director approving the report:**

Executive Director, People

**Ward(s) affected:**

All Wards  
Services are delivered on a City wide basis

**Title**

Youth Justice Plan – Requirement under the Crime and Disorder Act 1998 Part III 40-(1)

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**Is this a key decision?**

No

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**Executive summary**

Youth Offending Teams (YOTS) were established under the Crime and Disorder Act 1998 (CDA). The functions assigned to the Youth Offending Service include the duty upon the local authority under the Children Act 1989 to take all reasonable steps to encourage children not to commit offences. The Act imposed a duty on each Local Authority, acting in co-operation with statutory partners (Police, Health and Probation) to ensure that all youth justice services are available in their area to such an extent as is appropriate.

The Crime and Disorder Act also imposed a duty on each Youth Offending Team to complete and submit a Youth Justice Plan each year. The plan provides an overview of the Coventry Youth Offending Service (CYOS) achievements against key indicators, plans and targets, and identifies the key strategic actions for the next 12 months.

The Youth Justice Plan has been agreed and signed off by the statutory partners - Police, Health, Probation and the Local Authority, represented by the Deputy Director, Early Intervention and Social Care, People Directorate.

**Recommendation:**

That the Cabinet Member (Children and Young People) and the Cabinet Member (Policing and Equalities) recommend that the City Council endorses the Youth Justice Plan.

That the City Council endorses the Youth Justice Plan. The Plan will then be submitted to The Parliamentary Library in line with the requirements of the Crime Disorder Act, 1998.

**List of Appendices included:**

Youth Justice Plan 2014-15

**Other useful background papers:**

None

**Has it or will it be considered by scrutiny?**

No

**Has it, or will it be considered by any other council committee, advisory panel or other body?**

Yes - The Coventry Youth Offending Services Management Board on 19 May 2014.

**Will this report go to Council?**

Yes

**Report title:** Youth Justice Plan – Requirement under the Crime and Disorder Act 1998 Part III 40-(1)

## **1. Context (or background)**

- 1.1 The functions assigned to the YOS include the duty upon the local authority under the Children Act 1989 to take all reasonable steps to encourage children not to commit offences. The Act imposed a duty on each Local Authority, acting in co-operation with statutory partners (Police, Health and Probation) to ensure that all youth justice services are available in their area to such an extent as is appropriate.
- 1.2 The key tasks of the service are:
- Assessing and delivering interventions to the out-of-court-disposal cohort
  - Management and delivery of community sentences
  - Management and delivery of secure estate sentences and resettlement
  - Servicing the Youth Court and Crown Courts (in terms of provision of a court team, bail and health assessments, provision of pre-sentence reports and stand down reports)
  - Victim services
  - Parenting services and management of Parenting Orders
- 1.3. The Crime and Disorder Act also imposed a duty on each Youth Offending Team to complete and submit a Youth Justice Plan each year. The Plan provides an overview of CYOS achievements against key indicators, plans and targets, and identifies the key strategic actions for the next 12 months.
- 1.4 The plan has been agreed and signed off by the statutory partners - Police Health, Probation and the Local Authority, represented by the Deputy Director, Early Intervention and Social Care, People Directorate.
- 1.5 The plan is completed annually, agreed by CYOS Management Board members and submitted to The Parliamentary Library. The current Plan has secured Board sign off and Cabinet Members' endorsement is being sought. If the plan is not submitted as required, it places CYOS in breach of its Youth Justice Board (YJB) conditions of Grant agreement. This year 2014/15 the YJB grant is £658,082, which represents 30% of the services budget.
- 1.6 CYOS is required to report against three national indicators:-
- Reducing the number of young people entering the Youth Justice System as First Time Entrants (FTE)
  - Reducing re-offending
  - Reducing the use of Custody for young people

During 2013/14 the service:-

- Secured a further reduction in the number of First Time Entrants (FTEs), the best performance to date (rate per 100,000 10-17 year old population).
- Participated successfully in a bid with the lead and sponsoring agency Coventry and Warwickshire NHS Partnership Trust for a Criminal Justice Liaison and Diversion Scheme.

- Implemented an Out of Court Disposals delivery model (O OCD which is described by the YJB Local Partnership advisor as “comprehensive” in a recent quarterly divisional report). The importance of this type of intervention in terms of intervening early is evidenced in Appendix 6 of the Youth Justice Plan, case studies 1 and 2 which demonstrate the range of needs that require an early agency response.
- Secured a reduction in both the number of actual offences committed per offender and the percentage of the offending cohort who re-offended, by comparison with last year.
- Increased the number of restorative interventions, an approach which has an evidence base in relation to its impact on reducing re-offending.
- Worked in partnership with “Troubled Families” (TF) agencies to evidence improvements in distance travelled by families, and has been the identified lead agency in turning around 29 of the families in last year’s cohort.
- Implemented a “Youth One Day One Conversation” (YODOC) Offender Management forum. Our approach was discussed at the recent Home Office “Road Test” of the Integrated Offender Management principles and model. In discussion with attendees, who included the Home Office (HO) Head of Offender Strategies, it was considered that the rationale and model were appropriate. The Home Office also impressed by the transition arrangements for those young people who became adults and needed to move to One Day One Conversation (ODOC), the adult forum.
- Reduced the number of custodial sentences passed by a third when compared to last year, and achieved our lowest rate for the past five years.
- Significantly reduced the number of young people entering custody for breach alone, from 10 in 2012/13 to 3 in 2013/14.
- Reduced the number of remand episodes, securing our lowest number for the past five years by working closely with our Youth Court Bench and use of Bail packages.
- Reduced the number of short term sentences from 10 in 2012/13 to 3 in 2013/14. It is recognised by the YJB and Prison Reform Trust that short sentences can be disruptive in terms of resettlement and prevent delivery of substantial custodial based interventions. There is a discourse that argues that a short sentence is an indicator that custody was not necessary in the first place.

#### 1.7 Priorities for 2014/15 are to:

- Ensure that the supervision process is appropriate in line with new learning nationally and locally. In the light of new guidance from Coventry’s Safeguarding Sub-Committee Quality Assurance and Procedures Group (on which YOS is represented), we will review our supervision policy and procedures for staff. The guidance has been issued across the City and not specifically to CYOS. We will also implement actions from the Section 11 audit undertaken in April 2014 and consider Her Majesty’s Inspectorate of Prisons (HMIP) aggregated Short Quality Screening (SQS) findings regarding supervision.



- Reduce the frequency of exposure to and participation in Domestic Violence and Abuse (DVA) and Child Sexual Exploitation (CSE).
- Improve outcomes for young people who are not in education, training or employment, to assist successful engagement with study and work in the face of high youth unemployment.
- Ensure no detriment to service users' education provision and ensure diversity of need is responded to as a consequence of legislative changes.
- Ensure that CYOS young people receive entitlement under legislation for the Raising of Participation Age Act.
- Increase the use of restorative approaches both within CYOS and across partners.
- Enable service users to shape service delivery.
- Ensure that Out of Court Disposals (OOC) activity reflects national guidance, maintains credibility, and prevents unnecessary entry into formal CJS and measure demonstrable outcomes in terms of the value of "intervening early".
- Retain Enhanced Community Resolution (ECR), as early indicators are that it is an effective early intervention, introducing Common Assessment Framework (CAF) as a routine step down where appropriate.
- Understand the parenting issues in the Out of Court Disposals cohort.
- Contribute to the City's Prevention and Early Intervention Strategy and Plan (EIP).
- Enhance partnership working with Troubled Families, Children and Families First.
- Ensure no detriment to young people as a consequence of the national "Transforming Rehabilitation" agenda.
- Ensure that every young person has an Intervention Plan that has key partner engagement at the planning stage as well as delivery; showing appropriate sequencing incorporates the young person's priorities and reflects the victim.
- Understand our re-offending profile to inform future developments and targeting of resources.
- Ensure that best practice and evidenced based learning is a core feature across our portfolio of interventions.
- Ensure that custody is only used as a last resort.
- Seek to reduce the refusal rate for Bail packages.
- Seek to continue to reduce the number of FTEs entering the Secure Estate.
- Seek to reduce the re-offending rates of those exiting custody.

## **2 Options considered and recommended proposal**

- 2.1 Completion and submission of the Youth Justice Plan is compulsory under CDA legislation. It is proposed that the Cabinet Member (Children and Young People) and the Cabinet Member (Policing and Equalities) recommend that the City Council endorses the Plan.

### **3. Results of consultation undertaken**

- 3.1 All statutory partners are consulted under a statutory duty imposed by CDA. All Management Board members are consulted and contribute, although only statutory partners sign off is required.

The statutory partners are represented by:

- Deputy Director, Early Intervention and Social Care, People Directorate (Chair of the Board) on behalf of the Chief Executive
- Assistant Director, Childrens Social Care
- Chief Superintendent, Police Commander for Coventry, West Midlands Police
- Head of Probation, Coventry, Staffordshire and West Midlands Probation Trust
- Coventry and Rugby Clinical Commissioning Group

Other members include:

- Head of Community Safety
- Executive Director – CSWP Ltd
- Chair of The Magistrates Youth Panel
- Legal Advisor to the Youth Panel
- Head of Learning and Achievement for Looked After Children
- Senior Advisor 14-19 People Directorate
- Head of Service, IYSS

- 3.2 Whilst service users are not consulted on the content and format of the plan, user feedback is sought and considered across areas of CYOS practice.

### **4. Timetable for implementing this decision**

- 4.1 Youth Justice Board Grant conditions state that receipt of the second payment is conditional on submission of a strategic plan.
- 4.2 The Youth Justice Plan is also used by Her Majesty's Inspectorate of Probation (HMIP) as a data source for determining which YOTS are subject to Inspection, and therefore early submission is beneficial.
- 4.3 As the Youth Justice Plan forms part of the Policy Framework, the Plan requires City Council approval.

### **5. Comments from Executive Director, Resources**

- 5.1 Financial implications

Grant funding from the Youth Justice Board may be withheld/withdrawn if the plan is not submitted in line with CDA legislation requirements. The YJB grant for this year (2014/15) to CYOS is £658,082.

From 1 June 2014 responsibility for the delivery of Community Payback/unpaid work for 16 and 17 year olds transfers from Probation to Youth Offending Teams. A grant of £10,355.00 from the Youth Justice Board has been identified for CYOS to support this work. A new operating model and National Standards have been released, which requires significant developmental work in order to deliver this intervention adequately. It is not currently known whether the available grant will fully support this new work.

By April 2015 the responsibility for Junior Attendance Centres (JAC) will be transferred from the Home office to the Local Authority. Consultation with stakeholders will commence shortly, with a focus on delivery which reflects an 'apprenticeship' style approach with greater emphasis on skill acquisition and educational attainment.

## 5.2 Legal Implications

Section 40, Crime and Disorder Act 1998 places a duty on the local authority, after consultation with the relevant bodies, to formulate and implement for each year a Youth Justice Plan setting out how youth justice services in the area are to be provided and funded and how the YOS teams established are to be composed and funded, how they will operate and what functions they are to carry out.

## 6. Other implications

### 6.1 How will this contribute to achievement of the council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / LAA (or Coventry SCS)

Activity within the Youth Justice Plan is aligned at a strategic level locally by plans which include:

- The Local Police and Crime Board Plan
- The Prevention and Early Help Strategy
- Coventry Local Policing Plan 2014/15
- Coventry Domestic Violence and Abuse Partnership Action Plan
- Coventry Children and Young People Plan
- Coventry Sustainable Communities Strategy and
- The Coventry Joint Strategic Needs Assessment (JSNA) 2014/15

### 6.2 How is risk being managed?

Risk, as detailed above, has been managed by consulting with partners in a timely manner to facilitate sign off, endorsement and submission to The Parliamentary Library in line with our statutory duty and good practice requirements.

### 6.3 What is the impact on the organisation?

The plan presents a balanced budget and no immediate implications for other groups. The plan details the risks going forward in to the next financial period 2014/15.

### 6.4 Equalities / Equality Impact Assessments (EIA)

Legislative changes, such as new pre-court disposal option have been subject to substantial EIA activity under Ministry of Justice and Youth Justice Board. No adverse impact has been identified. This is not a new activity and YOS has undertaken EIA activity as appropriate.

### 6.5 Implications for (or impact on?) the environment

None

## 6.6 Implications for partner organisations?

Partners have all participated and signed off the plan and there are no implications arising post sign off.

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**Appendices**

**Youth Justice Board Plan 2014/15**

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Coventry Youth Offending Service  
Youth Justice Plan 2014 - 15

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## Executive Summary

It has been a challenging and exciting year, from which a leaner Service has emerged. We are experiencing the impact of reductions in funding to the Council. Coventry Youth Offending Service (CYOS) remains fit for purpose.

This is evidenced in a number of ways including National Indicator performance and our March 2014 YJB Community Division Quarterly Review (CDQR) stated that Coventry Youth Offending Service continues to be considered:

***“A strong and well performing YOT”***  
***Youth Justice Board Local Partnership Advisor***

A previous Community Division Quarterly Review (CDQR) report 2013/14 also highlighted that we have a very dedicated, professional and stable workforce.

We continue to prioritise our activities in terms of value for money, which is measured by impact for services users, residents and partners.

CYOS has a good performance background and remains enthusiastic about using technology and best practice to drive forward service improvements, for example as an early adopter nationally for a new data base and Asset Plus (the new national framework for assessments).

We are also fortunate to be partners in two national pilots, one of which is seeking to reduce the use of custody and young people entering care (multi systemic therapy) The most recent is a Criminal Justice Liaison and Diversion Trial Scheme (young people and adults). This project screens offenders for mental health/ health issues, with the aim of diverting them from the criminal justice system (CJS).

During the last year we have welcomed new members to CYOS Management Board including a new Chair.

CYOS is now hosted within the newly created People Directorate and we would anticipate that this will assist seamless transition for our young people to adult services as appropriate.

### Local Indicators and Drivers

In 2013-2014 CYOS:

- Increased the number of young people in suitable education, employment or training, securing our best performance in four years.
- The service has contributed to the development of the City’s Multi-Agency Safeguarding Hub (MASH) via a short co - location of a member of staff to support it, and Head of Service (HOS) sitting on the steering group.
- We have included 17 year olds in PACE Act Appropriate Adult activity, with an average attendance time well below the two hour National Association of Appropriate Adult Network (NAAN) standard for all our call outs (based on a random sample of cases). CYOS is a full member of NAAN.
- A young man who was identified through an out of court disposal was nominated for and received the Police and Crime Commissioners Good Citizen Award, which was presented to him in March 2014 by the Lord Mayor.

### Reducing First Time Entrants (FTE)

- Secured a further reduction in the number of FTEs, our best performance to date (rate per 100,000 10-17 year old population).
- Participated successfully in a bid with the lead and sponsoring agency Coventry and Warwickshire NHS Partnership Trust for a Criminal Justice Liaison & Diversion Scheme.

- Implemented Out of Court Disposals delivery model (OOCDD which is described by our YJB Local Partnership advisor as “comprehensive” in a recent CDQR. The importance of this type of intervention in terms of intervening early is evidenced in Appendix 6 case studies 1 & 2 which demonstrate the range of needs that require an early agency response.

#### Reducing Re-Offending

- CYOS secured a reduction in both the number of actual offences committed per offender and the percentage of the offending cohort who reoffended, by comparison with last year.
- CYOS has increased the number of restorative interventions, an approach which has an evidence base in terms of its impact on reducing reoffending
- The Service works in partnership with “Troubled Families” (TF) agencies to evidence improvements in distance travelled by families, and we have been the identified lead agency in turning around 29 of the families in last year’s cohort.
- We recently implemented a “Youth One Day One Conversation” (YODOC) Offender Management forum. Our approach was discussed at the recent Home Office “Road Test” of the Integrated Offender Management principles and model. In discussion with attendees, who included Home Office (HO) Head of Offender Strategies, it was felt the rationale and model were appropriate. They were also impressed by the transition arrangements for those young people who became adults and needed to move to ODOC, the adult forum.

#### Reducing Use of Custody

- We have reduced the number of custodial sentences passed by a third when compared to last year, and achieved our lowest rate for the past five years.
- We have significantly reduced the number of young people entering custody for breach alone, from 10 in 2012/13 to 3 in 2013/14.
- We have reduced the number of remand episodes, securing our lowest number for the past five years by working closely with our Youth Court Bench and use of our Bail packages.
- We have reduced the number of short term sentences from 10 in 2012/13 to 3 in 2013/14. It is recognised by the YJB and Prison Reform Trust that short sentences can be disruptive in terms of resettlement and prevent delivery of substantial custodial based interventions. There is a discourse that argues that a short sentence is an indicator that custody was not necessary in the first place.

## Introduction

Youth Offending Teams were established under the Crime and Disorder Act 1998 with the principal aim being to prevent offending by children and young persons. The Act imposed a duty on each local authority with its statutory partners, Police, Health and Probation to ensure that all youth justice services are available in their area.

The key tasks of the service are:

- Assessing and delivering interventions to the out-of-court-disposal cohort
- Management and delivery of community sentences
- Management and delivery of secure estate sentences and resettlement
- Servicing the Youth Court and Crown Courts (in terms of provision of a court team, Bail & Health Assessments, provision of Pre-Sentence Reports and Stand Down Reports)
- Victim Services
- Parenting services and management of Parenting Orders.

The legislation also imposed a duty to complete and submit a Youth Justice Plan each year. This plan will provide an overview of our achievements against key indicators, plans and targets and will identify the key strategic actions for the next 12 months.

Our detailed performance analysis, against National Indicators, FTE, Reoffending and

Custody sits in the YJB Community Division Quarterly Reviews and will continue to inform our strategic objectives.

Additionally our analysis and performance against locally retained indicators, from the original national set, is contained in quarterly performance reports to our YOS Management Board on: Accommodation, Education, Training and Employment (ETE) and Management Board commissioned reports, for example most recently an analysis of our Robbery cohort.

Detailed financial data sits on a new YJB template which will form part of our grant conditions. Appendix 4 provides our headline funding streams, identifies the level of change in our budget against last year and indicates a projected budget going forward. YJB funding is ring-fenced and may only be spent of developing good practice. CYOS applies the Absorption model for demonstrating spend against the Youth Justice board Grant.

Our headlines from last year are that CYOS achieved:

- An on-going reduction in the number of young people committing offences from 471 in 2012/13 to 416 in 2013/14
- A reduction in both the reoffending frequency and binary rates in the most recent available data compared to 1 year prior (March 2011 to March 2012)
- A reduction in the number of remand episodes and in the number of remands that do not translate into a custodial sentence
- A reduction in the number of young people entering custody for Breach of

order alone. In 2011/12 there were 13 young people sentenced to custody, reduced to 10 in 2012/13 and to 2 in 2013/14

- Secured a reduction in the use of youth custody with a fall from 44 episodes in 2012/13 to 28 in 2013–14
- Secured a year on year reduction in FTE’s with an all-time low of just 96 in 2013-14, supported by the roll out of OOCd and Troubled Families activity
- Analysed and disseminated Community Resolution (CR) data to inform the development of a local model for Out Of Court Disposals (OOCd) under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)
- Sustained Triage, now called Enhanced Community Resolution (ECR) delivery as part of our agreed model for OOCd’ s
- All OOCd cases receive parenting screening, services or signposting
- Our parenting group , using some of the cooking skills that they had learnt , choosing to raise funds for charities

- Substantially increased the number of victims engaging in level 2 restorative processes and ensured that our staff can provide support in complex cases. 4 members of staff received 4 days training from Victim Support to work with victims of sex offences, and a wider staff group received 1 days training funded by the YJB and delivered by an accredited provider for complex and sensitive cases



CYOS Parenting Group members have, through cake baking, raffles and other activities, raised a total of £830 last year for various charities including Baby Lifeline and the RSPCA. They also undertook a Knit for Africa event completing 50 squares.

**The victim was subject to a violent Burglary and TWOC and threatened with violence. Six weeks later he was again the victim of a burglary while at work and his vehicle was taken. A visit was arranged to attend the Supporting Offenders Through Restoration Inside Programme (SORI) at HMP Hewell, whereby adult prisoners complete a week’s course looking at raising their awareness of the impact their offence had on their victims. The victim found contributing to this course very beneficial and was provided with the opportunity to speak with adult prisoners who had committed similar offences. Work following the visit also included shuttle mediation with one of the young people who was found guilty of the second offence. This work took place over several months. “Prison visit was a worthwhile experience and did help through life for prisoners instead of the media. It has been a positive experience (within reason) and would like to thank the service for being there”  
(Feedback from the victim)**



- Offered a broad compendium of interventions to meet a diversity of need. New resources include programmes for young people at low risk of CSE, analysis of the female cohort data which has been used to inform current programmes and a planned specific resource (to come on line in July 2014), an education/ reparative programme at Lunt Roman Fort, a Dangerous Dogs programme and an environmental project which included the building of Invertebrate Hotels (A mini nature reserve for insects).



- CYOS Young People have continued to restore Bannerhill Camp Anti-Aircraft Battery as part of a reparation project



- Invertebrate Hotel



- IYSS worked in partnership with West Midlands Fire Service to deliver a five day educational and team building course for Young People.



- Lunt Roman Fort Project

## Our Priorities

**Impact:** to reduce risks to future delivery against indicators

During 2013/14 we undertook a range of assessments and audits. This included thematic areas of practice, cases, Children Act Section 11 audit, YJB self-Assessment tool sections, a CYOS Board Review and the YJB Restorative Practice Gap analysis tool. We also undertook substantial data analysis which included indicators (national and local), appropriate comparator groups, and analysis of high concern areas such as our Robbery cohort. We participated in regional evaluations such as The Integrated Offender Management (IOM Road Test) and considered YJB and City partner plans and priorities.

The priorities detailed below emerged out of that activity:

### Local Indicators & Drivers

- Ensuring that our supervision process is appropriate in line with new learning nationally and locally.** In the light of new guidance from Coventry's Safeguarding Subcommittee Quality Assurance and Procedures Group (on which we are represented) we will review our supervision policy and procedures for staff. The guidance has been issued across the City and not specifically to CYOS only. We will also implement actions from our Section 11 audit undertaken in April 2014 and consider Her Majesty's Inspectorate of Prisons (HMiP) aggregated Short Quality Screening (SQS) findings regarding supervision.
- Reduce the frequency of exposure to and participation in Domestic Violence and Abuse (DVA) and Child Sexual Exploitation (CSE).** By the age of 10 years, young people exposed to traumatic and abusive environments are 13 times more at risk of joining a gang. At least 750,000 children
- witness domestic violence annually, a key risk factor in these children themselves causing violence in later life (Sources HM Government 2011 Ending gang and youth violence, Protecting people, promoting health: a public health approach to violence prevention for England Department of Health/NHS, HO 2013).

We will review our responses to DVA and ensure that we refer in as appropriate to the Multi Agency Screening Hub (MASH). The CYOS Head of Service sits on both the DVA and MASH Steering Group, and the Service Manager attends the Domestic Violence Operational Group. We look forward to the roll out of the intervention being developed in partnership with Coventry University which is for young perpetrators of domestic violence.
- Improve ETE/NEET outcomes enabling successful engagement with study and work in the face of high youth unemployment.** We will continue to work on the regional YOT education task and finish group which, amongst other things is developing a tool for measuring distance travelled for young people in terms of attainment. We will continue to consult on the development of a new regional counting rule which reflects the appropriateness of the education provision rather than just the number of hours of delivery.
- Improve access to training.** CYOS Coventry, Solihull and Warwickshire Partnership (CSWP) personal advisor will attend a new sub regional Training Providers Forum to enhance referral pathways for CYOS young people and

develop access to other providers and will seek to develop referral pathways with other training providers, and accredited programmes.

- To ensure no detriment to service user's education provision and ensure diversity of need is responded to as a consequence of legislative changes.** Special educational Needs (SEN) statements and learning difficulty assessments (LDAs) will be replaced with Education, Health and Care Plans (EHC) plans for children and young people up to the age of 25. YOTs will be expected to contribute to these plans when young people are known to them, and to share all relevant information with custodial facilities. For those young people in custody, there will also be responsibility on host authorities to ensure that home authorities are notified of any (previously) unidentified additional needs, so that a full assessment can be carried out upon release (if not whilst still in custody). This also refers to those of 18 years+ if they wish to continue in education. (Part 3 of The Children and Families Bill 2013: Department for Education & Department of Health: Special Educational Needs Code of Practice: for 0 – 25 year olds, implementation Sept 2014). We will participate in a regional ETE Task & Complete Forum reviewing the timely sharing of information between community and custody and internally will consider how to reform the education information gathering template, to include Health data too. This will have a double benefit of helping to ensure that identified needs are met in regard to the new process and also assist with the completion of

Comprehensive Health Assessment Tool (CHAT).

- Ensure that CYOS young people receive entitlement under Legislation re: Raising of Participation Age Act.** Local authorities are required to secure sufficient suitable education and training provision for all young people aged 16-18 (inclusive) in their area (under sections 15ZA and 18A of the Education Act 1996 (as inserted by the ASCL Act 2009)) and to make available to young people age 19 and below support that will encourage, enable or assist them to participate in education or training (Section 68, Education and Skills Act 2008). We will, alongside partners report any young person (including 18 year olds from September 2014) exiting to CSWP so that need levels can be mapped and inform service commissioning.
- Increase the use of restorative approaches both within CYOS and across partners.** We will increase restorative justice capacity internally and support the broader City restorative activity by mapping existing providers, agreeing delivery standards and sharing expertise. The YJB Grant (phase two funding) will enable us, as part of our training provision, to offer opportunities to partner services to build a strong high quality provision across the need spectrum. We will also seek accreditation from The National Restorative Justice Council for CYOS. Looked after Children (LAC) and young people are sometimes still appearing in court for offences committed within their care environment. We will review our existing arrangements with both LA direct providers and commissioned

providers to ensure that a restorative approach is always considered.

- **Service users should shape service delivery.** Participation sessions will be delivered independently by Youth Workers. In addition the service user Youth Service Inspection Team (young people) will audit our service and CYOS young people will be given the opportunity to train as inspectors and audit the Youth Service. We will also consider in addition to feedback routinely gathered from victims whether a victim forum would be beneficial ( this will be discussed with Victims as part of our current feedback activity)

#### Reducing First Time Entrants (FTEs)

- **Ensure that Out of Court Disposals (OCD) activity reflects national guidance, maintains credibility, and prevents unnecessary entry into formal CJS and measure demonstrable outcomes in terms of the value of “intervening early”.** We will continue to participate in regional quality assurance activity of OCD, developing processes currently being rolled out for adults, to ensure that they are fit for purpose for young people. The ambition is to incorporate young people by 2015/16, or to have a separate regional process in place. CYOS quality assures the OCD activity with Police partners locally and meets on a quarterly basis. We will continue to compare local data to force wide data, identifying any emerging issues and disseminating findings via The West Midlands Scrutiny Board, of which we are a member. It will also be used to inform our evaluation framework of this activity, including impact on reoffending, and help us to

identify whether OCD activity delays or prevents entry in to Court system.

- **Retain the Enhanced Community Resolution (ECR)** as early indicators are that it is an effective early intervention, introducing Common Assessment Framework (CAF) as a routine step down where appropriate.
- **Understand the parenting issues in the OCD cohort.** We will review emerging parenting issues identified in the Out of Court cohort via parenting assessments and intervention. Findings will inform a refresh of the Parenting Thematic Action Plan.
- **Contribute to the City’s Prevention and Early Intervention Strategy and Plan (EIP),** through undertaking base lining activity as required which will contribute to mapping activity, and the data bank for identifying need for services for young people and parental needs.
- **Enhance partnership working with Troubled Families, Children and Families First.** CYOS will build on its existing relationship continuing with joint training , attendance at Team meetings and ensuring planning in partnership and visible evidence of that activity in case files. We will also consider and apply the HMIP thematic report on Troubled Families following its release.

#### Reducing Re-Offending

- **Ensure no detriment to young people as a consequence of the national “Transforming Rehabilitation” agenda.** We will work closely with new potential partners to ensure no negative impact on young people’s ability to transition



positively from CYOS to adult offender management partners. We will review our Transitioning to Adult agreement (T2A) to ensure it remains fit for purpose.

- We will roll out the YJB new delivery model for young people subject to “unpaid work” (16-18 year olds) and are committed to ensuring that the “apprenticeship” approach is embedded. YJB are due to release operating model details and funding shortly. Transfer of unpaid work from the National Offender Management Service (NOMS) to YOTS is scheduled to occur in June 2014. We have analysed data to provide an indicator of work volume and user profile, including educational ability, and are currently working with partners to ensure a provision is in place for the transfer date. We have received support from CSWP in terms of project design and cost.
- Ensure Integrated Offender Management (IOM) activity is not impacted by the introduction of new “partners”. We will work with IOM partners utilising The Coventry Offender Management Group (COMG) to respond to any emerging issues.
- **Ensure that every young person has an Intervention Plan that has key partner engagement at the planning stage as well as delivery, shows appropriate sequencing, incorporates the young person’s priorities and reflects the victim.** We have introduced a Case Planning Panel for all new cases. Key partners have committed to attending Panel which will support completion of Asset and inform the young person’s Intervention Plan both in terms of

intervention identification and sequencing. Partners include Health, Compass (young people’s substance misuse service), Social Care, and the Youth Service. Victim Officers will also attend to ensure that the needs of the victim are considered and incorporated into planning (responding to HMIP SQS national aggregated findings (November 2012-March 2014 that a large proportion of plans did not address victim issues). Other attendees will be invited as required.

- **Understand our reoffending profile to inform future developments and targeting of scarce resources.** The service will undertake analysis of Reoffending utilising the YJB tool (updated version available April 2014) and translate findings into an action plan. This is a resource intensive activity requiring support from West Midlands Police in order to track the 18 plus cohort via Police National Computer (PNC).
- **Ensure that best practice and evidenced based learning is a core feature across our portfolio of interventions.** In line with YJB Effective Practice guidelines we are going to pilot the Theory of Change process on our Cognitive Behavioural Programme “Jigsaw” and consider roll out across our interventions offer.

#### Reduce the Use of Custody

- **Ensure that custody is only used as a last resort.** We will review our “Reducing the use of the Secure Estate Strategy”, including priority areas and consideration of new targets.
- We will maintain our “Engagement Panel” activity which, while creating

additional work for front line managers, has seen a fall in young people entering custody following breach activity.

- **Seek to reduce the refusal rate for Bail packages.** While this is a small cohort (5 people, 5 episodes) it is a priority and we will anonymise cases and discuss the decision making rationale with Magistrates and other Criminal Justice System (CJS) partners. We will review provision and our presentation of Bail packages in the context of the emerging dialogues.
- **Seek to reduce the number of FTEs entering the Secure Estate.** While we achieved most of our Secure Estate priorities, the actual number of bed nights used increased compared to the previous year by 519 nights. Nearly 400 of those nights were attributable to three individuals two of whom were FTEs. A number of FTEs featured, due to the gravity of their offences (Murder, Robberies with the use of violence and weapons including imitation firearms and a machete). CYOS will be disseminating via The Head Teachers Group findings from its Robbery analysis, to facilitate preventative messages and target hardening messages being delivered in mainstream education environments.
- All remands are monitored by our Management Board, we will provide an analysis report to test threshold application and seek to bench mark with other YOTs.
- **Seek to reduce the reoffending rates of those exiting custody.** National statistics show that for the year ending December 2011, 71% of young people exiting custody nationally went on to reoffend within a year of leaving custody, compared to 46% of adults. We will undertake an analysis of the “Resettlement” cohort from 2013/14 against indicators and services provided including services provided (by the facility) while in custody. From a CYOS perspective we will identify against for example accommodation, Mental Health/ Substance Misuse, Education, Training, Employment, Transition Planning, Timeliness and Re-offending rates. We will then present a report to CYOS Management Board, translating that into a cross agency action plan.
- We will continue to attend The Accommodation Strategy Group which is currently reviewing the impact of its new commissioning arrangements with a sole provider placement broker for young people’s accommodation, and will feed in any identified issues with regard to the arrangements for adult accommodation which commenced this year. We anticipate that their new “complex case” beds will mean that our young adults with high risk characteristics such as Arson or Sex Offences will have more accommodation options available to them, which should assist with resettlement arrangements and managing risk in the community.
- We will seek to share CHAT information that we are able to provide with the secure estate in advance of the national roll out.

## City Youth Crime Profile

### City Profile

Coventry is currently home to 323,123 people, and has a rapidly growing population; it was the twelfth fastest-growing Local Authority area in England and Wales between 2011 and 2012, showing an increase of 1.96% in comparison to the England and Wales average of 0.73% (*ONS Mid-2012 Population Estimates*). The biggest driver of growth was international migration, accounting for 5,116 of the overall net gain of 6,217 people.

Historically, the City has had a young population, and this continues to be the case, with 37.6% aged 25 and under compared to the national position of 32%. This is partly the result of two large universities being located within the city limits. The city also has a diverse population with 21% of residents being born outside of the UK compared to the national figure of 12.5%. In 8.7% of households in Coventry no person has English as their first language (4.4% England).

Coventry has a slightly lower than average population of 10 – 17 year olds, with 9% in this age group compared to the national average of 9.2%. This does not, however, reflect the diverse and complex needs of children within the city. CYOS continues to provide services in a challenging environment, which includes:

- High Youth unemployment - 21% of all YOS's young people were fully NEET upon completing their Orders, as were 26% of over-16+ group.
- High levels of child poverty – 23% of children living in poverty compared to the national position of 20% (*Child Poverty Map of the UK, Campaign to End Child Poverty, February 2013*).

- High numbers of looked-after children – 658 children and young people were 'looked-after' as of April 2014.

### Youth Offences Profile

- In the financial year 2013/14, CYOS was aware of 575 offences with a substantive outcome, and a further 222 punished with a Community Resolution. This means that the number of offences with a substantive outcome has fallen (from 531 in 2012/13) while the number of CRs has remained almost stable, up by just 1.
- The majority of offences with substantive outcomes in the most recent year were in the categories of Violence Against the Person (23%), Theft and Handling (18%) and Breach of Statutory Order (11%).
- The most common categories of offence punished by Community Resolution were Theft and Handling (36%), Violence Against the Person (30%) and Criminal Damage (17%).
- In 2012/13 there were 38 convictions against young people for Robbery, which has fallen to 27 in 2013/14.
- 14.6% of First Time Entrants were convicted of Robbery, a reduction on 2012/13, when 23% of FTEs were convicted of Robbery. The majority of these offences were committed in Quarter 1 of the year.
- The overall proportion of serious acquisitive crime in 2013/14 was 13.2%, down from 21% in the previous year.

### Disposals Profile

- The overall number of disposals has declined by 49% in the 5 years since 2008/09 (CYOS staffing levels have been reduced by 38 %).
- Community Resolutions were by far the most common OOC used, at 222 as previously noted. We also knew of 66 Youth Cautions and 7 Youth Conditional Cautions, as well as 3 Final Warnings and 2 Reprimands (which were still available to the police for the first month of the year).
- There is a clear shift towards the use of OOC, which is reflected by Coventry Court Sittings having reduced from 5 to 1 per week and a resulting increase in CYOS resources required in this area.

### Demographics of our young people

- The majority of CYOS young people are typically White Male aged 16 – 17 years. This group accounted for 43% of the on-going interventions being conducted by YOS at the end of 2013/14.
- As a result, youth offending remains a typically male activity, with this group accounting for 81.2% of offences.
- We see an ethnically diverse range of young people in the YOS with 77.5% of cases in 2013/14 being White, 6.3% Black or Black British, 6.8% Asian or Asian British, and 2.1% mixed ethnicity. By comparison with the secondary school Census data from January 2013, the White group is over-represented; there is a slight under-representation of the Black and Mixed categories, and a large under-representation of the Asian category.
- 16.5% of the young people with on-going YOS interventions at the end of the

financial year were also Looked After by Coventry Local Authority.

A number of data sources have been utilised to inform the profile including CYOS' s database ChildView, YJB database YJMIS, census Office for National Statistics Information and The Community Safety Partnership Strategic Assessment and Findings.

## Use of Resource and Value For Money

### Impact: Informed targeting of resource to sustain performance

CYOS is committed to sustaining performance in the face of ever increasing funding and resource challenges. We regularly review service delivery to enable us to respond to service demands, which change rapidly in relation to the external financial and political landscape.

Challenges include:

- An increase in the gravity of offences committed by some young people, including an increase in the use of weapons and violence associated with offences of robbery and the percentage of FTEs appearing in the Robbery cohort and long term remands.
- An uplift in the amount of work generated by delivery of out of court disposals.
- Reduced court activity, but the requirement for staff to work differently with cross-boundary youth court benches now operating across Coventry and Warwickshire. The time delays which can occur due to reduced court sitting patterns have a financial impact if the young person is subject to remand, is inappropriate detention and contradicts previous Home office guidance for example Criminal Justice, Simple, Speedier, Summary. We will be monitoring cases for any delays.
- Transfer of unpaid work from National Probation Service to CYOS for 16 and 17 year olds. The transfer will occur in June 2014 but as yet the operating model and funding transfer details have not been made available. We do know that the breakdown of hours between education and training and actual reparative activity is to be 50:50 (as opposed to generally 20:80 at present). This is new work and as yet we have not been informed of the level of funding transfer.
- Continual review of budget and resources to deliver efficiencies.

- Coventry's high level of DVA against West Midlands comparator groups, specifically with regard to the long term impact on young people who experience it within their families for example an increased involvement probability of in criminal activity.
- While securing a reduction in the number of remand episodes, the number of nights used has increased from last year by 519 nights. Nearly 400 of those nights are attributable to three young people who were charged respectively with Armed Robbery, a Section 18 Wounding resulting in an 8 year sentence, and a remand for Murder. Two of the young people remain on remand and will appear in next years figures also, and were FTEs. It is anticipated that the funding transfer for remands may not meet projected costs.
- We continue to face challenges with regard to the use of custody, when compared to regional and national performance. An increase in the use of violence and weapons in offences of Robbery has impacted on the number of custodial episodes and use of remand bed nights.

The service demonstrates its value for money by evidencing improved performance against both national and local indicators, in the context of year on year reductions in its funding levels.

Success is also evidenced by Service user feedback. Responses include:

**"Just good advice from someone outside the situation....."  
".....always at the end of a phone....."**

**"Very friendly and approachable, don't know what I would have done without my workers support, to be honest"**

**(Feedback from parents)**

### Budget 2014/15

CYOS funding consists of the City Council budget, YJB good practice grant and partner contributions into the pooled budget. Statutory partners have been able to maintain their financial contributions for 2014/15.

We have secured from the local Police and Crime Board funding previously received from the Police and Crime Commissioner to support our early intervention activity and specialist parenting work. This funding has also previously contributed towards the cost of Coventry's Young People's Substance Misuse Service (Compass), which works closely with CYOS.

CYOS has a confirmed budget for 2014/15 of £2,160,919 which is made up of both delegated funds into the pooled budget, and staffing costs (see appendix 4). The projected budget for 2015/16 is £2,002,851.

### Invest to save

Last year our Statutory Board decided, in a challenging financial climate, to support an OOCR called Enhanced Community Resolution (ECR) which provides an early assessment and intervention. This is not available in all areas across the country.

Since the introduction of the new Out of Court Disposal framework in April 2013, CYOS has delivered 80 ECR's, which has contributed to a further reduction in the number of young people entering the Youth Justice System for the first time.

In monetary terms, as well good outcomes for young people, this is incredibly important.

The Ministry of Justice (MOJ) National Audit Office paper "The cost of a cohort of young offenders to the criminal justice system technical paper 2011" identified an average cost of £8,000 per offender per year for FTE based

on costs to court, police, offender managers (LA and its Statutory YJS partners). It excludes costs of physical and emotional impacts on victims, or the costs business or individuals incur in anticipation of crime.

Without additional intervention some of these young people would have become FTE's receiving a higher tariff disposal (see Appendix 6 case study 1 which demonstrates high need which, if unmet, would escalate).

Based on the average cost provided by the audit commission this would equate to a potential partners savings of up to £640,000. Last year we further reduced the number of actual FTEs by 15 compared to the previous year which equates to a partner saving of £120,000.

A number of agencies impact on FTEs, in addition to CYOS, and the saving is also spread across them not solely the LA.

CYOS are lead workers for a number of "Troubled Families". In the pre-Christmas (2013) PBR window there were successful claims totalling over £20,000 for cases where YOS was the sole agency and had reduced or prevented offending.

Delivery of CYOS Orders may prevent entry into care. An indisputable indicator of our activity reducing costs and LAC activity is the area of bail. CYOS successfully offered and had accepted 9 bail packages (01.04.13- 31.03.14) thereby avoiding remand episodes.

This meant we had additional orders to manage (4 of the packages were 25 hour a week programmes) but the LA did not pick up additional remands costs (from between £163-£580per night). This also meant those young people did not acquire LAC status, as all young people who are remanded automatically do so.

CYOS constantly measures volume indicators to ensure the effective targeting of resources

against demand. This is important in that assumptions about capacity based purely on caseload numbers are misleading, as the cases remaining in the sentenced cohort are predominantly complex. The indicators of volume which are monitored include:

- The YJB Scaled Approach risk level at which cases are managed
- The number of assessment, reports and case diary entries completed by YOS Officers

The service has always recognised the value of an adaptable workforce, which has become increasingly important as resources reduce. Information used to review and maintain staff as 'fit for purpose' includes:

- Corporate performance objectives
- Outcomes of inspections and peer reviews and assessments
- Aggregated and individual Feedback and Staff Appraisals
- The use of quality assurance tools
- Service user feedback



## Structures & Governance

**Impact:** Integrated strategic oversight- effective VFM delivery and better outcomes for service users, victims and

### Structures

CYOS is hosted by the People Directorate, and sits within Childrens Social Care. The Board is chaired by the Deputy Director, Early Intervention and Social Care, and the Vice Chair is the Police representative.

The Board discharges its duties by: -

- Requiring the Head of Service to report and account for performance against YJB and local indicators, health outcomes and the management of risk
- Oversight of budget and staffing structures to ensure that the service is adequately resourced
- Commissioning (internally) specific projects, research and evaluation of aspects of service delivery
- Quality assurance, oversight and monitoring of plans including those which emerge from Community Safeguarding and Public Protection Incidents
- Monitoring and sign off of the annual Youth Justice Plan

### Governance - Management Board

In line with the requirements of the Crime and Disorder Act (1998) and revised guidance from the Youth Justice Board for YOT Partnerships, CYOS has the appropriate agencies represented on its Management Board. Alongside the key Statutory Partners, we also benefit from the attendance of the Co-Chair of the Youth Court Bench, senior advisors from Education and

Looked After Children, the Chief Executive of the Careers Guidance Company Ltd (formerly Connexions) and the Manager of the Community Safety Team.

Partner agency representation on the Board at a senior level ensures that CYOS maintains links with the key local strategic groups for example:

- Local Safeguarding Children's Board (LSCB) and associated theme groups, Quality Assurance and Procedures Sub Group.
- The Local Police and Crime Board (formerly Community Safety Partnership)
- Health and Wellbeing Board

### Planning

Service Planning is influenced locally at both strategic and operational levels, aligned to plans which include:

- Coventry Children and Young People Plan
- Coventry Sustainable Communities Strategy (*The Next 20 Years*). CYOS contributes to short term priorities and longer term outcomes, in particular a safer more confident Coventry, and ensuring that young people are safe. CYOS also strives to ensure that all young people with whom we work are encouraged to enjoy, achieve and make a positive contribution to their communities
- The Local Police and Crime Board Plan
- The Prevention and Early Help strategy.
- Coventry Local Policing Plan 2014/15



- West Midlands Police and Crime Commissioner Police and Crime Plan 2013-14
- Coventry Domestic Violence and Abuse Partnership Action Plan
- The Coventry Joint Strategic Needs Assessment (JSNA) 2014/15

Internal plans include:-

- Thematic effective practice plans with a named manager lead, utilising YJB key indicators of quality for each theme
- Reducing the use of the Secure Estate Strategy and Action Plan
- Community Safeguarding and Public Protection Action Plans, none currently in operation

External drivers for planning activity include:

- YJB Corporate and Business plan 2011/12-2014/15
- Government papers and legislation, for example, *The Coalition: our programme for Government and the introduction of the principles behind a "rehabilitation revolution"*. These include payment by results, and an opening up of the market to other sectors introduced in Breaking the Cycle green paper 2010
- HMIP Thematic reports recommendations

## Partnership Arrangements

**Impact:** Sharing of knowledge, expertise & services with clear agency role resulting in less offending, less victims and value for money

### Statutory Partners

The Management Board is chaired by the Deputy Director, Early Intervention and Social Care and also has Assistant Director representation from that area as a Board member. This relationship has proved effective both internally and externally for example:

- The Board held a workshop recently to assess our performance and structure in the context of the recently released Ministry of Justice (MOJ) Modern Youth Offending Partnerships Guidance. Legislative and policy changes which have meant that the local and national landscape has altered considerably. The Management Board agreed that overall representation is appropriate with a good level of attendance. A number of actions were identified to strengthen connectivity with other key forums and agencies, including the voluntary sector and Housing and to reinvigorate profile of CYOS through internal Council mechanisms and the media.
- Strengthening of joint working through CYOS involvement in preparation for and response to Ofsted Inspection of Children Social Care. Training opportunities to bring MST skills base in house, as well as access to City MST pilot for young people on the edge of custody or care. An Operations Manager has been trained as an MST supervisor, and a case manager is currently being trained in MST approach via The Tavistock and Portman NHS Foundation Trust (which is a specialist mental health trust based in north London who have agreed to train “out of area” for the first time). The training is occurring alongside Children and Families First case managers.
- Via strategic planning strengthening the links between YOS, the Youth Service and Children’s Social Care in response to support young people who are missing from home, or at risk of CSE and trafficking.
- Ensuring that learning from the Ofsted inspection of Services for Children in Need of help and Protection, Children Looked After and Care Leavers and Review of the Effectiveness of the Local Safeguarding Children Board 2014 is disseminated to CYOS, and where appropriate we engage and support change.

Following recent changes to Health Service structures, Coventry and Rugby Clinical Commissioning Group are now represented on the CYOS Board by the Children’s Joint Commissioner.

CYOS continues to benefit from hosting two clinical nurse specialists, who receive clinical supervision through CAMHS, and whose work directly benefits the wider health agenda. This relationship has proved effective in that;

- CYOS has successfully aligned its Health KPI with Warwickshire YJS’s Health Reporting Template.
- Coventry’s Health KPI’s were re-negotiated in February 2014 and agreed by our Management Board and all service delivery and outcomes will now be measured against them.
- The introduction of the point of entry General Health Assessment Tool in 2012/13 has proved very useful in identifying varying health needs (and further referrals) for young people entering the Criminal Justice System (CJS) or receiving OOCs. This has evidenced previously unmet need.

- In line with on-going YJB guidance, national research and the impending roll out of the Comprehensive Health Assessment Tool (CHAT), specialist initial assessment prompts will be added to this tool as they are devised. E.g. Speech, Communication & Language, Neuro-disabilities.
- Support for the early roll out of elements of the CHAT have been secured, commencing June 2014. To ensure further development of this work, specialist referral pathways are to be developed and agreed, to ensure the smooth and continuous delivery of health interventions.
- Coventry secured one of only ten national pilots for a Criminal Justice Liaison and Diversion Trial (CJL&DT) and will shortly have additional staff co-located with the team to support this activity. This provision will ensure that historic gaps in provision cease to exist. For example, screening of young people in police custody not already known to CYOS (which are the majority), young people who receive a first police only Community Resolution and occasional court activity (Bank holidays and Saturdays). Discussions are currently underway regarding the trials ability to utilise the CHAT assessment framework to ensure there is a common assessment language and portable outcomes (will follow young person in to the secure estate if required.)

West Midlands Police are represented at Chief Superintendent Level at the Management Board, and we also have an identified Inspector and Sergeant to support Integrated Offender Management (IOM) activity and OOC. This relationship has proved to be effective in ensuring:

- A local quality assurance process is in place for OOC and that analysis of outcomes not subject to joint police/ CYOS decision making occurs. The Local Panel has met on three occasions over

the last 12 months and has fed its findings into regional forums.

- The adaptation of the Integrated Offender Management (IOM) model locally with the adoption and delivery of the “one day, one conversation model” specific to young people (YODOC) to ensure that the relevant agencies are present and active on cases.
- The retention of a co-located CYOS Youth Crime Officer.
- The strength of the Offender Management link continues to be ably demonstrated, and has ensured that effective cross agency control measures and monitoring are in place for our high risk offenders and effective, timely communication has been in place.

The National Probation Service is represented at the Management Board at Head of Service level and has an identified lead at Senior Probation Officer Level for operational liaison.

This relationship has proved effective in:

- Assistance with placing high risk offenders who are considered too risky for young people’s generic accommodation provision, this has primarily been for those with sex offence convictions. It is anticipated that this need will be now met under the new city commissioning arrangement’s for adult beds including a number of specific beds for such cases.
- Delivery against our T2A protocol, which requires review in light of the “Transforming Rehabilitation” activity.
- Cross disciplinary shared knowledge, skillsets and expertise.
- Effective cross agency management and response regarding unpaid work activity and timeliness of Breach response.

Non statutory Partnerships

CYOS is fully engaged with key partners with appropriate representation in offending, prevention and safeguarding forums. This includes the Local Police and Crime Board, supporting both the completion of their strategic assessment (via data/intelligence sharing) and delivery of emerging activity to prevent youth crime.

CYOS is closely aligned to Criminal Justice partners, being represented at the Coventry Offender Management Group which co-ordinates and evaluates delivery across both the adult and juvenile populations, attendance at Offender Management forums and The Multi agency Public Protection Arrangements (MAPPA).

We are equally well represented in Safeguarding activity at both a strategic and operational level. We brief LSCB on our activity, our most recent report covering performance data, Appropriate Adult Services, Community Safety and Public Protection Incidents (CSPPI) and People Posing a Risk to Children (PPRC).

We are a member of the Safeguarding Sub Group Quality Assurance and Procedures and actively participate in the development of new procedures and citywide audit activity. We utilise Safeguarding training opportunities for our staff and recent courses have included Forced Marriage & Honour Based Violence and Working with Survivors of Sexual Violence (level 3). CYOS is embedding the LSCB screening tool for young people who may be at risk of child sexual exploitation (CSE), and has introduced internal interventions targeted at the low level risk cohort.

We work closely with other YOTs, particularly those in the West Midlands region, working together under a range of Task and Finish Groups as agreed by the Heads of those Services. This has reaped numerous rewards, developing our understanding of performance issues, testing thresholds, disseminating best practice and reducing the financial training burden by co-commissioning activity as appropriate. For example most recently partnering with Birmingham YOS for Restorative

Justice training , maximising the number of places available under the 2013/14 YJB Grant. There is an effective working relationship with our Courts, with meeting forums, electronic bulletin updates, joint training events and representation on our Board. Some of the current communication strategies require review following the merger of the local justice areas.

The last year presented us with a raft of new challenges including changes to court sitting patterns, merging of local justice areas and the introduction of a broader range of OOCR options, which has impacted on the volume of activity going through the Courts.

Over the last quarter of 2013-2014 we worked with Warwickshire Youth Justice Service to write a joint working protocol with the Youth Courts in Coventry and Warwickshire, following the merger of the two local Justice areas. This has facilitated a consistent set of standards for the work done in Courts across the merged area. We have also presented together to the joint bench through the Magistrates Youth Court panel meeting and will do this bi-annually to ensure we can effectively deliver messages about practice.

We have also worked with Magistrates in the development of a West Midlands force wide OOCR scrutiny Panel.

CYOS regularly receives compliments regarding the quality of its court work from Magistrates and solicitors, which is an external indicator of the quality of the partnership.

**“Credit to the report writer.....grateful.....didn’t need to add to the report because everything was contained within it”  
(Defence Solicitor)  
“Very good Report”  
(Chair of the Youth Court Bench in the same case)**

We worked with other YOTS nationally continuing to focus on “Effective Practice” developments which included participating in two sector led Youth Justice Peer Reviews as reviewers. This utilises a model developed in partnership with the YJB and The Local Government Association (LGA), based on the tried and tested safeguarding model used in LA Children’s Service. Best practice identified has been brought back to CYOS, for example Case Planning Panel, described in more detail later.

We are on the Troubled Families Strategic Board and Operational Group which has enhanced our joint working, and has enabled CYOS to contribute towards positive distance travelled for a number of families, in addition to those where we were lead agency.

The Citys Multi Systemic Therapy (MST) pilot has engaged successfully with a number of CYOS service users, securing improvements across most of its evaluation targets. These include school attendance levels, remaining at home, no further arrests and no custody episodes. In Appendix 6 case study 4 provides an example of MST engagement with a challenging multi-generational crime family. CYOS has a trained MST supervisor who provides cover for the project and who is a member of the MST Management Board.

We have been working closely with Werrington Youth Offending Institute (YOI) and Rainsbrook Secure Training Centre (STC) to enhance information transfer process above the standards currently required. Early dialogues are taking place on the use of The Comprehensive Health Assessment Tool (CHAT). The primary drivers for CHATs development were Healthy Children, Safer Communities (HM Government) and it is hoped that implementation of the CHAT will improve outcomes of the most disadvantaged vulnerable groups (Healthy Lives Health People DH 2020).

We continue to work with secure estate partners, developing early adopter agreements with our main feeder units, for example in relation to communication, new assessment models, and the development and support of programmes within that estate, recognising their value in improving outcomes.

**A big thank you to the IRS team (CYOS) for all the support... your presence and contribution was appreciated....it provides an excellent example of the type of support and encouragement that gives an intervention like Building Bridges such an efficacy with helping young men connect with their parents and families and so avoid many of the dangers associated with breakdown in that key relationship.**

**I hope you don’t mind but I have mentioned your commitment and input to other areas in the hope that they might be similarly inspired. (Brian Eccleshall - HMP YOI Werrington)**

We have worked closely with the City Councils Route 21, the aftercare team which manages young people who acquire LAC status as a consequence of being remanded. We have seen benefits in outcomes for young people including securing appropriate accommodation.

We have participated in the development of The West Midlands Regional Quality Assurance Scrutiny Panel (developing terms of reference and defining scope) for force wide use of OOC. Its primary purpose is to determine whether the method of disposal is considered appropriate and circulate findings to The Police and Crime Commissioner (PCC) and Chief Constable. Whilst this panel will not immediately scrutinise Youth cases it is anticipated that they will be included within the next 12 months.

On a regular basis we identify new partners who work with others to improve the opportunities available to our young people. We are currently

engaged with Lunt Roman Fort where the young people receive educational input as well as undertaking physical reparative activities such as painting, weeding, scarifying building bases and repairing fencing. Our user group are not always the easiest to engage, particularly when education features. Feedback so far has been very positive with most young people rating the experience as good or very good and when asked what might improve it a couple asking for a stronger educational input. It is our intent to build on this programme and it is being considered as a potential unpaid work opportunity.

## Challenges and Opportunities

### Use of the Secure Estate

One of our biggest challenges will be to secure a further reduction in custody levels. Each loss to custody is analysed and we have not identified any avoidable sentenced custody incidents. We have also reduced the number of young people entering the secure estate under each potential entry criteria (Remand, Sentenced, short term sentences, sentences for breach). The next step is analysis outside of our activity, to see what thresholds are applied in other areas. We will need to determine whether we send young people to custody for less serious offences than other areas, or is it entirely a by-product of the gravity of the offences being committed.

The uplift in the financial burden on the LA for remand costs is considerable. Some young people subject to short remands are also on occasion having the remand period extended, due to court sitting dates, as a consequence of the merger of the local justice areas for Coventry and Warwickshire.

It is important to note that a number of those entering the secure estate were FTEs and not under our sphere of influence.

**Criminal Justice Liaison & Diversion Trial Pilot**  
Coventry was awarded one of only ten national pilots which will provide a range of health services to adults and young people at risk of entering the criminal justice system.

The model will be an all-age service across criminal justice pathways addressing a wide range of health issues and vulnerabilities and be relevant to those with protected characteristics as set out in the Equality Act 2010. The entry point to the service will be as and when an individual comes into contact with the police (or other criminal investigating authority) under suspicion of having committed a criminal offence.

Aims include improved access to healthcare and support services for vulnerable individuals through effective liaison with appropriate

services, a reduction in health inequalities and a reduction in FTEs.

This presents an opportunity to close a gap in current provision as it covers Police Cell block interviews whereas CYOS Clinical Nurse Specialists intervention occurs routinely following charge and notification to YOS, not based on "suspicion". The out of hours, 7 day service will be a welcomed additional benefit, and the seamless transition of service/data will be assisted by the co-location of some of the projects staff with CYOS.

The range of health factors and vulnerabilities addressed include, Mental Health, Learning disability, Dual diagnosis, Autism, Safeguarding, Personality Disorder and Conduct disorder

### Restorative Justice

In November 2013 the Government made available £29 million in additional funding for restorative justice, (RJ) with the aim of making RJ available at all stages of the criminal justice process. Most of this funding is allocated through the PCC. The YJB also provided additional funding to YOTs to improve their delivery and enable them to meet their duties under the new Restorative Justice Victims Code, which came into effect in December 2013. The City has an opportunity to enhance its restorative resource through partnership working and CYOS will support this activity and COMG will monitor progress. The local PCC Board has supported this activity with funding.

We are well positioned to improve outcomes for victims, reduce the number of First Time Entrance, (FTE) and the rate of re-offending as a consequence.

Pre-sentence restorative justice is now an option (The Crime and Courts Act 2013, came into effect December 2013). This means the Court can delay sentencing for restorative assessment and activity in advance of concluding the case. The government guidance to inform roll out and delivery expectations has



not yet been released. The principle is good but not without risks. Our experience has been that many victims take time to consider what if any restorative process they wish to engage with. This is not just a local finding with many YOTs reporting similar experiences. It has been an “ideal” of the YJB that victims should attend the first Referral Order Panel Meeting but many victims find this too early in their experience preferring to engage later when they feel ready. The pre-sentence approach occurs even earlier so we will approach this with caution and look forward to receiving government guidance.

There is a strong evidence base linking the use of restorative process and a reduction in offending. CYOS has increased the number of restorative interventions and has early evidence of the impact for victims.

**“I have found everything helpful. Being listened to, getting my phone back, the mediation meeting, just the whole experience and feeling that someone cares.... The victim worker really helped me to move on from my experience”**

**(Victim of a knife-point robbery)**

#### Asset Plus

The YJB have developed, with support from YOTs and in conjunction with HMIP requirements, a new approach to assessments and planning for young people. This will mean substantial changes for practitioners. The approach will result in, amongst other things:

- The removal of scoring of criminogenic factors
- A different rating scale for static factors and a matrix to enable the scaled approach model to transition across
- Merging of the planning framework which currently extrapolates risk of harm to others from vulnerability planning and young people’s intervention plans

- The introduction of new specialist assessment tools specific to health, speech and communication

The role out of Asset Plus remains in this years Plan as the original roll out date was deferred due to a number of YJB ICT commissioning issues. Benefits include:

- A shared assessment language
- A shared planning framework
- Support effective transition between the community and custody and custody and the community

It is a considerable commitment and we have locally identified a Change and Technical lead and also have a management representative on the National Development Group.

#### Unpaid Work

This is an opportunity to utilise a new disposal to prepare young people for work or further education while ensuring that there is a visible repair to the community.

The challenge is the timing with responsibility transferring to YOTs in June 2014 and as yet no release of the operating model and any attached national standards, or an indication of the funding available to deliver.

We do know that in 2011/12 orders totalling 4,574 hours were made. In 2012/13, it was 2,596 hours and in 2013/14, it was 1,530 hours. We are continuing to analyse the profile of the young people subject to such orders to ensure our local delivery model meets their diversity of need.



#### HMIP Short Quality Screenings (SQS) aggravated findings

While we have not been subject to a SQS, aggregated data from those completed up until December 2013 has identified that effective management oversight continues to be an area for improvement, along with aspects of public protection. Improvement is also needed in the planning and delivery of interventions to address victim issues.

We will review our spectrum of supervision which includes daily interactions, formal supervision and panels. This will be done in the context of impact in line with the HMIPs "key principles for the effective management oversight of Risk of Harm to others and Safeguarding/Child protection" and CSCBs recently released standards of supervision.

Case Planning Panels commenced in April 2014. Victim Officers are present to ensure that full consideration of the victims wishes and needs is embedded at the commencement of the order, and reflected in intervention plans.

#### The Anti-Social Behaviour, Crime and Policing Bill

It is anticipated that the new powers will be available from Autumn 2014 with guidance due to be issued from the Home Office during June 2014. Some initial discussions have been progressed at a local level, in relation to the potential use of the tools and powers by statutory agencies in addition to any monitoring arrangements. A protocol for all tools and powers is due to be developed and will be applicable to all agencies operating at a local level.

With reference to the introduction of the community trigger, communities will now have a mechanism for challenging agencies if an inadequate response has been provided to reported issues. In terms of these challenges there is currently no clarification regarding whether the PCC will be responsible, or if

management will be devolved to local partnerships in order to agree a criteria. It is anticipated that these responsibilities will be devolved so there will be a need to consider the approach to be adopted at a local level.

## On the Horizon

At the time of writing this Plan we were not in receipt of the assessment of the Enquiry by Parliamentarians into the Operation and Effectiveness of the Youth Court, chaired by Lord Carlile, and therefore no actions have been identified.

greater emphasis on skill acquisition and educational attainment.

The purpose of the enquiry is to evaluate whether the current system adequately protects the welfare of young people, and if Crown Courts are appropriate settings for dealing with serious crimes committed by young people. It will also give particular attention to re-offending-rates, as seven out of 10 under 18s who leave custody go on to commit further offences.

We do anticipate changes emerging in practice as a consequence and will add any actions to our strategic plan as required.

As members of the Association of YOT Managers (AYM) a response was submitted, and the previous Chair of the Board gave verbal evidence.

### Secure Colleges

In 2017 the first "Secure College" in the country will open, next to Glen Parva YOI.

If young people are to spend time in custody the better the education provision, the higher the probability of reducing future offending.

### Transformation

Junior Attendance Centres (JAC) will be transferred to Local Authorities by April 2015 subject to an "affirmative order" being laid before parliament in October 2014.

Consultation with stakeholders will commence shortly, including on a delivery mechanism which reflects an "Apprenticeship" style approach with

## Appendix one

## Youth Justice Action Plan

Indicator	Action	Timescale	Impact	Lead	Related Plans / strategies/ source documents
<b>First Time Entrants</b> <b>1.</b>	<p>Criminal Justice Liaison &amp; Diversion Pilot</p> <p>Attend Programme Board of above to provide oversight of performance, to review risks and mitigation action &amp; steer development of future pilot strategy</p> <p>Monitor impact of above activity on FTE</p> <p>Develop information exchange protocol, referral pathways</p> <p>Co-location of Diversion worker at YOS</p>	<p>Monthly initially, reducing to quarterly.</p> <p>3 monthly</p> <p>June 2014</p> <p>June 2014</p>	<p>Reduction in FTEs</p> <p>Access to services and brief interventions</p> <p>Improved health outcomes</p>	Georgina Kell	<p>CJL&amp;DP Action Plan, Healthy Children, Safer Communities (HM Government), Healthy Lives Healthy People (DH 2020) Coventry Local Police Crime &amp; Community Safety Plan 2014/15 (Strategic priority-Tackle causes of crime including alcohol , drugs and mental health)</p>
<b>2.</b>	<p>Out of Court Disposals</p> <p>West Midlands Scrutiny activity, including ensuing that prior to absorption in the developing adult Panel , the young people specific issues are addressed including confidentiality .</p> <p>Local Scrutiny Panel (OOCd)</p> <p>Complete end of year review, including volumes of use, impact (re offending), signposting levels, CAFs initiated, and a parenting profile of need. Disseminate findings and provide base lining data to EIP</p>	<p>On going</p> <p>3 monthly</p> <p>May 2014</p>	<p>OOCd retain credibility both with the public and other professionals</p> <p>Avoiding the pitfalls identified in the Criminal Justice Joint Inspection (CJI)</p> <p>Exercising Discretion: The Gateway to Justice (June 2011)</p> <p>Reduced FTEs</p>	<p>Georgina Kell</p> <p>Inspector Orenas (West Midlands Police)</p> <p>Matthew Haynes</p>	<p>Prevention and Early Intervention Strategy and Plan (EIP)</p> <p>Exercising Discretion: The Gateway to Justice (CJI 2011)</p>

<p><b>3.</b></p>	<p>Continue to develop partnership working with Troubled Families (Children and Families First) Attendance at Board</p> <p>Attendance at Operational Group Increase joint working approach via attendance at Team meetings, Case Planning and training events</p> <p>Review findings from HMIP Troubled Families Thematic when released and incorporate relevant learning locally</p>	<p>On going</p> <p>When report released</p>	<p>Increase of families evidencing positive distance travelled( crime category) Skills shared through joint training and co-ordinated plans and visibility of joint working in case records</p> <p>Local practice reflects best practice</p>	<p>Georgina Kell</p> <p>Mathew Haynes</p> <p>Georgina Kell</p>	<p>Troubled Families Action Plan Directorate and Divisional plan Department of Communities and Local Government.</p>
<p><b>4.</b></p>	<p>Build on the findings from Robbery Cohort Analysis Report to the Board , focusing of FTE activity, that results in custody Dissemination of findings Heads of School</p>		<p>Prevention messages delivered to those most at risk of becoming FTEs Target hardening messages delivered in school settings</p>	<p>Georgina Kell</p>	<p>Coventry Local Police, Crime &amp; Community Safety Plan 2014/15 (community priority-Reduce Violent Crime) YJB Corporate priority</p>
<p><b>5.</b></p>	<p>Consider the delivery model required locally to meet changes in practice as a consequence of new ASB powers under The Anti-Social Behaviour, Crime and Policing Bill ( anticipated live September 2014)</p>			<p>Liam Nagle</p>	<p>Coventry Local Police , Crime &amp; Community Safety Plan 2014/15 (Community priority-Reduce Anti-Social Behaviour)</p>

<b>Re offending</b> <b>6.</b>	Review Transitioning to Adult (T2A) agreement and procedures	June 2014	Young People do not disengage as a consequence of transition	Mathew Haynes	Transforming Rehabilitation reforms
	Work with new IOM partner for YODOC transition to ODOC Young people	June 2014		Tom McSweeney	
<b>7.</b>	Pilot the CHAT on our high crime causing and high risk cohort  Identify unmet need, develop priority referral pathways and provide findings report to Health Commissioner and to inform Health reports to CCSB and annual reports	Commence June 2014  Review with partners November 2014	Early identification of unmet need, referral pathways in place in advance of YJB national rollout of CHAT. Inform the joint working approach and decision re potential Health Vulnerable Children and Young Peoples & Inclusion Team	Gavin Smyth	The Quality Goal for improving service access ( Health)  Healthy Children , Safer Communities HM Gov 2009  Healthy Lives Healthy People DOH 2012
<b>8.</b>	Embed the new Health Reporting framework for CYOS Board ( KPIs)and review findings	March 2015	Format fit for multi-agency purposes. Service gaps and strengths identified	Gavin Smyth	
<b>9.</b>	Deliver unpaid work to 16 and 17 year olds Complete model design in line with YJB Operating Model Model promoted with CYOS case managers and Magistrates	May 2014 May 2014 1 June 2014	Service able to offer sentencing option to Youth Court Bench	Andrea Barnes	Transforming Rehabilitation YJB Operating Model

	Programme Operational, evaluation framework in place and capacity to match historic usage patterns Complete 6 month evaluation and report to Board	December 2014			
<b>10.</b>	Populate the April 2014 YJB Reoffending tool , analyse findings , develop cross agency action plan with Board support	July 2014  Complete report August 2014 Cross Agency Plan agreed at next available Board Meeting	Sustain positive direction of travel in both binary rates and number of re-offences	Georgina Kell, David Woodhouse and Inspector Orencas	YJB priority indicator and local priority
<b>11.</b>	Embed Case Planning Meeting Meetings commenced March 2014 6 month review to include an audit of Intervention Plans , record of professionals attendance, and young people's engagement	Fortnightly	Every young person has an Intervention Plan that has key partner engagement at the planning stage as well as delivery, appropriate sequencing, incorporates the young person's priorities and reflects the victims needs and wishes	Adrian Seymour	In line with best practice identified in sector led Youth Justice Peer Reviews

<b>12.</b>	Apply the Theory of Change Process across our portfolio of interventions , trialling it on Jigsaw which is a cognitive behavioural therapy programme	Commence July and stagger across the year	Coherent framework of evaluation which meets effective practice standards in place and informing developments	Andrea Barnes	YJB Effective Practice Recommendation
<b>13.</b>	Map city Restorative Process points of delivery, their criteria and evaluation frameworks, with support and oversight via COMG Joint training with partners as appropriate Review existing restorative arrangement's with LA and commissioned LAC accommodation Secure accreditation from Restorative Justice council for 3 staff initially Participate in West Midlands Task and Finish group	Complete August 2014  April 2014 Complete end year	Citywide understanding of Restorative process and shared definition Reduction in FTEs & Reoffending. Less LAC YPS appearing in court for offences committed in their care environment Increased Victim Satisfaction	Georgina Kell/ Liam Nagle  Mathew Haynes	Coventry Local Police, Crime & Community Safety Plan 2014/15 (community priority- Put our Victims First, strategic objective place our victims at the forefront of activity) MOJ /YJB priority to increase capacity to deliver victim services and delivery
<b>Custody 14.</b>	Review Secure Estate Strategy, refresh targets and actions. Monitoring by CYOS Board	June 2014  3 monthly	Maintain positive direction of travel regarding number of remand and sentenced custody episodes	Georgina Kell	

15.	Assess the impact of the joint working protocol agreed with Warks YOT last year to adapt to the merging of the two local justice areas Promote local practice improvements and seek Magistrates feedback to inform developments	July 2014  Youth Court Panel timeline	Increased Magistrates confidence in alternatives to custody, fall in custody rate	Adrian Seymour	
16.	Analyse with relevant partners all CYOS Bail packages that were refused by the court	Commencing April 2014	Packages modified, increased court confidence and reduction in refusal rate compared to 2012/13	Adrian Seymour	
17.	Analyse the resettlement cohort including against accommodation, LAC status, ETE provision before, during and post exit from custody, programme provision while in custody, substance misuse and health. Report available for Board Cross Agency Action Plan	Commencing April 2014  August 2014 September 2014	Reduction in the reoffending rate for young people exiting custody	Tom McSweeney	
<b>Other Drivers/ Local indicators</b>					
<b>CYOS Statutory Board Review</b>	Board members to champion thematic areas of CYOS activity Areas to be agreed and theme leads identified	August 2014		Angie Parks	
18.	Offender Management Strategic Theme Board key messages to be provided to CYOS Board	Commencing May 2014	Board to understand wider offender management agendas regionally	Angie Parks	



19.	CYOS updates to be provided to Cabinet Member for children and young people and Cabinet Member for community safety	Commencing July 2014	Members become more aware of CYOs activity and performance	Angie Parks/ Mark Godfrey	
20.	Explore links with PCC Youth Commissioners, Police and YOS		Ensure that youth commissioners understand the role of youth justice agencies which in turn may influence planning	Cllr Faye Abbott  Chief Superintendent Claire Bell	Linked to Local Policing plan and PCC Regional Plan
21.	Enhance communication strategy to include regular good news stories, and submissions to internal council staff communication "Beacon Daily Round Up" Increase external promotion of CYOS success via Councils Communication Teams exploiting local media outlets	On-going	Increased public confidence	Angie Parks	
22.	Board members to consciously champion CYOS in various forums to ensure recognition of impact and connectivity to multiple city priorities and outcomes	On-going	Positive profile and in times of increased financial restraint and CYOs is recognised more widely as a contributory partner to other City agendas	CYOS Board Members	
<b>HMIP Ofsted</b> 23.	Review our spectrum of supervision in line with HMIPs Key Principles of For the Effective Management oversight of Risk of Harm to Others and safeguarding/child protection and the recently released LSCB supervision minimum standards Guidance	Completed July 2014	Effective Management oversight in place and visible	Georgina Kell	LSCB work stream priorities Action Plan Procedures and Quality Assurance sub group

<b>24.</b>	Review responses/ screening tools and referral pathways for D/V & CSE, briefing staff as new MASH comes on line Track responses to referrals	August 2014	Timely assessment and co-ordinated agency response. Reduced vulnerability	Angie Parks/Georgina Kell	Coventry Domestic Violence and abuse Partnership Action Plan( objectives 2&3)
<b>NEET 25.</b>	Attend sub regional Training Providers Forum	October 2014	New referral pathways results in uplift in performance and increased access to accredited programmes	Jas Nagra	NEET Operational Delivery model
<b>26.</b>	Implement AssetPlus Change Lead to maintain membership of national developmental group Consideration and delivery of additional training requirements Technical lead to liaise as appropriate between software providers and LA ICT Cascade approach training across staff group	In line with emerging national deadlines which are currently subject to change	Transition to Assetplus does not impact negatively on service delivery Comprehensive assessment and planning methodology leads to positive outcomes for young people	Adrian Seymour	
<b>Service user voice 27.</b>	Youth Service staff to host CYOS young peoples service user group Reciprocal training of IYSS young people to enable participation in young peoples Inspection Process ( CYOS to Youth Service , Youth Service to CYOS) Report on Victim feedback findings which will include solicitation of their willingness to contribute to a service user forum specific to Victims	Every 3 months  September 2014  October 2014	Independent forum for young service users shaping service delivery  Victim feedback features in service design and delivery	Nigel Patterson  Mathew Haynes  Mathew Haynes	

## Appendix 2 Management Board Membership

Name	People Directorate
Mark Godfrey	Deputy Director, Early Intervention and Social Care, People Directorate, Coventry City Council
Andy Pepper	Assistant Director, Early Intervention and Social Care, People Directorate, Coventry City Council
Mandie Watson	Community Safety Manager, Coventry City Council
Claire Bell	Chief Superintendent, Police Commander for Coventry, West Midlands Police
Kam Kaur	Children's Joint Commissioning Manager, Coventry and Rugby Clinical Commissioning Group, NHS Coventry
Kobina Hall	Head of Probation, Coventry, Staffordshire & West Midlands Probation Trust
Steve Stewart	Chief Executive, CSWP Ltd – the Career Guidance Company
Deepika Chauhan-James	Legal Advisor, Coventry Magistrates Court
Valerie Elliott	Co-Chair of Youth Panel, Coventry and Warwickshire Magistrates Court
Anne Brennan	Senior Advisor, 14-19 years, People Directorate, Coventry City Council
Jayne Casey	Head of Learning and Achievement for Looked After Children, People Directorate, Coventry City Council

## Appendix 3 Management Board Sign Off – Statutory Partners

Mark Godfrey .....(signature)  
(Deputy Director, Early Intervention and Social Care)

Andy Pepper.....(signature)  
(Assistant Director, Children’s Social Care, Targeted and Early Intervention)

Claire Bell .....(signature)  
(Chief Superintendent, Police Commander for Coventry)

Kam Kaur.....(signature)  
(Children’s Joint Commissioning Manager, Coventry and Ruby Clinical Commissioning Group, NHS Coventry)

Kobina Hall.....(signature)  
(Head of Probation - Coventry, Staffordshire & West Midlands Probation Trust)

## Appendix 4 Budget

### Partner Contributions to the Youth Offending Partnership Pooled Budget 2014/15

Agency	Staffing costs (£)	Payments in kind – revenue (£)	Other delegated funds (£)	Total (£)
<b>Local Authority *</b>	<b>605,809</b>	<b>0</b>	<b>541,809</b>	<b>1,147,618</b>
<b>Police Service</b>	<b>49,915</b>	<b>0</b>	<b>20,064</b>	<b>69,979</b>
<b>National Probation Service</b>	<b>69,893</b>	<b>0</b>	<b>22,123</b>	<b>92,016</b>
<b>Health Service</b>	<b>91,421</b>	<b>0</b>	<b>26,617</b>	<b>118,038</b>
<b>Police and Crime Commissioner**</b>	<b>53,226</b>	<b>0</b>	<b>21,960</b>	<b>75,186</b>
<b>YJB Good Practice Grant</b>	<b>624,951</b>	<b>0</b>	<b>33,131</b>	<b>658,082</b>
<b>Other***</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total</b>	<b>1,495,215</b>	<b>0</b>	<b>665,704</b>	<b>2,160,919</b>

\*for multi authority YOTs the totality of local authority contributions should be described as one figure.

\*\*any money from the PCC has been routed through a local crime reduction partnership should be included here.

\*\*\*It should be noted that the 'Other' category is for additional funding that the YOT/YOS can use for any, or general, Youth Justice activities. Accordingly, funding such as the YJB grant for Restorative Justice or for Unpaid Work should not be included

## Appendix 5 – indicator performance and overview

### First Time Entrants (FTE)

There is a correlation between the use of Out Of Court Disposals (OCCD) and a reduction of FTE numbers, but as Coventry is not a high user of OCCD across the West Midlands Police area we would suggest FTE performance is not wholly a reflection of that. When compared to our West Midlands neighbours (based on data provided by West Midlands Police), they generally have higher OCCD usage and a higher rate of FTEs. We are still out performing them.

When compared to our Family Group members based rate per 100,000 12 months to September, out of 9 members we had joint third highest reduction.

We continue to offer an Enhanced Community Resolution and when we looked at reoffending for this cohort April – September 2014 two out of 39 had reoffended. It is too early to provide credible reoffending data as the cohort is small and the full tracking period has not elapsed but the early indicators are positive.

### Reoffending

The counting rule does not take into account the impact of a reduced cohort and the complexity of that cohort whose profile frequently, for example, includes multigenerational crime families, high levels of exclusion, early engagement with multiple agency involvement, mental health issues, LAC or known to Social Care.

We have been reducing the actual number of crimes and offenders and therefore victims. This does not mean we will not continue to focus on this area and will be commencing substantial analysis of this cohort as soon as the national tool is released (April 2014).

When compared to our Family Group for the 12 months to March 2012, we have an above average reduction in terms of both the binary rate (Coventry -3.6, FG – 2.3).and the frequency rate (Coventry -0.06, FG -0.04).

### Custody

We are pleased with the impact of The CYOS Secure Estate Strategy which has, based on our Q3 position, secured a decrease in the use of short term sentences, young people entering custody for breach and the number of young people subject to remand. The only negative is that the number of bed nights used for remand purposes has increased and this is substantially due to an increase in serious crime (including Robbery's specifically with a high level of violence or use of weapons and a murder).

It is important to note that 69% of the Robbery cohort analysed in our recent report to YOS Board were First Time Entrants, as was the remand for murder.

First Time Entrants

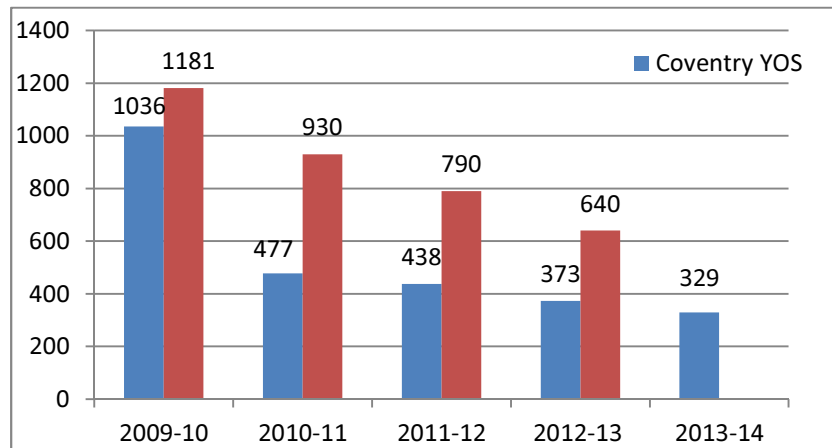


Table 1: FTE's per 100,000 of 10 – 17 year old population, Coventry YOS 2010-2014

Re-offending

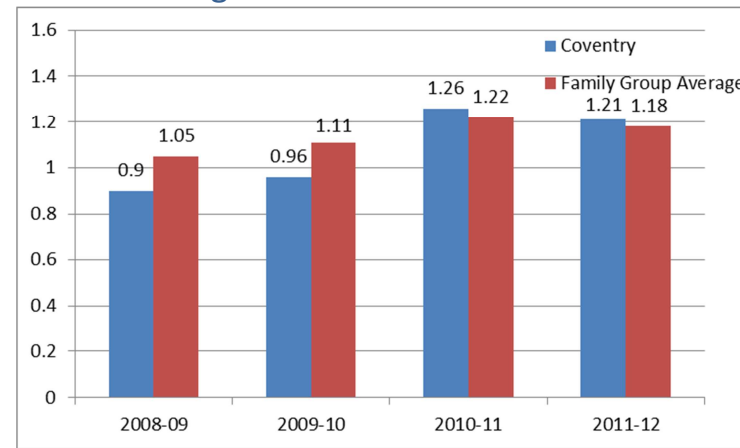


Table 2: Re-offending rates, Coventry YOS 2009 -2012

Custody

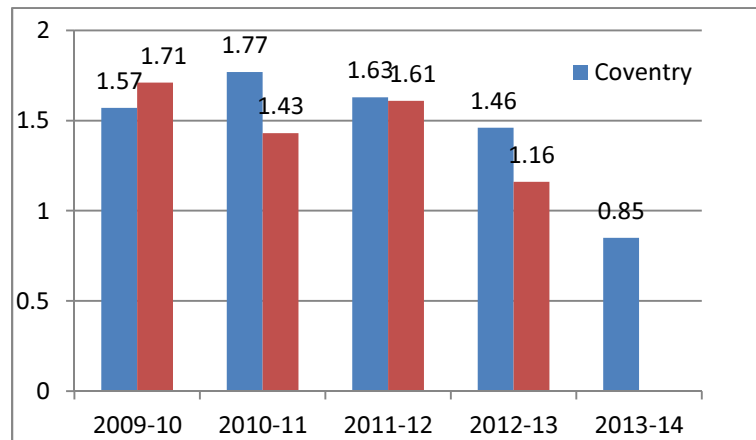


Table 3: Custody rates per 1,000 of the 10-17 year old population, 2010-14

Remands

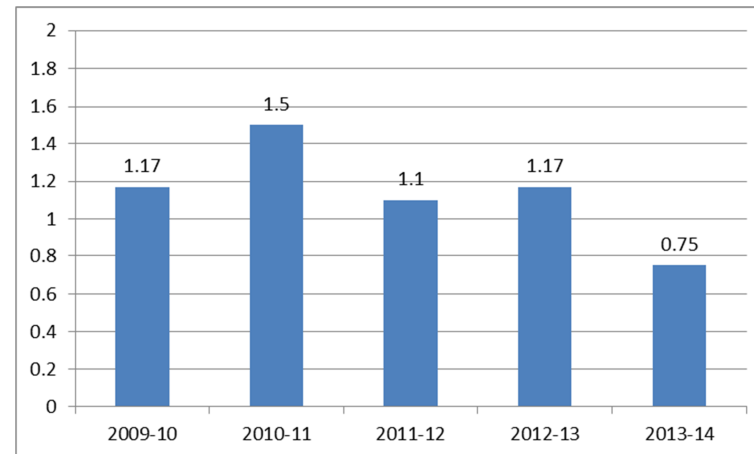


Table 4: Remands per 1,000 of the 10-17 year old population, 2009-2014

### Custody and Remands

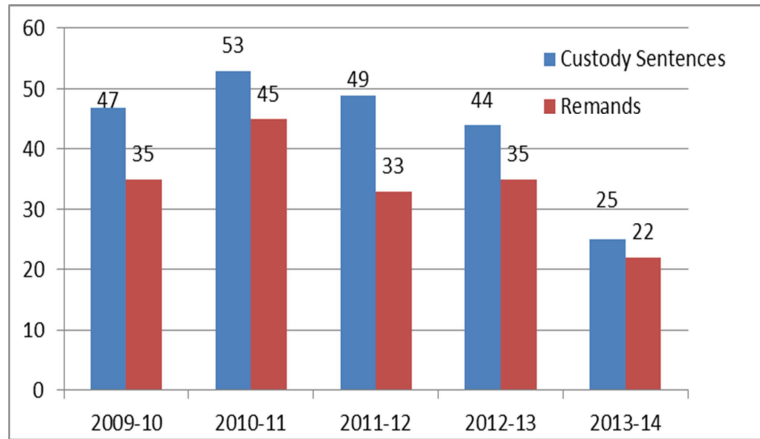


Table 5: Custody and remand episodes, Coventry YOS 2009 – 2014

### Accommodation

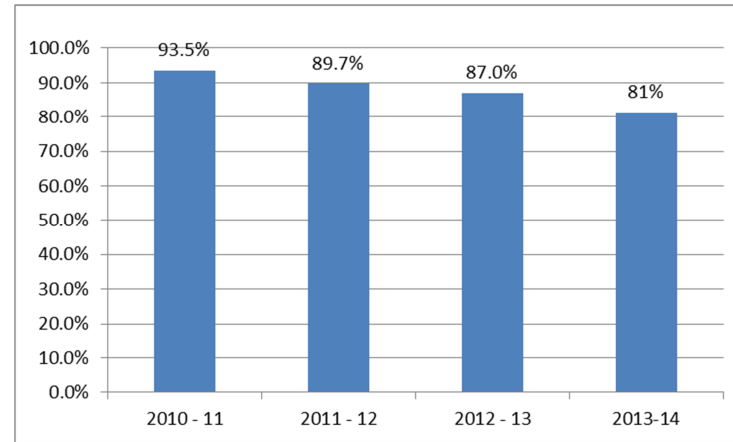


Table 6: Suitable accommodation, Coventry YOS 2011-2014

### Education, Training and Employment

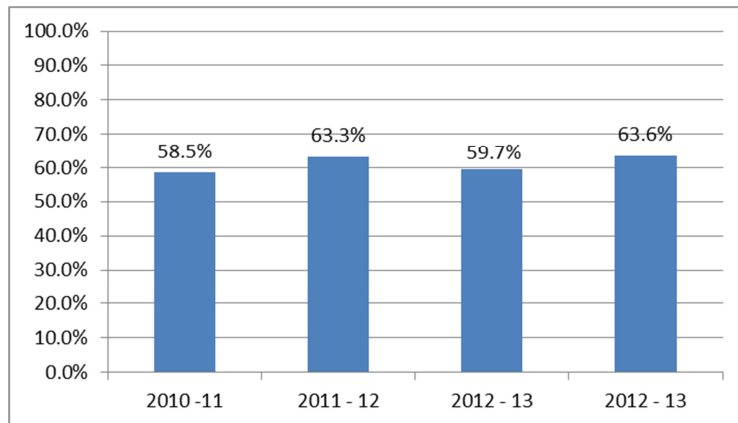


Table 7: Suitable ETE, Coventry YOS 2011 – 2014



Disposals

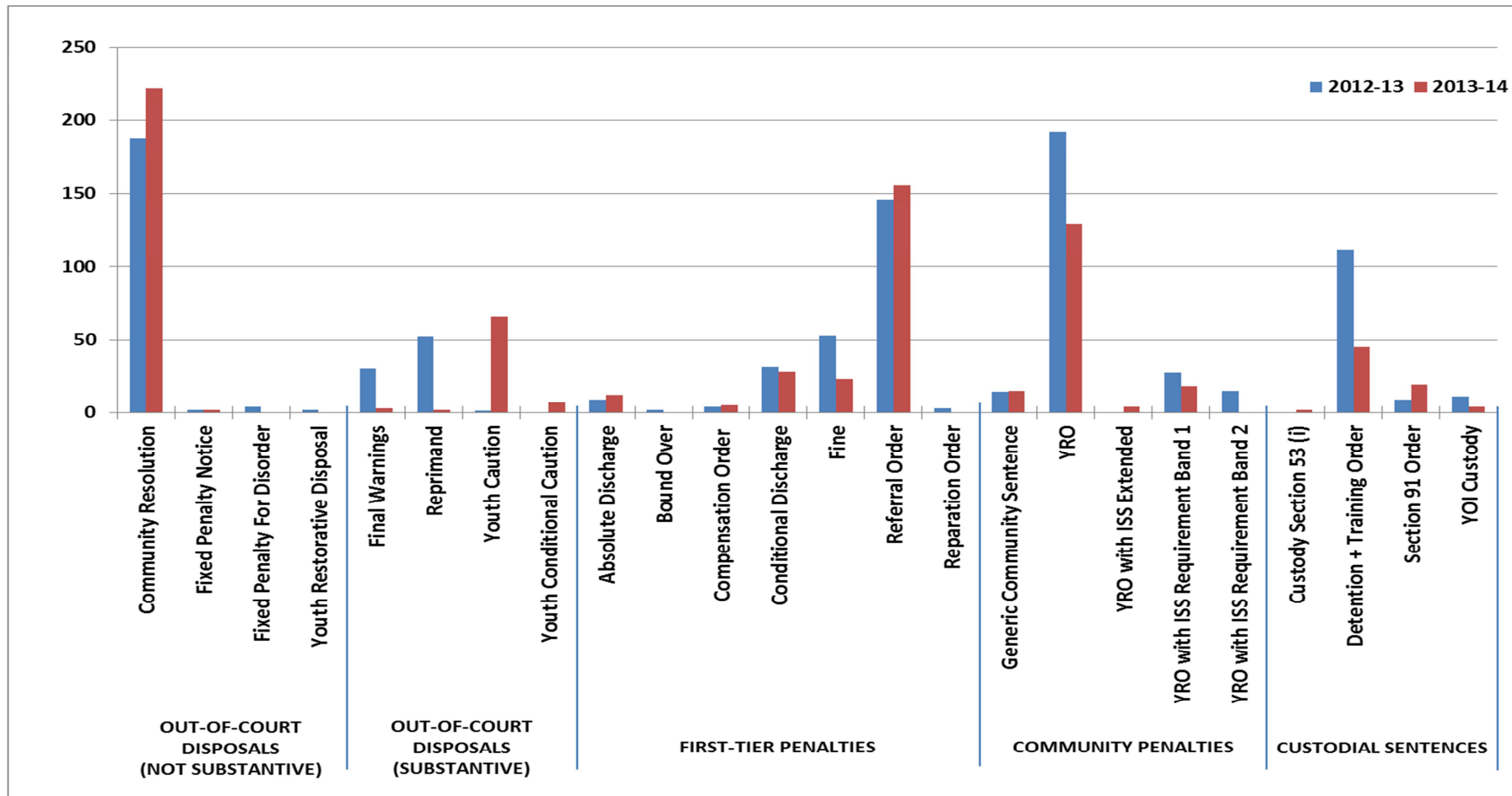


Table 8: Disposals, Coventry YOS 2013 & 2014 Financial Years

Offences

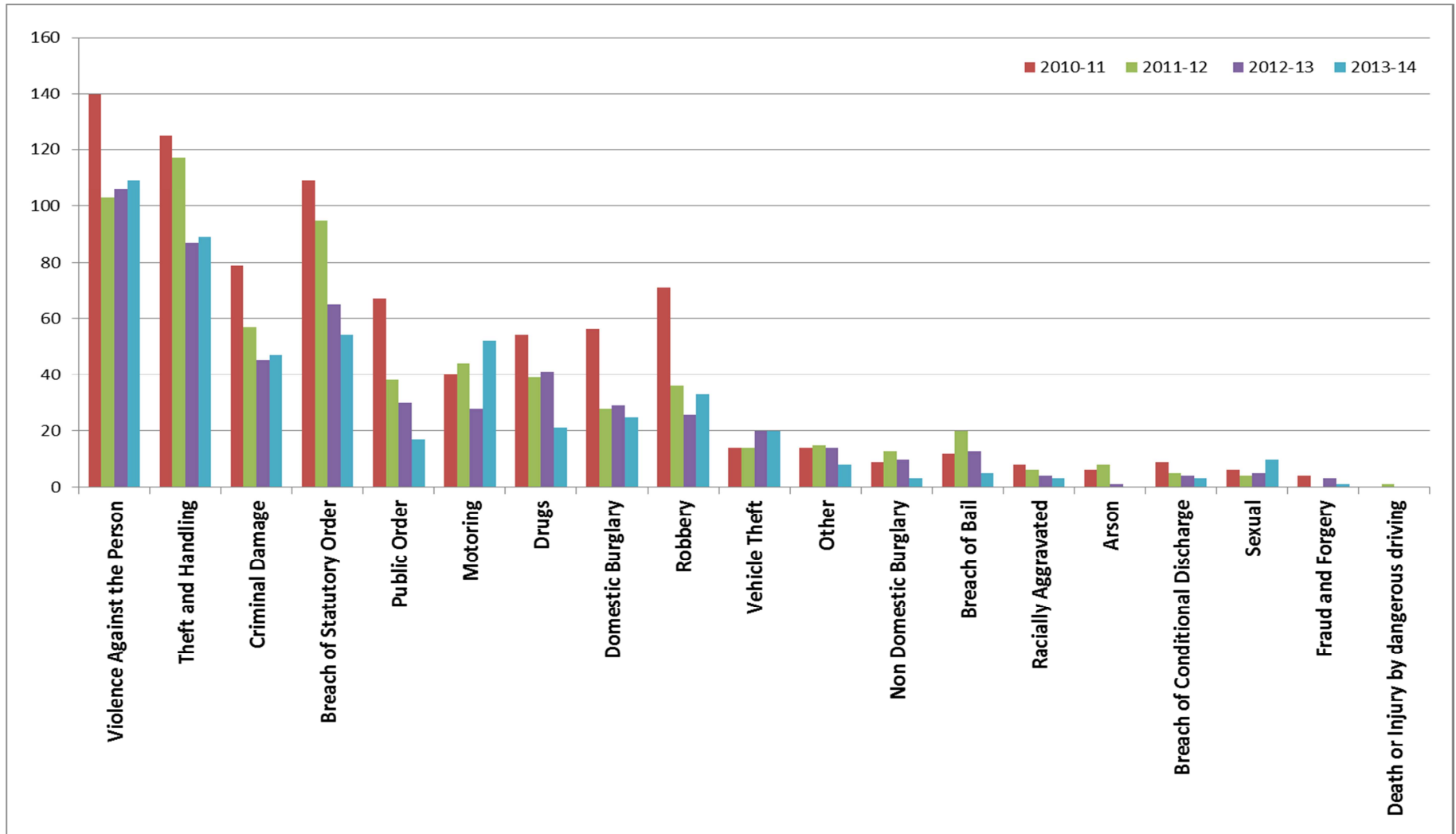


Table 8: Offences by offence type, Coventry YOS 2009 – 2014

Demographics

Ethnicity

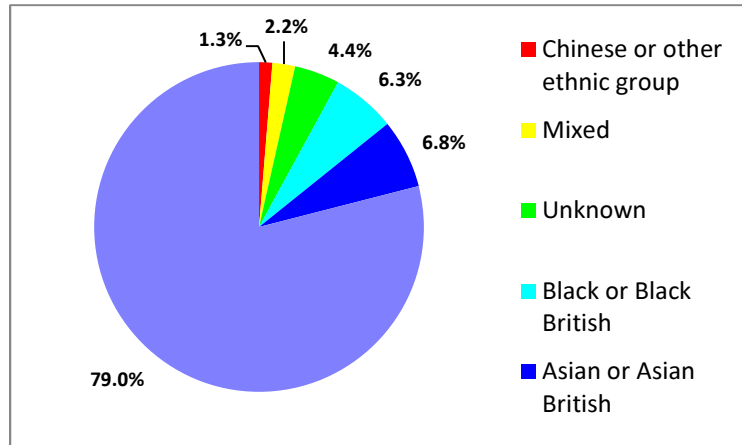


Table 10: Ethnic profile of young people, Coventry YOS 2013-14

Gender

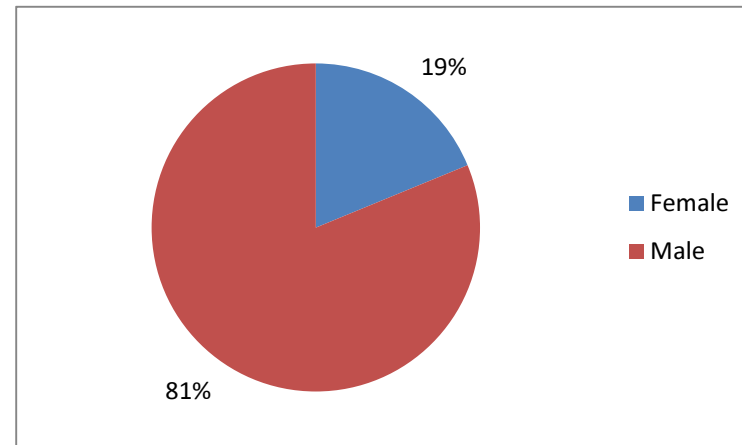


Table 11: Gender profile of young people, Coventry YOS 2012-13

Age

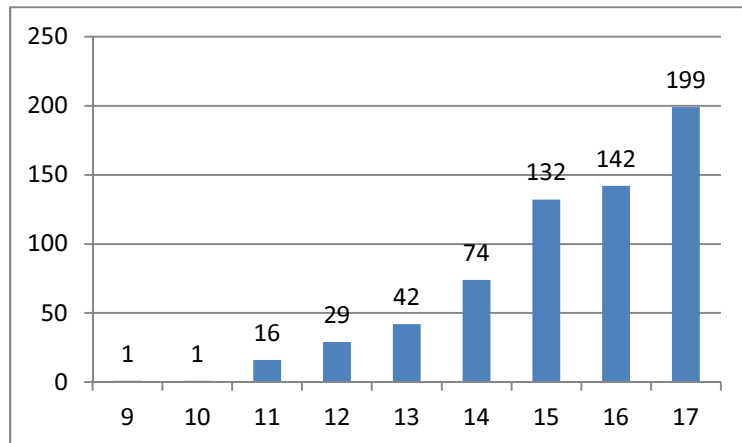


Table 12: Age profile of young people per offence excluding Breaches Coventry YOS 2013-14

## Appendix 6 Case Studies

### 1. Enhanced Community Resolution (ECR) as part of an Out of Court Disposal

Ann (14 years old) and her friend entered a shop, selected a bag and a jumper, and went into the changing rooms to hide the items on their person. They then attempted to leave the store. The girls were apprehended by a security guard and taken into an office. The store reported the matter to the Police, because the girls refused to give their details, and treated the situation as 'one big laugh'. The girls were arrested.

Initially it seemed that this was a relatively straight-forward case, requiring some offending behaviour work and victim empathy work as an intervention. However, on engaging with the family it became obvious that this case was more complex. Ann and her family had been known to Social Care between 2002 and 2010, following referrals for concerns around child protection and neglect.

CYOS instigated a Professionals meeting to address areas of concern relating to

- potential overcrowding of the family's accommodation
- Ann staying out all night with her parents' consent or knowledge of her whereabouts
- Ann making claims of self-harming, being sexually active and using alcohol
- a history of exclusion from school and concerns about Ann's behaviour in class

Those who attended the meeting included a Child Protection officer, Troubled Families worker, the CYOS case worker, Clinical Nurse Specialist (CNS), and Parenting Officer, and representatives from Ann's school.

As a result of the meeting the Children and Families First team agreed to accept the family onto their caseload, to provide support as YOS exited, following completion of the ECR.

### 2. Clinical Nurse Specialist Intervention in an Out of Court Disposal

Alan (16 years old) was referred to the Clinical Nurse Specialist (CNS) for an assessment because of the damage he had caused within the family home. At the initial assessment he engaged well, and began to disclose 'strange thoughts' he had been experiencing. On further exploration, Alan described how he had recently become increasingly paranoid, and believed that he was being controlled by people talking to him through his laptop and phone.

In speaking to Alan's mother, the CNS discovered that Alan had been agitated at home, and at times was convinced that images he had seen on the computer were pictures of himself, taken secretly at times when he was on his own, for example, when using the toilet. Alan also reported that difficulties in his family relationships had resulted in him increasing his use of cannabis.

With Alan's consent, the CNS undertook a joint screening session with Alan and his mother, to obtain a more detailed developmental history and to eliminate any organic cause for his symptoms. This illustrated a significant history of mental ill health within the family, and raised concern that Alan might be experiencing an early-onset psychosis. An urgent joint assessment with a psychiatrist was requested, resulting in medication and the proposal of a course of Cognitive Behaviour Therapy (CBT).

The CNS worked closely with Alan's CYOS case manager, and his key worker from Compass (young peoples substance misuse service).

Regular liaison between the CNS and Alan's psychiatrist, and the resultant relationship established with Alan, led to his decision to renew his relationship with his father which had broken down a year previously.

### **3. Clinical Nurse Specialist (CNS) Intervention in Custody**

Adrian (17 years old) was referred to the CNS by his case manager, after he was remanded to a Young Offenders Institute (YOI) for wounding with intent to cause grievous bodily harm (GBH). The case manager was concerned about Adrian's mental well-being, and the limited information available about any previous history of mental health issues. The case manager knew that prior to committing the offence, Adrian had completed his education and had been accepted for Army training.

An urgent visit was arranged. The CNS liaised with the mental health services at the YOI about his concerns, suggesting additional care which was required immediately whilst psychiatric reports were requested, prior to sentencing.

The CNS undertook a visit to Adrian's mother with his case manager, which disclosed a history of on-going domestic violence within the home throughout Adrian's childhood. His father also had a history of offending.

Adrian was subsequently diagnosed with mental health issues and the psychiatric reports provided influenced his care pathway post-sentence.

#### 4. Multi-Systemic Therapy Intervention

Adam (16 years old) had spent most of his life living with his mother and step father, having intermittent contact only with his father. His mother and step father have a history of domestic violence, often witnessed by the children, over a period of 9 years. The wider family on both sides had been known to the Police for many years, and Adam had been known to Social Care since 2006, and CYOS since 2009.

Adam had been involved in criminal activity since then, with offences including Assault, Battery, Criminal Damage, Aggravated Burglary, Possession of various drugs, and offences of violence. He had also breached his Criminal Anti-Social Behaviour Order (CRASBO).

In July 2013 it was agreed that Adam should live with his father, who might be able to support him in complying with his order, and influence a reduction in his offending. It was decided that an intensive, evidence-based intervention to work with the family would be beneficial, to prevent a future custodial sentence for Adam, and also because his younger brother had begun offending.

The case was allocated to the Multi-Systemic Therapy Team (MST). During the intervention both households were regularly visited by the therapist. The aim of the therapy was to assist mother and stepfather, and father, in devising strategies to monitor the behaviour of Adam and his brother, and to build more supportive relationships within the family. All engaged well with the service, and regular monitoring and supervision of both boys became routine. Parental roles and responsibilities have been reinforced, and additional support for Adam's parents has been secured through a wider network of family and friends. Adam has managed to comply with the conditions of his order with the support of his family, thus avoiding Breach and a probably custodial sentence.

**Appendix 7 -YOS Staff Ethnic Origin including Sessional Workers and Volunteers**

Ethnic Origin	White British	White Other	Indian	African	Dual Heritage	Black	Black Other	Asian	Eastern European	Portuguese	Korean	Unknown	Total
Strategic Manager	1												1
Operational Managers	4	1											5
Practitioners	29		2	1			2					1	35
Administration	5		2	1							1		9
Sessional Workers	9							1		1			11
Volunteers	10				1	2		1	1	1		1	17

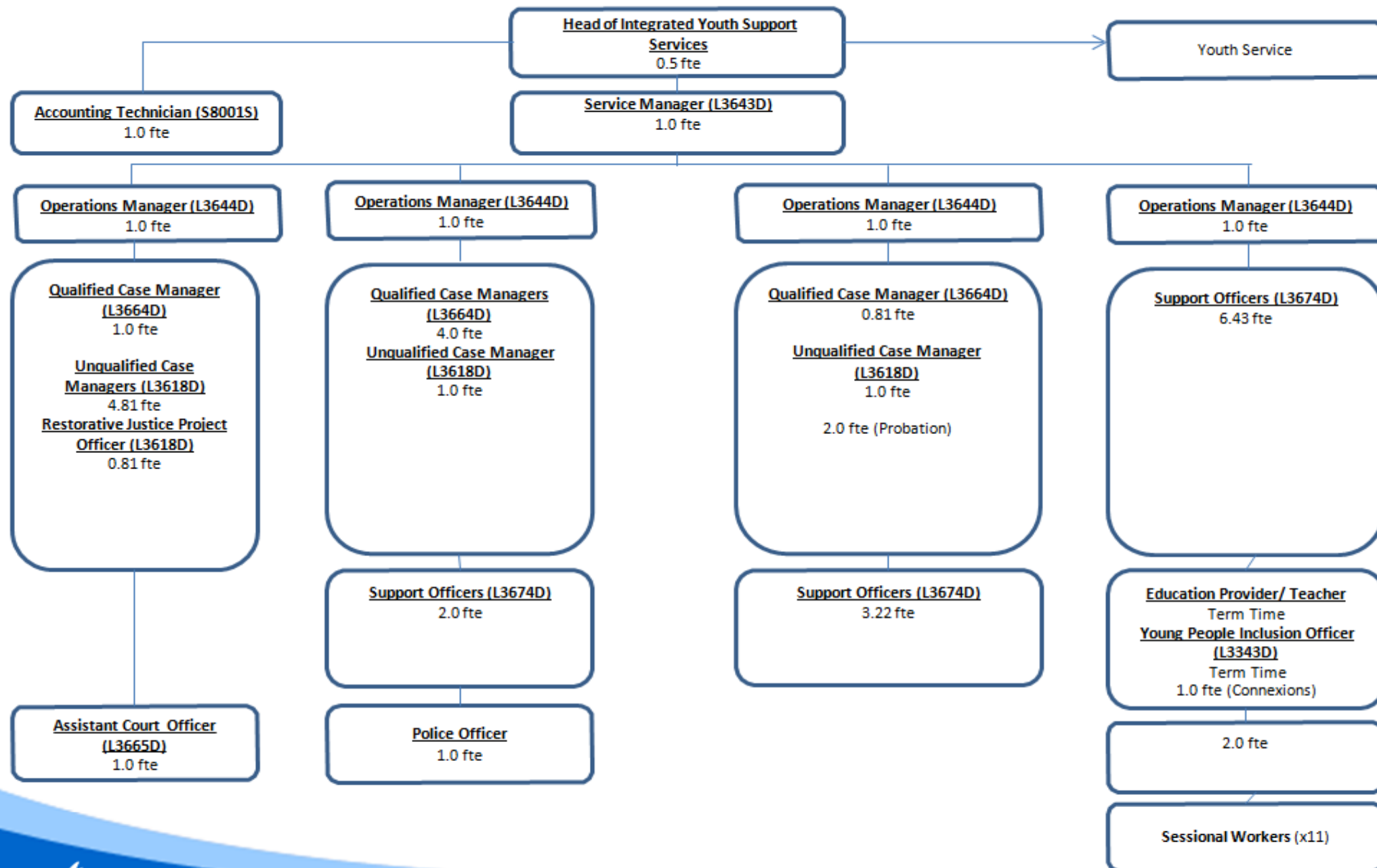
**Appendix 7 - YOS Staffing contract type including Gender**

Type of Contract	Strategic Manager (PT)	Strategic Manager (FT)	Operational Manager (PT)	Operational Manager (FT)	Practitioners (PT)	Practitioners (FT)	Administration (PT)	Administration (FT)	Sessional Workers	Volunteers	Total	Male	Female
Permanent		1		5	8	21	5	4			44	8	36
Seconded Probation						2					2		2
Seconded Police						1					1	1	
Seconded Health						2					2	1	1
Seconded CWSP						1					1		1
Sessional Workers									11		11	4	7
Volunteers										17	17	3	14

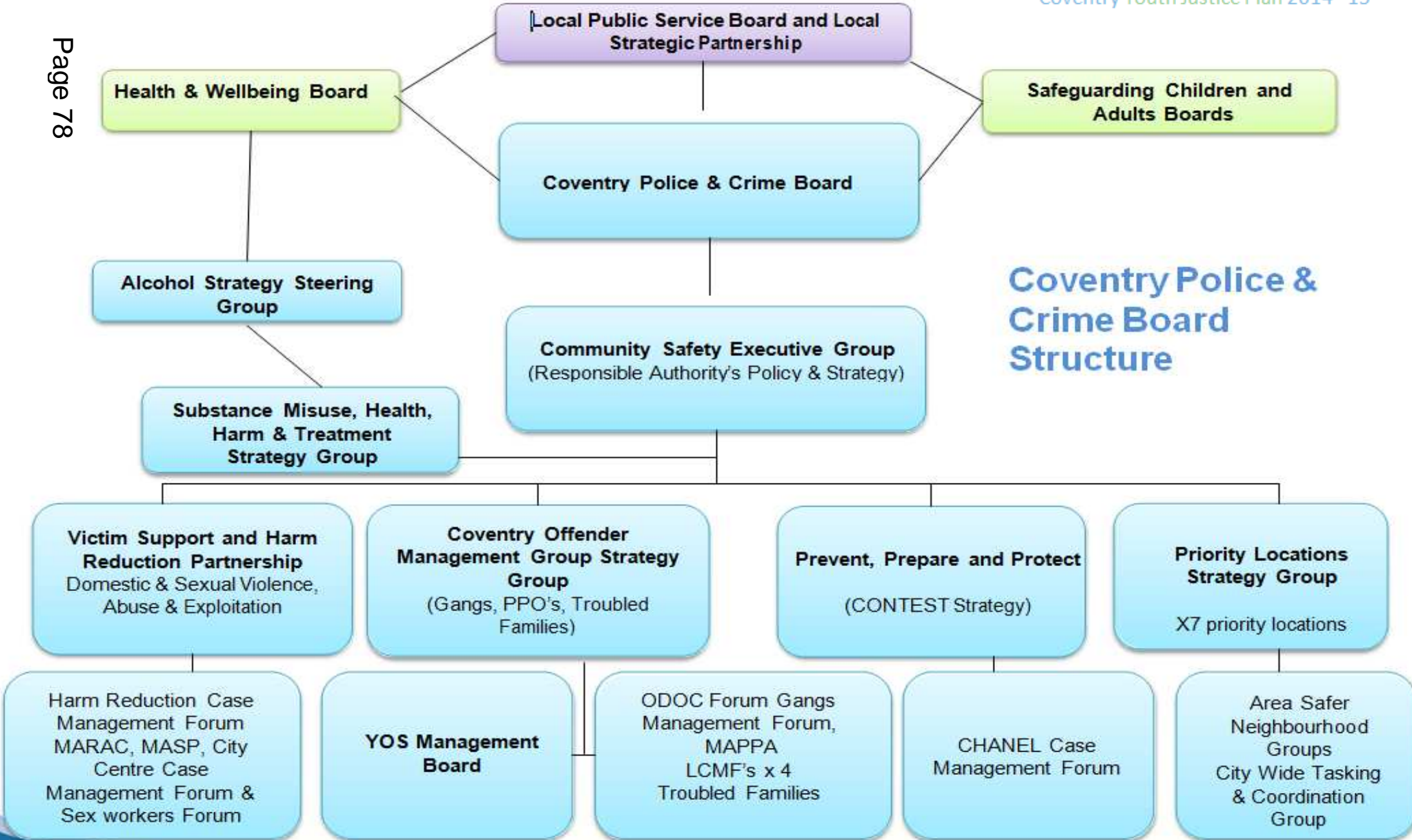
Restorative Justice Training – 25 YOS staff and 17 volunteers have completed this training



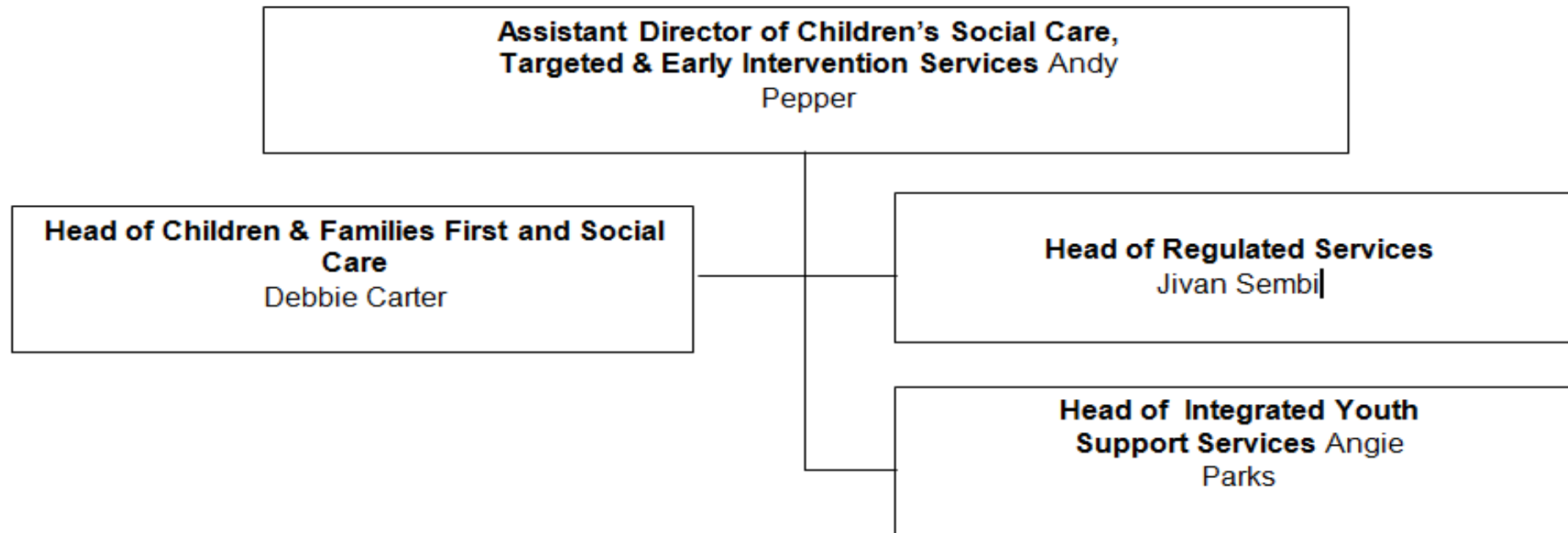
CYOS Organisation Employee Structure (February 2014) – Posts only



# Coventry Police & Crime Board Structure



## Children's Social Care, Targeted & Early Intervention Services



**Appendix 8 Glossary of Terms and Abbreviations**

AYM	Association of YOT Managers
CAF	Common Assessment Framework
CBT	Cognitive behaviour Therapy
CDQR	Community Division Quarterly Review
CHAT	Comprehensive Health Assessment Tool
CJL + DT	Criminal Justice Liaison + Diversion Trial
CJS	Criminal Justice System
CSWP	Coventry Solihull and Warwickshire Partnership
CR	Community Resolution
CSE	Child Sexual Exploitation
CYOS	Coventry Youth Offending Service
DVA	Domestic Violence and Abuse
ECR	Enhanced Community Resolution
EHC	Education Health + Care Plans
EIP	Early Intervention Strategy + Plan
ETE	Education, Training and Employment
FTE	First Time Entrants (to the Criminal Justice System)
HMIP	Her Majesty's Inspectorate of Probation
HOS	Head of Service
IOM	Integrated Offender Management
IYSS	Integrated Youth Support Service
JAC	Junior Attendance Centre

LAC	Looked After Children
LGA	Local Government Association
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act 2012
LSCB	Local Safeguarding Children Board
MAPPA	Multi-Agency Public Protection Arrangements
MASH	Multi-Agency Safeguarding Hub
MoJ	Ministry of Justice
MST	Multi-Systemic Therapy
NAAN	National Association of Appropriate Adult Network
NEET	Not in Education, Training or Employment
NOMS	National Offender Management Service
ODOC	One Day One Conversation
O OCD	Out-of-Court Disposal
PACE	Police and Criminal Evidence
PBR	Payment by Results
PCC	Police and Crime Commissioner
PNC	Police National Computer
PPRC	People Posing Risk to Children
SEN	Special Educational Needs
STC	Secure Training Centre
T2Adult	Transition to Adulthood Programme
YJB	Youth Justice Board

YJS	Youth Justice System
YODOC	Youth One Day One Conversation
YOI	Youth Offending Institute
YOT	Youth Offending Team



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Cabinet  
Council

8<sup>th</sup> July 2014  
15<sup>th</sup> July 2014

**Name of Cabinet Member:**

Cabinet Member (Business, Enterprise and Employment) – Councillor Maton

**Director Approving Submission of the report:**

Executive Director Place

**Ward(s) affected:**

All

**Title:**

Warwick District Council New Local Plan – Publication Draft

---

**Is this a key decision?**

Yes.

Aspects of the Publication Draft of the Warwick District Council (WDC) Local Plan carry specific implications for the city's southern wards (Cheylsemore, Wainbody, Binley and Willenhall and Westwood) given their shared boundary.

However, the development proposals contained within the plan and the on-going opportunities it offers for constructive engagement in relation to the development of Coventry's Local Plan mean the Council's response may have future implications for the city as a whole. This includes the legal 'Duty to Cooperate' as set out in the Planning and Compulsory Purchase Act 2004.

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**Executive Summary:**

Warwick District Council (WDC) published their plan for a period of representations on the 16<sup>th</sup> May 2014. This ran for 6 weeks until the 27<sup>th</sup> June 2014 in accordance with national Regulations relating to the submission of Local Plans. Given the timescales involved, officers have submitted an officer representation to WDC to ensure initial comments have been provided. It is this representation that is attached to Appendix 1 and is presented to members for their endorsement or amendment.

The Local Plan sets out the intended development proposals for Warwick District to 2029. Subject to the received representations, WDC intends to submit the plan to the Secretary of State later this year.

The response has been prepared on behalf of the Council in its role as Local Planning Authority and seeks political endorsement for Coventry's response to WDC at this important stage of its plan's development. It should also be noted that the development of the WDC Local Plan has knock on effects for Coventry's Local Plan given our shared interest around the Coventry and

Warwickshire Gateway, The University of Warwick and our relationships in terms of the Local Enterprise Partnership (LEP), Strategic Economic Plan (SEP) and City Deal. The key points proposed as part of this report relate to:

1. Coventry's continued commitment to fulfilling the Duty to Cooperate and the Council's support for the proposed policy DS20, which commits WDC to supporting Coventry City Council (CCC) in relation to meeting its housing needs should such a situation arise;
2. Support for WDC's plans to accommodate its objectively assessed housing needs within its own boundaries in accordance with the Coventry and Warwickshire Strategic Housing Market Assessment;
3. Continued support for the Coventry and Warwickshire Gateway proposals;
4. Continued support of the expansion plans at the University of Warwick; and
5. Clarification of the Council's position with regards the proposed housing site at Howes Lane, east of Finham.

Should the continued progression of the new Coventry Local Plan show that Coventry is unable to accommodate its own development needs within its own boundary then the city will require support from our neighbours to help deliver its needs. This relates to, and highlights the importance of, point 1 above.

Points 3, 4 and 5 (above) identify areas where development opportunities would be allocated or facilitated through policy adjacent to the city's southern boundary. As such, there are likely to be environmental impacts resulting from the development of Greenfield and Green Belt land, and additional pressure on Coventry's services with no additional income to the Council to pay for it. In contrast however we would expect many of the increased demands on our services, and associated implications, to be mitigated through improved infrastructure delivery; and we also expect to see positive impacts in terms of job creation, growth in economic output and housing provision. Members will also be aware of positive environmental impacts generated through the Coventry and Warwickshire Gateway proposals with regards the remediation of contaminated land in some of that area.

### **Recommendations:**

The Cabinet is requested to:

- 1) Recommend that the Council endorse the officer representations to Warwick District Council's New Local Plan – Publication Draft, as set out at Appendix 1.

The Council is recommended to:

- 1) Endorse the officer representation to Warwick District Council's New Local Plan – Publication Draft (as amended by Cabinet where necessary), as set out at Appendix 1.

### **List of Appendices included:**

- Appendix 1: Proposed representation to the Warwick District Council New Local Plan – Publication Draft consultation.
- Appendix 2a: WDC's Map 8 – Land around Coventry airport and proposed housing site at Howes Lane, east of Finham.
- Appendix 2b: Enlarged site map of the proposed allocation at Howes Lane, east of Finham.
- Appendix 3: WDC's Map 7 – Revised Green Belt boundary at the University of Warwick.

### **Background papers**

None



**Other useful documents:**

- Warwick District Council New Local Plan – Publication Draft is available to download at: [http://www.warwickdc.gov.uk/news/article/24/local\\_plan\\_proposals](http://www.warwickdc.gov.uk/news/article/24/local_plan_proposals)
- Previous Council Consideration of Warwick District Council New Local Plan Consultation paper  
<http://moderngov.coventry.gov.uk/Data/Council/201207241400/Agenda/Document%202.pdf> (Pages 4 and 263-271)
- Planning Application details approving University of Warwick Masterplan (2009)  
<http://planning.coventry.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=675555>

**Has it been or will it be considered by Scrutiny?**

No

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

No

**Will this report go to Council?**

Yes, 15<sup>th</sup> July 2014

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## Report title: Warwick District Council New Local Plan – Publication Draft

### 1. Context

- 1.1 Warwick District Council issued the Publication Draft of its new Local Plan for a period of representations (statutory consultation period) on the 16<sup>th</sup> May 2014. It sets out WDC's policies and proposals to support the development of the District through to 2029. Preparation of the plan commenced in 2010 and has been subject to 4 previous periods of consultation. The plan proposes site allocations to deliver growth, with some of these sites currently undeveloped Green Belt land. It is considered that this is a matter for Warwick District Council as planning authority, and therefore no objection in principle to this is recommended.
- 1.2 There are 3 specific proposals however that are situated adjacent to the Coventry administrative boundary. These include
- The allocation of a small site East of Finham at Oaklea Farm, Howes Lane for 20 new homes (See Appendix 2a and 2b). This is a small triangular shaped site adjoined on 2 sides by existing residential development, the majority of which is within Coventry's administrative boundary, with the A46 bordering the site to the east. Members should note that the Council have previously objected to this site in a Council report dated 24<sup>th</sup> July 2012. The reasons for this objection were concerns about service provision and the principle of the removal of the site from the Green Belt. In the first case, the approval of the City Deal and further opportunities to engage in servicing arrangements with the District and County Council are likely to mitigate any adverse impact on the city council's service provision. With regards the Green Belt concerns, WDC are within their rights to explore all development opportunities within their administrative area. They have sought through their local plan to minimise the release of Green Belt land and distribute housing across their district area. Officers are of the view that the decision to allocate this site has not been taken lightly and is a result of an exhaustive investigation into non-Green Belt options elsewhere in the district. As such, this proposed response to WDC would supersede the previous objection to this site on the basis that suitable arrangements will be made in relation to servicing the new homes.
  - Proposed Policy DS16 of the Local Plan identifies land referred to as the Coventry and Warwickshire Gateway as a sub-regional employment site (See Appendix 2a). This is with a view to supporting economic growth and job creation for the whole Coventry and Warwickshire area. The site is identified for partial removal from the Green Belt to support the development of the scheme proposed through the masterplan. Coventry City Council has previously supported the development of this site on a number of occasions, which is reflected in the proposed response.
  - In order to facilitate the continued delivery of the University of Warwick masterplan, The Local Plan proposes to remove the university footprint from the Green Belt (see Appendix 3). As the University site straddles the Coventry/Warwick boundary, Coventry City Council has previously supported the masterplan proposals in 2009.
- 1.3 Section 33A of the Planning and Compulsory Purchase Act 2004 (as introduced by the Localism Act 2011) establishes the 'Duty to Cooperate' and requires local authorities to engage constructively, actively and on an ongoing basis when developing their local plans and the evidence to support them. The 'duty' cannot be met retrospectively and cannot continue to be discharged in relation to this aspect of the WDC plan once it has been

submitted to the Secretary of State. As such, WDC and CCC have sought to discharge their respective responsibilities in relation to this 'duty' through numerous areas of joint working. Of most relevance to this report are work on the Coventry and Warwickshire Gateway proposals and the Joint Strategic Housing Market Assessment (SHMA), which provides an independent assessment of the number of homes required for the respective authorities.

- 1.4 Although the outcomes of the Joint SHMA have not yet been tested for Coventry, there remains a risk that it will not be possible to meet the needs of the city within its own boundaries. As such, CCC must be satisfied that the WDC Local Plan makes adequate provisions to support CCC in meeting this need should the situation arise. If such circumstances were to occur the Coventry and Warwickshire Joint Committee has approved the development of further evidence to help determine the most sustainable location(s) within the County to meet this need. Furthermore, Policy DS20 of the WDC Local Plan acknowledges this possibility and sets out a process whereby WDC will identify sites to help to meet Coventry's unmet needs within the WDC boundary should this be required and evidenced as the most sustainable option. It also commits to further work through the Duty to Cooperate as it will relate to a review of the Local Plan (post adoption) or the production of a supporting Development Plan Document. Members should be aware that given some lingering uncertainty around how the Planning Inspectorate approach the 'duty', Policy DS20 could be considered as an agreement to agree, therefore failing to take proper account of Coventry's potential issues with regards its housing needs. It is the view of officers however that the provision of this commitment in a policy, situated at the heart of the overarching development strategy, would mean any subsequent attempt to go back on this commitment (following the identification of a need for Coventry) would render the WDC Local Plan out of date and unsound. Under such circumstances WDC would be left exposed to speculative development without the protection of a useable development plan.
- 1.5 On this basis officers are satisfied that WDC have discharged their responsibilities in terms of the 'duty', as far as they relate to CCC with regards their Local Plan whilst also putting in place a firm commitment to supporting on-going cooperation as it will relate to CCC's Local Plan and subsequent planning documents.

## **2. Options considered and recommended proposal**

- 2.1 There are two realistic options available. The first of these is to remain silent; this was rejected on two grounds. Firstly, because it is in the Council's interests to formally express its views on a plan containing development proposals that will have direct implications for land adjoining and straddling Coventry's administrative boundary. Secondly, because the Councils need to undertake active and constructive cooperation through the Duty to Cooperate, especially in relation to how WDC's Local Plan will impact on the future development of Coventry's own Local Plan.
- 2.2 The second option, which is recommended, is to formally respond in broad support of WDC's proposed Local Plan in accordance with the Duty to Cooperate, whilst being clear that CCC consider there is a risk that some of Coventry's objectively assessed housing need might be required to be accommodated in Warwick District. The Duty to Cooperate is not confined to housing issues but also relates to other strategic matters including employment, significant infrastructure schemes such as road and rail, and other cross boundary matters. This is also reflected in the recommended response.

## **3. Results of consultation undertaken**

- 3.1 There has been no consultation undertaken by Coventry City Council with respect to this report, but the Council has responded to each of Warwick District's local plan consultations.

#### **4. Timetable for implementing this decision**

- 4.1 The deadline for responses to the consultation was Friday 27<sup>th</sup> June 2014. Due to the timing of Cabinet and Council meetings and the unfortunate timing of the consultation at a time of Coventry local elections, a 'holding' response was sent to WDC prior to this deadline and within the timeframe allowed by the statutory period of consultation.
- 4.2 Further correspondence will then be sent to WDC following the Council meeting on the 15<sup>th</sup> July 2014 to confirm or amend the Council's response.

#### **5. Comments from the Executive Director, Resources**

##### **5.1 Financial implications**

There are no known direct costs for the Council directly associated with this consultation or the recommendations in this report. There may be indirect costs to the Council as a result of the proposed site allocation East of Finham, however, the site is relatively small, and there would be scope to negotiate with Warwick District to achieve a mutually acceptable financial solution, thus mitigating any significant financial risk.

##### **5.2 Legal implications**

It is considered that responding to this consultation will assist both Warwick District and Coventry City Councils to demonstrate compliance with the Duty to Cooperate, as set out in Section 33A of the Planning and Compulsory Purchase Act 2004 (as introduced by the Localism Act 2011), associated regulations, and the National Planning Policy Framework 2012.

#### **6. Other implications**

##### **6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?**

The Warwick Local Plan will contribute to a number of the City Council's core aims as follows:

- A prosperous Coventry. The WDC Local Plan makes a number of development proposals that are adjacent to or straddle the Coventry boundary. Such proposals will support economic growth, job creation and investment in infrastructure that will have a positive impact on Coventry's prosperity. Of particular relevance are the Gateway proposals and the support for the University of Warwick;
- Providing a good choice of housing. The WDC Local Plan sets out a number of potential sites for new homes to be built, offering a choice that can be expected to be available to local people throughout the area; and
- Improving the environment and tackling climate change. The WDC Local Plan focuses new development in accessible and sustainable locations that minimises the need to travel.

##### **6.2 How is risk being managed?**

The key risk associated with the proposal is concerned with technicalities around the Duty to Cooperate. In particular, this relates to the need to maintain an opportunity to work with WDC in the future should it be evidenced that Coventry is unable to meet its identified

housing needs. It also relates to the continued joint working around the Gateway proposals and the on-going support for delivering the University of Warwick's wider masterplan.

Officers believe that the policies contained within the WDC Local Plan are effective and will offer a sound basis for constructive and on-going cooperation between WDC and CCC, especially in relation to the key areas identified above.

By responding in support of the WDC Local Plan, it is considered that the Council would be acting appropriately in terms of its own responsibilities under the Duty to Cooperate, helping to give both the Coventry and Warwick Local Plans the best chance of discharging the 'duty' and progressing to adoption.

### **6.3 What is the impact on the organisation?**

No direct impact.

### **6.4 Equalities / EIA**

It is Warwick District Council's responsibility to complete an Equality Impact Assessment to inform its own Core Strategy.

Notwithstanding, there are likely to be significant economic and social benefits to the city through the development of new homes and employment opportunities adjacent to the city boundary.

### **6.5 Implications for (or impact on) the environment**

The Warwick Local Plan will be accompanied by a Sustainability Appraisal, in accordance with relevant regulations, that will assess the environmental implications of the Publication Draft.

### **6.6 Implications for partner organisations?**

The recommended response to the consultation that appears at Appendix 1 supports the proposals made in the WDC Local Plan Publication Draft (May 2014). There are no implications for partner organisations that cannot be mitigated or managed through the supporting work already undertaken by WDC and through on-going cooperation between CCC and WDC.

**Report author(s):**

**Name and job title:** Mark Andrews, Acting Planning Policy Manager

**Directorate:** Place

**Tel and email contact:** 02476 834295, mark.andrews@coventry.gov.uk

Enquiries should be directed to the above person.

<b>Contributor/approver name</b>	<b>Title</b>	<b>Directorate or organisation</b>	<b>Date doc sent out</b>	<b>Date response received or approved</b>
<b>Contributors:</b>				
Jim Newton	Acting Head of Planning	Place	12/05/14	21/05/14
Colin Knight	Assistant Director (Planning Transportation & Highways)	Place	21/05/14	27/05/14
Lara Knight	Governance Services Team Leader	Resources	10/06/14	11/06/14
<b>Names of approvers for submission:</b> (officers and members)				
Finance: Phil Helm	Finance Manager (Place)	Resources	21/05/14	23/05/14
Legal: Carol Bradford	Locum Legal Officer	Resources	21/05/14	23/05/14
HR: Jasbir Bilen	HR Manager	Resources	21/05/14	22/05/14
Executive Director: Martin Yardley	Executive Director for Place	Place	27/05/14	27/05/14
<b>Members:</b> Cllr Kevin Maton	Cabinet Member for Business, Enterprise and Employment	Place	16/06/14	17/06/14

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**Place Directorate**

Civic Centre 4  
Much Park Street  
Coventry  
CV1 2PY

**Please contact:**  
Direct line 024 76 83 4295  
E-mail: [mark.andrews@coventry.gov.uk](mailto:mark.andrews@coventry.gov.uk)

Reference:

Date:

Dear Mr Barber

Please accept this letter as an officer holding response on behalf of Coventry City Council (in its role as Local Planning Authority) in response to Warwick District Council's new Local Plan - Publication Draft (May 2014). Due to the tight timescales involved and the timing of the period of representations we have been unable to obtain Full Council endorsement for this response prior to the deadline. As such, a further letter of endorsement (or amendment as appropriate) will be sent after Coventry's Council meeting on the 15<sup>th</sup> July 2014.

We welcome the opportunity to make representations to WDC's New Local Plan and wish to provide our response in the spirit of the Duty to Cooperate and in general support of your Local Plan. Our comments are therefore as follows:

1. Section 33A of the Planning and Compulsory Purchase Act 2004 (as introduced by the Localism Act 2011) establishes the 'Duty to Cooperate' and requires local authorities to engage constructively, actively and on an ongoing basis when developing their local plans and the evidence to support them. The 'duty' cannot be met retrospectively and cannot continue to be discharged in relation to this aspect of the WDC plan once it has been submitted to the Secretary of State. As such, we recognise the effort that WDC has put in to discharging their responsibilities in relation to this 'duty' as it relates to CCC. This includes numerous areas of joint working, most notably the work on the Coventry and Warwickshire Gateway proposals and the Joint Strategic Housing Market Assessment (SHMA).

Although the outcomes of the Joint SHMA have not yet been tested for Coventry, there remains a risk that it will not be possible to meet the needs of the city within its own boundaries. Given this uncertainty and the timing of the WDC Local Plan publication, CCC has sought to reassure itself that the WDC Local Plan makes adequate provisions to support CCC in meeting the city's needs should the situation arise. As part of this process we have noted that the Coventry and Warwickshire Joint committee has approved the development of further evidence to help determine the most sustainable location(s) within the County to meet this need should it be required. Furthermore, and

most importantly, we recognise and welcome the inclusion of Policy DS20 of the WDC Local Plan and its supporting text.

This specific section of the plan acknowledges the potential issues facing Coventry and sets out a process whereby WDC will identify sites to help to meet Coventry's unmet needs within the WDC boundary should this be required and evidenced as the most sustainable option. It also commits to further work through the Duty to Cooperate as it will relate to a review of the Local Plan (post adoption) or the production of a supporting Development Plan Document. As already suggested we support this commitment and welcome its inclusion in the plan.

Furthermore, we recognise the policies positioning within the overarching development strategy chapter of the Local Plan, suggesting it forms a fundamental part of the plan and goes to the heart of its soundness and legal compliance. It is the view of CCC therefore that any subsequent attempt to go back on this commitment (following the identification of a need for Coventry) would render the WDC Local Plan out of date and unsound.

Having regard to the above the Council is satisfied that WDC have discharged their responsibilities in terms of the 'duty', as far as they relate to CCC with regards their Local Plan whilst also putting in place a firm commitment to supporting on-going cooperation as it will relate to CCC's Local Plan and subsequent planning documents.

2. As previously identified WDC and CCC worked jointly with its Warwickshire neighbours to Commission the Coventry and Warwickshire Strategic Housing Market Assessment, which was completed in November 2013. The Council supports WDC's intention to accommodate its own objectively assessed needs within its own boundary in accordance with this Joint SHMA.
3. As suggested above CCC and WDC have undertaken significant levels of joint working alongside the C&W LEP to support and promote the current development proposal referred to as the Coventry and Warwickshire Gateway. As such, CCC supports the allocation of this area as a sub-regional employment site in Policy DS16. The proposed development offers an opportunity for significant economic investment in the sub-region, creating new jobs and generating economic growth.
4. CCC recognises the important contributions the University of Warwick makes to the prosperity and reputation of Coventry and the wider sub-region. As such, we support the careful amendments to the Green Belt boundary being proposed in the plan, to help enable the continued delivery of the Universities masterplan.
5. The Council have reconsidered its position in relation to the land at Howes Lane, East of Finham. We recognise that the decision to allocate this land has not been taken lightly and appreciate that the need to consider existing Green Belt land is reflective of appropriate evidence and assessments that have informed the choice of housing sites. Notwithstanding, the Council wish to maintain on-going communications in relation to this site to ensure the servicing and overall impacts associated with the new homes do not place undue pressure on Coventry City Council resources. Subject to a satisfactory

approach in this regard, the City Council hold no objection to the allocation of this site. Please accept the Council's view on this as superseding previous correspondence in relation to this site.

To clarify CCC supports the Local Plan being proposed by WDC and believes that it offers a sound and legally compliant basis upon which to bring forward sustainable development in Warwick District. At the same time, it offers a solid commitment and robust platform from which to continue active, constructive and on-going cooperation with Coventry City Council over the life time of the plan.

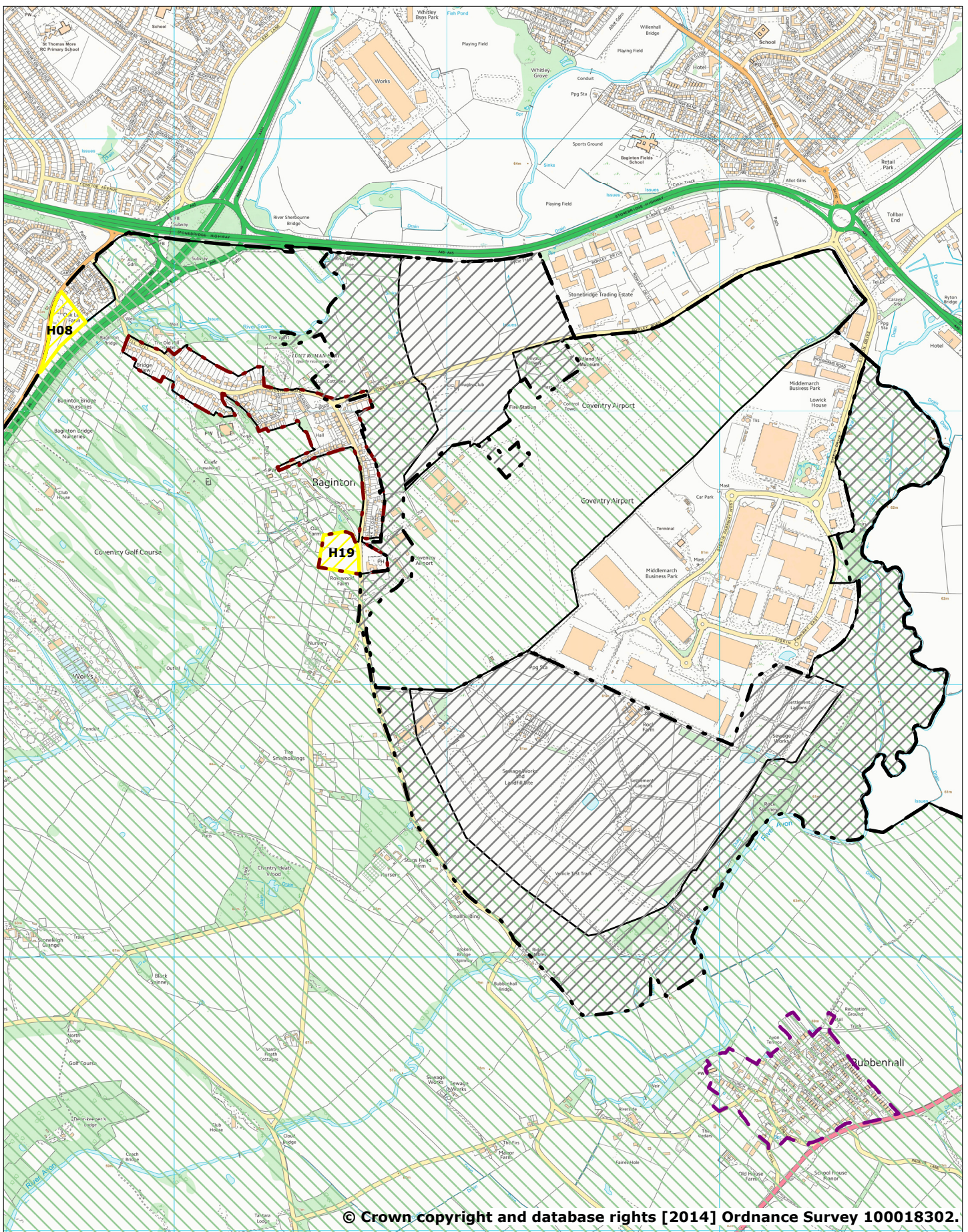
Lastly, I can confirm that should the Inspector consider it necessary and appropriate, Coventry City Council (as Local Planning Authority) are happy to attend any subsequent public examination in relation to the points made above.

Yours sincerely

Mark Andrews  
**Acting Planning Policy Manager**







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**Key**

-  WDLP - Green Belt (DS19)
-  Warwick District Council Boundary
-  WDLP - Growth Village Envelopes (H10)
-  Site Ref
-  WDLP - Infill Village Boundaries
-  WDLP - Sub Regional Employment Allocation (DS16)

**8. Baginton, Bubbenhall and Coventry Airport**

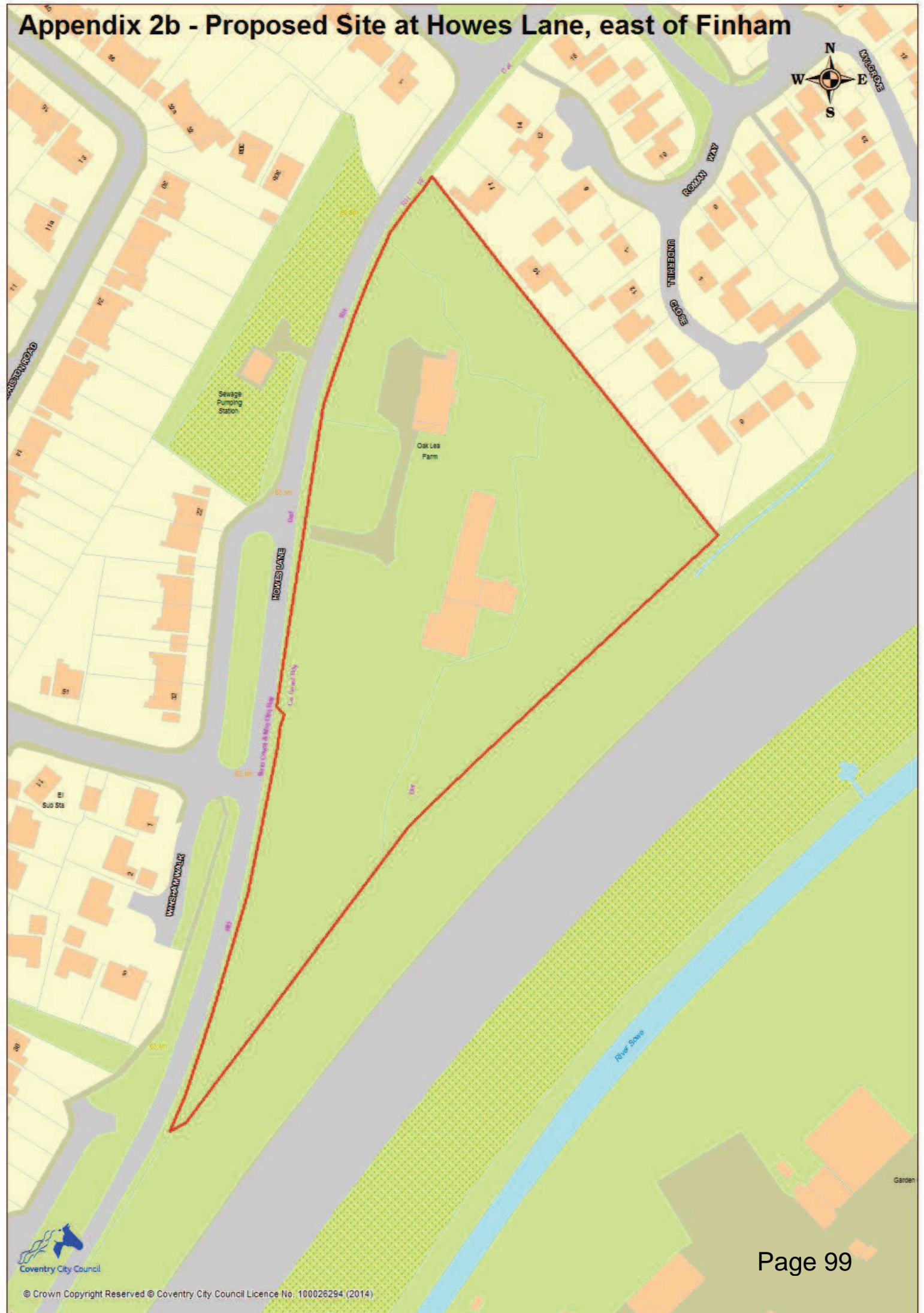
**Local Plan Policies Map**



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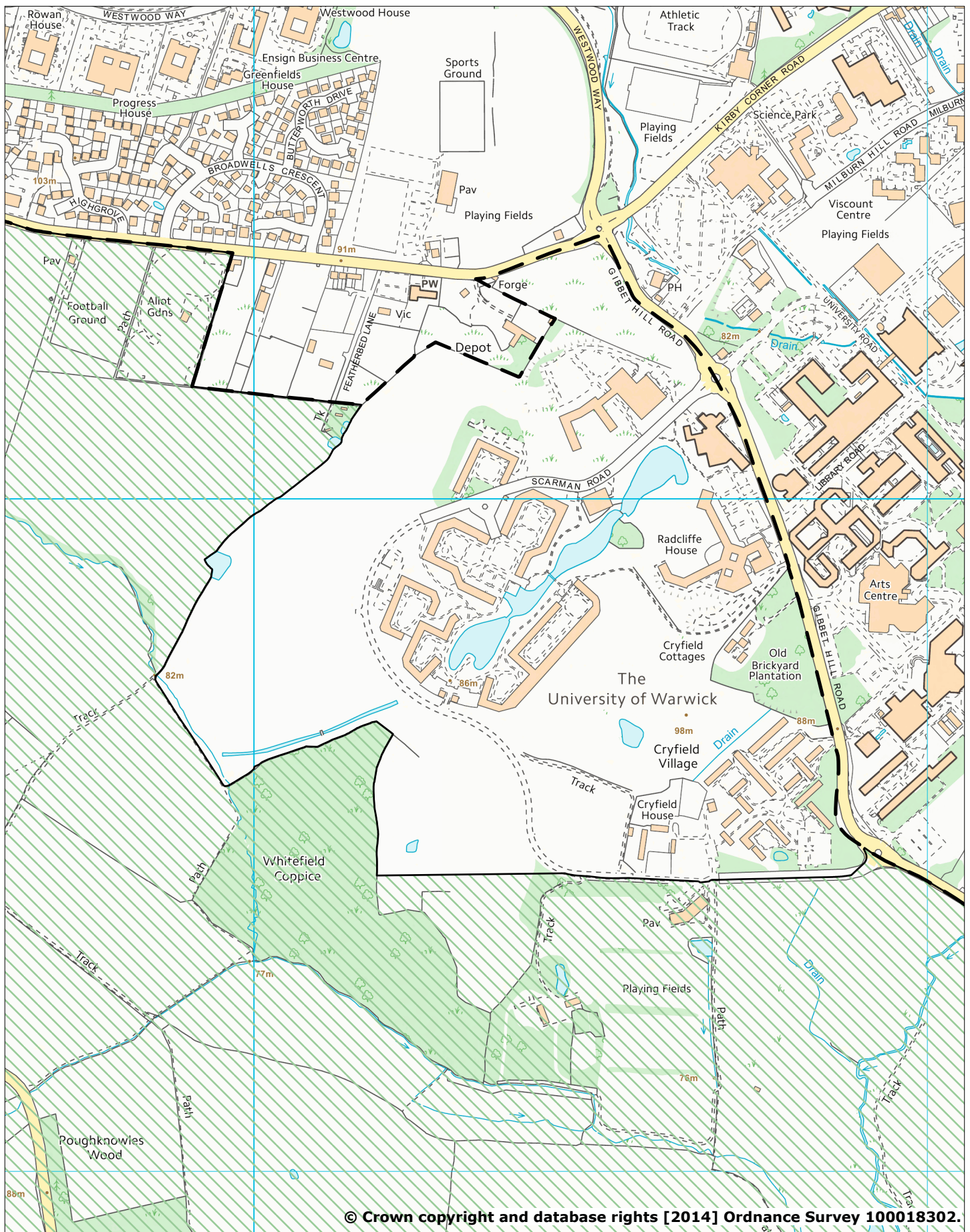


# Appendix 2b - Proposed Site at Howes Lane, east of Finham



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**Key**

WDLP - Green Belt (DS19)
  Warwick District Council Boundary

## 7. University of Warwick

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**Cabinet  
Council**

8<sup>th</sup> July 2014  
15<sup>th</sup> July 2014

**Name of Cabinet Member:**

Cabinet Member (Public Services) - Councillor Lancaster

**Directors Approving Submission of the report:**

Executive Director - Place

**Ward(s) affected:**

All

**Title:**

Coventry & Solihull Waste Disposal Company – Revised Articles of Association and Memorandum of Understanding

---

**Is this a key decision?**

No

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**Executive Summary:**

Coventry City Council and Solihull Metropolitan Borough Council jointly own Coventry and Solihull Waste Disposal Company Limited (CSWDC). Shareholding is split in a ratio of 66 Coventry shares and 33 Solihull shares. CSWDC has successfully operated the Energy from Waste Plant (EfW) in Coventry since 1994 (although the original plant dates from 1975), and over the last three years the operation has returned significant dividends to both shareholders.

As well providing the primary waste treatment capacity for Coventry and Solihull, CSWDC also obtain considerable revenues from the sale of electricity, heat and waste treatment capacity to other local authorities.

One of the challenges for CSWDC is securing a mixture of long term and short term waste contracts to fill the waste treatment capacity not used by Coventry and Solihull. One of the single biggest contributors of waste to CSWDC after Coventry is Warwickshire County Council (WCC), who's current contract expires in 2016.

Given the already existing close links between Coventry, Solihull and Warwickshire, as well as the need to explore joint service delivery models to deliver greater efficiency, officers of all three authorities have been exploring closer arrangements for waste disposal / treatment.

This report seeks approval for joint working on waste disposal to become a reality by making WCC a Class C shareholder in CSWDC in exchange for a guaranteed tonnage input for the next twenty five years.

## Recommendations:

Cabinet is asked to:

1. Approve the proposed changes to the Articles of Association and Memorandum of Understanding for Coventry and Solihull Waste Disposal Company, as detailed in the attached documents to allow Warwickshire County Council to become a shareholder in Coventry and Solihull Waste Disposal Company.
2. Approve the changes to the Coventry and Solihull Waste Disposal Company's shareholders agreement, as detailed in the attached documents to allow Warwickshire County Council to become a shareholder in Coventry and Solihull Waste Disposal Company.
3. Approve the issue of one Class C share in Coventry and Solihull Waste Disposal Company to Coventry City Council for the immediate forward sale to Warwickshire .
4. Approve the immediate forward sale of the Class C share from Coventry City Council to Warwickshire County Council, allowing them to become a shareholder in the Coventry and Solihull Waste Disposal Company.
5. To delegate authority to the Assistant Director for Streetscene and Greenspace to complete the necessary shareholder resolutions of CSWDC to give effect to the recommendations 1 and 2 above.
6. Recommend that Council note the retirement of David Wilson as Coventry City Council's non-executive director on the board of the Coventry and Solihull Waste Disposal Company, and approve the appointment of the Director of Resources (or his nominated substitute) as their replacement on a fixed term of two years and with no remuneration.

Council are asked to:

1. To note the retirement of David Wilson as Coventry City Council's non-executive director on the board of the Coventry and Solihull Waste Disposal Company, and to approve the appointment of the Director of Resources (or his nominated substitute) as his replacement on a fixed term of two years and with no remuneration.

## List of Appendices included:

- **Appendix 1** – revised articles of association for the Coventry and Solihull Waste Disposal Company limited.
- **Appendix 2** – revised shareholders agreement for the Coventry and Solihull Waste Disposal Company limited.
- **Appendix 3a** – Pre-emption Waiver
- **Appendix 3b** – Share Sale Agreement between Coventry and Warwickshire
- **Appendix 3c** – Share Transfer Form
- **Appendix 3d** – Power of Attorney for the Class C share sale

## Other useful background papers:

None

## Has it been or will it be considered by Scrutiny?

No

## Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

## Will this report go to Council?

Yes – 15<sup>th</sup> July 2014

**Report title: Coventry & Solihull Waste Disposal Company – Revised Articles of Association and Memorandum of Understanding**

**1. Context (or background)**

**1.1 Shareholding:**

1.1.1 Between 2008 and 2010 Coventry, Solihull and Warwickshire Council’s explored the procurement of a sub-regional EfW to replace the existing CSWDC facility under the banner of Project Transform. This was project was considered to not be economically or technically viable in 2010 and was abandoned. However, the management of waste treatment on sub-regional basis still offered a great opportunity for joint working between three neighbouring authorities and a potential for all three parties to benefit financially.

1.1.2 Since this time negotiations have taken place between Coventry, Solihull and Warwickshire as to how joint working could bring benefits through the existing EfW facility operated by CSWDC.

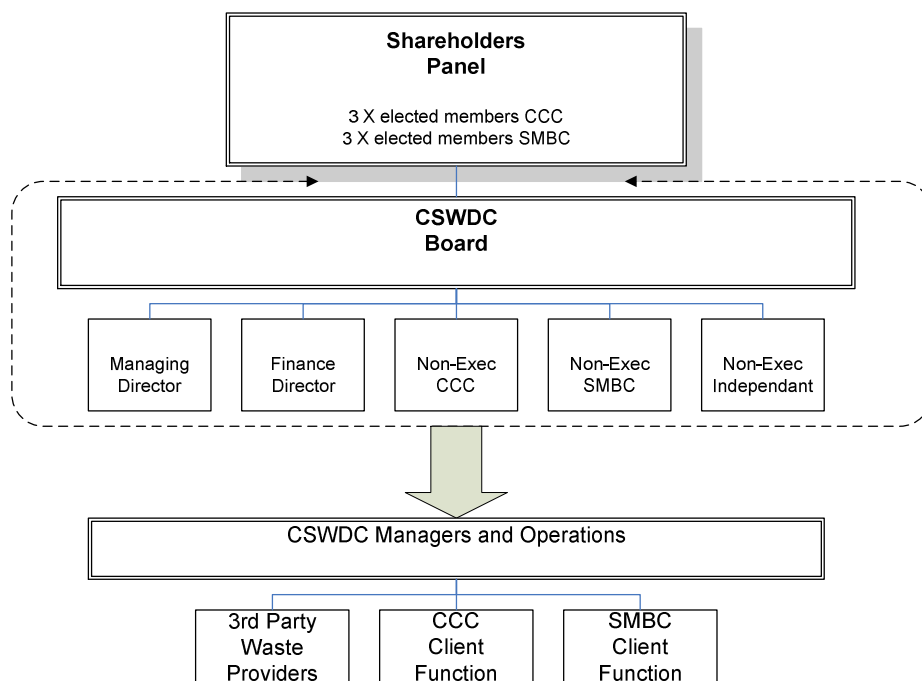
1.1.3 Coventry and Solihull currently, and will continue to, hold the only primary shares in CSWDC and receive a dividend in accordance with this shareholding. Sixty-six shares are held by Coventry (Class A), and thirty-three by Solihull (Class B). The proposal described in section two of this report does not diminish Coventry and Solihull’s ownership of CSWDC, nor does it reduce their proportion of any dividend paid.

1.1.4 In addition to the primary shares, Coventry and Solihull also hold “Preference Shares” to secure their original investment in CSWDC. Both Coventry and Solihull have allowed CSWDC to redeem these preference shares in exchange for dividend payments over the last two years. As with the primary shares, the proposal in section two of this report does not reduce the value of these Preference Shares, nor does it create any additional Preference Shares.

**1.2 Governance:**

1.2.1 Since the formation of CSWDC in 1994 the company structure has been as diagram 1 below.

**Diagram 1 – CSWDC Governance Structure**



- 1.2.2 Coventry's non-executive director has served on the board since 1994. Whilst there is currently no contractual end date for his term on the CSWDC board, it has mutually been agreed that now would seem an appropriate time for him to retire from his post and that Coventry should appoint a replacement on a time limited period.

## 2. Options considered and recommended proposal

### 2.1 Warwickshire County Council becoming a shareholder in CSWDC:

- 2.1.1 Warwickshire's current contractual arrangements with CSWDC comes to an end in 2016. At this point Warwickshire are left with two options for the waste treated by CSWDC to complement their existing arrangements with Staffordshire County Council and FCC Environment:

1. To re-tender the CSWDC contract on the open market, potentially losing the financial and environmental benefits of accessing a waste treatment facility located in the centre of the county.
2. To consider wider shared service options with Coventry and Solihull.

- 2.1.2 Warwickshire's preferred option was to explore option 2, and authority to enter into an agreement with Coventry, Solihull and CSWDC was given by Warwickshire's full council.

- 2.1.3 Two options for Warwickshire to become a shareholder of CSWDC have been considered, these are:

**Option 1** – with the agreement of Coventry and Solihull, CSWDC would arrange for the sale of a primary share in CSWDC based upon a valuation of CSWDC. This would provide CSWDC and the existing shareholders with a one off cash lump sum and entitle Warwickshire to a share of dividend from CSWDC. However, this would also expose Warwickshire to an equal share of any risks and liabilities in the future ownership of CSWDC. This option was discounted at an early stage of negotiations by Warwickshire.

**Option 2 (Preferred)** - with the agreement of Coventry and Solihull, CSWDC would raise a new class of share (Class C), that would have no dividend rights for the holder, no liabilities, and limited voting rights at the shareholders panel and board on specific matters relating to the control of the Company . The Class C share would also not have the ability to appoint its own director to the CSWDC board, unlike the existing primary shareholders. However, as board appointments (other than those made directly by Coventry and Solihull) are by a joint elected member panel the holder of the C class share would have a right to be a member on this appointment panel.

- 2.1.4 The proposal is that once this Class C share has been issued to one of the existing shareholders (for practicalities it has been agreed that this will be Coventry), it would be immediately sold to Warwickshire County Council for nominal fee, giving them a holding in CSWDC, in exchange for guaranteed waste deliveries for the next twenty-five years.

### 2.2 Appointment of a new non-executive CSWDC board member for Coventry:

- 2.2.1 Under the shareholders agreement both Coventry and Solihull each have a right to appoint one non-executive board member to the CSWDC board. All other board appointments are appointed collectively.

- 2.2.2 The current Coventry appointed non-executive board member has been in post since 1994, and receives an annual salary plus travel expenses, which is c. £20k per annum. With the introduction of Warwickshire as a Class C shareholder and recognising the current post holders 20 years of service, it is has been mutually agreed that he will step down at a convenient point this summer.

- 2.2.3 The appointment of the Coventry's non-executive board member is at the discretion of the City Council. As can be seen from diagram 1 above the work of CSWDC and decisions of its board are controlled and ratified by the elected members appointed to the Shareholders Panel, and the non-executive board member is appointed to act on Coventry's behalf in the best interests of CSWDC.
- 2.2.4 Therefore, to bring the CSWDC board membership in line with other Coventry City Council owned arm's length companies and to realise a saving it is proposed that a new non-executive board member is appointed on the following basis:
1. That a senior officer from the Resources Directorate is appointed to the non-executive director post for fixed term of two years from the retirement of the existing post holder.
  2. That the above appointment is made without the existing remuneration or expenses package. Saving CSWDC c.£20k per annum, which should then be passed back to Coventry City Council through an increased dividend.
  3. That the above arrangements are reviewed after the fixed term of office.

### **3. Results of consultation undertaken**

Significant consultation work has taken place between Coventry City Council, Solihull Metropolitan Borough Council, Warwickshire County Council, and CSWDC to reach this agreement.

### **4. Timetable for implementing this decision**

Following approval from Council this decision would be implemented in full by 31<sup>st</sup> July 2014.

### **5. Comments from Executive Director, Resources**

#### **5.1 Financial implications**

Coventry will receive 2/3rds of the consideration paid by WCC for the one Class C share in CSWDC, the balance going to Solihull. The value is however not a material sum.

This is a new class of share which has no dividend rights, therefore its issue will not directly impact any future dividends received by Coventry. Its issue does however secure minimum tonnages for CSWDC for the next 25 years which will positively impact on the company's financial position and potentially therefore any dividends issued

The replacement of a non-executive Director with the Council's Executive Director – Resources on the CSWDC board will result in a saving to the company of £20k. This will benefit Coventry in terms of increased dividend

#### **5.2 Legal implications**

CSWDC was established in 1992 because waste disposal authorities were obliged to arrange for the discharge of their waste disposal functions through a contractor or a Local Authority Waste Disposal Company. The Secretary of State had power under section 32 of the Environmental Protection Act 1990 to give directions to waste disposal authorities which had not transferred their undertakings to waste disposal companies requiring them to do so. Section 32 of Environmental Act 1990 has been repealed but Coventry and Solihull have continued to dispose of their waste through CSWDC. To enable CSWDC to make the necessary changes to its constitution under the Companies Act 2006 the Council as a shareholder has to approve the alterations to the Memorandum and Articles of Association

The share sale agreement sets out the terms of the sale of the C share from the Council to Warwickshire County Council.

**6. Other implications**

**6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?**

The decision to sell a Class C share to Warwickshire County Council will further improve the future financial viability of CSWDC and therefore Coventry's shareholding in this arm's length company. By strengthening the financial position of CSWDC is hoped that this will help maintain the current healthy level of dividends received from CSWDC which contribute considerably to the City Council's medium term financial strategy.

**6.2 How is risk being managed?**

Risk will be managed through the normal CSWDC management and shareholder arrangements.

**6.3 What is the impact on the organisation?**

None

**6.4 Equalities / EIA**

There are no Equality issues arising from this decision or this report.

**6.5 Implications for (or impact on) the environment**

None

**6.6 Implications for partner organisations?**

None



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# Appendix 1

THE COMPANIES ACT 2006

COMPANY LIMITED BY SHARES

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ARTICLES OF ASSOCIATION

of The Coventry & Solihull Waste Disposal Company Limited  
(adopted by special resolution on 2014)

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## Appendix 1

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### Annex A

Provisions of the Memorandum of Association treated as provisions of the Articles of Association in accordance with Section 28 of the Companies Act 2006.

**THE COMPANIES ACT 2006**  
**COMPANY LIMITED BY SHARES**  
**ARTICLES OF ASSOCIATION**

of The Coventry & Solihull Waste Disposal Company Limited (Company number 2690488)  
(the "**Company**")

**INTERPRETATION AND LIMITATION OF LIABILITY**

**1. DEFINED TERMS**

1.1 In these articles ("**articles**"), unless the context requires otherwise:

**"Act"**

means the Companies Act 2006;

**"alternate" or "alternate director"**

has the meaning given in **article 23**;

**"A" ordinary share"**

means an ordinary share of £1 for the time being in the capital of the Company having the designation "A";

**"A" preference share"**

means a cumulative redeemable preference share of £1 for the time being in the capital of the Company having the designation "A";

**"associated company"**

has the meaning given in **article 65.2**;

**"bankruptcy"**

means individual insolvency proceedings and includes similar proceedings in a jurisdiction other than England and Wales;

**"Board"**

means the Board of directors of the Company from time to time;

**"B" ordinary share"**

means an ordinary share of £1 for the time being in the capital of the Company having the designation "B";

## Appendix 1

**"B" preference share"**

a cumulative redeemable preference share of £1 for the time being in the capital of the Company having the designation "B";

**"call notice"**

has the meaning given in **article 31.2**;

**"call payment date"**

has the meaning given in **article 31.2**;

**"Chairman of the Board"**

has the meaning given in **article 15**;

**"chairman of the meeting"**

has the meaning given in **article 54**;

**"clear days"**

means, in relation to a period of notice or otherwise, that period excluding the day when the notice or other document is received or deemed to be received and the day for which it is sent or on which it is to take effect;

**"conflict situation"**

has the meaning given in **article 18**;

**"connected person"**

The connected person of any person as defined by Section 839 Income and Corporation Taxes Act 1988 (and **"connected"** shall be construed accordingly);

**"C" ordinary share"**

means an ordinary share of £1 for the time being in the capital of the Company having the designation "C";

**"director"**

means a director of the Company, and includes any person occupying the position of director, by whatever name called and an alternate director appointed by a director;

**"distribution recipient"**

has the meaning given in **article 45**;

**"document"**

includes, unless otherwise specified, any document sent or supplied in electronic form;

## Appendix 1

**"electronic form"**

has the meaning given in section 1168 of the Act;

**"fully paid"**

in relation to a share, means that the nominal value and any premium to be paid to the Company in respect of that share have been paid to the Company;

**"group"**

means the Company and every subsidiary and holding company of the Company and every subsidiary and holding company of such subsidiary and holding company;

**"group company"**

means any company which is a member of the group;

**"hard copy form"**

has the meaning given in section 1168 of the Act;

**"holder"**

in relation to shares means the person whose name is entered in the register of members as the holder of the shares;

**"holding company"**

has the meaning given in section 1159 of the Act;

**"instrument"**

means a document in hard copy form;

**"Local Authority"**

means the Council of the City of Coventry or the Metropolitan Borough of Solihull or Warwickshire County Council or together Local Authorities;

**"ordinary resolution"**

has the meaning given in section 282 of the Act;

**"ordinary share"**

any "A" ordinary share or "B" ordinary share or "C" ordinary share;

**"paid"**

means paid or credited as paid;

**"participate"**

in relation to a directors' meeting, has the meaning given in **article 13**;

**"preference share"**

any "A" preference share or "B" preference share;



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**“proper officer”**

in the case of the Metropolitan Borough of Solihull the Director of Resources for the time being thereof in the case of the Council of the City of Coventry the Executive Director- Resources for the time being thereof in the case of Warwickshire County Council the Strategic Director of Resources for the time being thereof (or such successor positions or officers as are nominated by the Local Authorities from time to time) in the case of the Company a director or the company secretary and in the case of any other company that becomes a shareholder, a director or the company secretary of such company;

**"proxy notice"**

has the meaning given in **article 58**;

**"relevant rate"**

has the meaning given in **article 32.2**;

**“restricted acquisition”**

any acquisition or transaction as a result of which a controlling interest is obtained in the circumstances and by the persons referred to in article 42;

**"shareholder"**

means a person who is the holder of a share;

**"Shareholders' Agreement"**

the Agreement dated 15<sup>th</sup> March 1994 as amended from time to time and entered into between the Council of the City of Coventry (1) the Metropolitan Borough of Solihull (2) Warwickshire County Council (3) and the Company (4);

**"shareholder's group"**

means, in relation to a shareholder that is a company, the shareholder and every subsidiary and holding company of that shareholder and of such subsidiary and holding company;

**"Shareholders' Panel"**

the panel constituted by the shareholders in the manner set out in the Shareholders' Agreement;

**"shares"**

means shares in the Company;

**"situation involving a transaction or arrangement"**

has the meaning given in **article 19**;

## Appendix 1

**"special resolution"**

has the meaning given in section 283 of the Act;

**"subsidiary"**

has the meaning given in section 1159 of the Act;

**"transfer"**

in relation to any share, means any sale, transfer, assignment, pledge, charge or other disposal of any share or any interest in that share, and **"transferred"** has a similar meaning;

**"voting "A" shares"**

the "A" ordinary shares and those of the "A" preference shares carrying for the time being the right to vote in general meetings;

**"voting "B" shares"**

the "B" ordinary shares and those of the "B" preference shares carrying for the time being the right to vote in general meetings;

**"voting "C" shares"**

the "C" ordinary shares carrying for the time being the right to vote in general meetings;

**"Waste Disposal Contract(s)"**

The Contracts entered into between the Company and each of the Shareholders from time to time relating to the waste disposal services provided by the Company to each of the Shareholders

**"writing"**

means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

**"2003 Act"**

Means the Local Government Act 2003 which expression shall include where the context so requires any regulations issued under that act.

- 1.2 Unless already defined in these articles, words or expressions contained in these articles bear the same meaning as in the Act. The singular shall include the plural and the masculine the feminine and neuter and vice versa.

# Appendix 1

## **2. LIABILITY OF SHAREHOLDERS**

The liability of the shareholders is limited to the amount, if any, unpaid on the shares held by them.

## **DIRECTORS**

### **3. NUMBER OF DIRECTORS**

The maximum number and minimum number respectively of the directors may be determined from time to time by ordinary resolution of the Company. Subject to and in default of any such determination there shall be a maximum of five directors and the minimum number of directors shall be one.

### **4. DIRECTORS' GENERAL AUTHORITY**

Subject to the articles, the directors are responsible for the management of the Company's business, for which purpose they may exercise all the powers of the Company.

### **5. BORROWING POWERS**

The amount for the time being remaining undischarged of moneys borrowed or secured or for which the Company is indebted under bonds or other obligations created otherwise for cash shall not exceed such sums as may be sanctioned by the Company from time to time by ordinary resolution but no debt incurred or security given in respect of moneys outstanding in excess of the foregoing limit shall be invalid or ineffectual except in the case of express notice at the time when the debt was incurred or the security was given that such limit had been or was thereby exceeded.

### **6. POWERS OF DIRECTORS**

The directors shall have no power or authority to approve any contract, transaction, arrangement, matter or thing listed below unless the relevant matter has first been approved in accordance with clause 18 of the Shareholders' Agreement:

- 6.1 the acquisition or formation of any subsidiary by the Company or any other investment in or acquisition of another company, a partnership, consortium or joint venture;
- 6.2 the adoption of a new head office for the administration of the Company, or of a new registered office;
- 6.3 the acceptance of any contracts for the disposal of waste the consequence of which is or may be that any waste to be disposed of for the Local Authorities is diverted away from the energy from waste plant operated by the Company at London Road, Coventry;
- 6.4 the early repayment of any finance owed to any shareholder;

## Appendix 1

- 6.5 any single capital expenditure or revenue scheme with a value in any year in excess of £1,000,000, even if specifically allowed for in the Corporate Plan (as defined in the Shareholders' Agreement);
- 6.6 the acquisition or disposal of any freehold or leasehold property or parts thereof or the granting or surrendering of a lease in respect thereof by the Company;
- 6.7 the acquisition or disposal of assets by the Company (other than in the ordinary course of business) where the item to be disposed of is a capital item the net book value of which exceeds £1,000;
- 6.8 any loan or advance by the Company or the granting of any guarantee or indemnity of the obligation of any person, firm or company by the Company (other than an advance against expenses or salary which is repayable on the next due date for payment of such salary and other than in the ordinary course of business);
- 6.9 any transaction, arrangement or agreement with or for the benefit of a shareholder or any director of the Company or any subsidiary or any person connected with any such shareholder or director;
- 6.10 the making of any political contributions or gifts by the Company;
- 6.11 the making of any charitable contributions or gifts by the Company of a value in excess of £5,000 in any financial year;
- 6.12 the factoring of the Company's debts;
- 6.13 creating or allowing to subsist any incumbrances over the Company's assets;
- 6.14 the Company entering into any loan, leasing arrangement, bond or contract which is or is likely to be a credit transaction (as that term is defined in the 2003 Act) without the prior written consent of the Local Authorities;
- 6.15 the adoption of or change in accounting policies or practices employed in the preparation of the management accounts or audited accounts of the Company or of a new accounting reference date or the preparation of any accounts which (by writing off any asset or creating provision or reserve for any liability or otherwise) thereby showing distributable profits lower than would be shown had such accounts insofar as lawfully permitted not included such item;
- 6.16 the approval, signing or filing at Companies House of any audited accounts of the Company without having first notified year end results to the Shareholders' Panel no later than 7 weeks after the end of the accounting period to which they relate;
- 6.17 the cessation or material reduction of the Company's business or any change in the nature of the Company's business or activities;
- 6.18 the appointment of new auditors to the Company; and
- 6.19 the entering into a written service agreement with any director or connected person or a variation of any existing service agreement with any such person;

## Appendix 1

- 6.20 the increase in the remuneration package of any director of the Company above the limits set out in article 24.5;
- 6.21 the entering into by the Company of a waste disposal agreement with a customer on terms which, when taken over the anticipated duration of the proposed agreement, are more favourable than those enjoyed by the Shareholders under their respective Waste Disposal Contracts

### **7. SHAREHOLDERS' RESERVE POWER**

- 7.1 The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.
- 7.2 No such special resolution and no alteration of the articles invalidate anything which the directors have done before the resolution is passed or the articles are altered (as appropriate).

### **8. DIRECTORS MAY DELEGATE**

- 8.1 Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles:
- 8.1.1 to such person or committee;
- 8.1.2 by such means (including by power of attorney);
- 8.1.3 to such an extent;
- 8.1.4 in relation to such matters or territories; and
- 8.1.5 on such terms and conditions,
- as they think fit.
- 8.2 If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.
- 8.3 The directors may revoke any delegation in whole or part, or alter its terms and conditions.

### **9. COMMITTEES**

- 9.1 Committees to which the directors delegate any of their powers must follow procedures which are based, as far as they are applicable, on those provisions of the articles which govern the taking of decisions by directors.
- 9.2 The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

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### 10. DIRECTORS TO TAKE DECISIONS COLLECTIVELY

The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting of the directors or a decision taken in accordance with **article 11**.

### 11. UNANIMOUS DECISIONS

- 11.1 A decision of the directors is taken in accordance with this **article 11** when all eligible directors indicate to each other by any means that they share a common view on a matter.
- 11.2 Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.
- 11.3 References in this article to eligible directors are to directors who would have been entitled, in accordance with the articles, to vote on the matter had it been proposed as a resolution at a directors' meeting.
- 11.4 A decision may not be taken in accordance with this **article 11** if the eligible directors would not have formed a quorum at such a meeting.

### 12. CALLING A DIRECTORS' MEETING

- 12.1 Directors' meetings shall be held at least once a quarter.
- 12.2 Any director or any shareholder entitled to exercise the rights contained in articles 21.1 or 21.2 may call a directors' meeting by giving reasonable notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice.
- 12.3 Notice of any directors' meeting must indicate:
  - 12.3.1 its proposed date and time;
  - 12.3.2 a brief outline of the matters to be discussed;
  - 12.3.3 where it is to take place; and
  - 12.3.4 if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- 12.4 Notice of a directors' meeting must be given to each director and shareholder, but need not be in writing.
- 12.5 Notice of a directors' meeting need not be given to directors or shareholders who waive their entitlement to notice of that meeting, by giving notice to that effect to the Company, and notice of the waiver may be given before or after the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

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### **13. PARTICIPATION IN DIRECTORS' MEETINGS**

- 13.1 Directors participate in a directors' meeting, or part of a directors' meeting, when:
- 13.1.1 the meeting has been called and takes place in accordance with the articles; and
  - 13.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- 13.2 In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.
- 13.3 If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

### **14. QUORUM FOR DIRECTORS' MEETINGS**

- 14.1 At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 14.2 The quorum for directors' meetings shall be three directors (present in person or by alternate) and must include at least one of those nominated under either article 21.1 or 21.2 or their alternates.
- 14.3 If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision to call a general meeting so as to enable the shareholders to appoint further directors.

### **15. CHAIRING OF DIRECTORS' MEETINGS**

- 15.1 The directors shall appoint one of the directors not including those appointed under articles 21.1 and 21.2 to be the Chairman of the Board.
- 15.2 The person so appointed for the time being is known as Chairman.
- 15.3 If a Chairman appointed in accordance with this article 15 is not participating in a directors' meeting within 10 minutes of the time at which it was to start, the participating directors may appoint one of themselves to chair it.

### **16. NO CASTING VOTE**

The Chairman or other director chairing the meeting shall not have a second or casting vote.

### **17. RECORDS OF DECISIONS TO BE KEPT**

The directors must ensure that the Company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every decision taken by the directors.

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## 18. DIRECTORS' CONFLICTS

- 18.1 A "**conflict situation**" means a situation in which a director or an alternate has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company:
- 18.1.1 including a situation relating to the exploitation of any property, information or opportunity, irrespective of whether the Company could take advantage of the property, information or opportunity;
- 18.1.2 excluding a situation which could not reasonably be regarded as likely to give rise to a conflict of interest; and
- 18.1.3 excluding a situation involving a transaction or arrangement.
- 18.2 A director or an alternate shall not infringe his duty to avoid a conflict situation if the matter or situation which would otherwise result in that director or alternate infringing that duty arises out of or results from that director or alternate:
- 18.2.1 being a director, alternate, officer, employee, consultant or member of any other group company; or
- 18.2.2 being (directly or indirectly) involved with or interested in, any other group company;
- for the reason that any such matter or situation is hereby authorised and no further authorisation, whether pursuant to **article** 18.3 or otherwise, is required in respect of such matter or situation. In addition, any such director or such alternate shall not be in breach of any other duties he owes to the Company, including the duty to exercise independent judgment, as a result of him being involved in other group companies in the manner referred to in this **article** 18.2.
- 18.3 Any other matter or situation which would otherwise result in a director or an alternate director infringing his duty to avoid a conflict situation may be authorised by the directors. Any such authorisation will only be effective if:
- 18.3.1 the quorum at the meeting of the directors at which that matter or situation is considered is met without counting the director or alternate in question or any other interested director or alternate; and
- 18.3.2 the matter or situation was agreed to without their voting or would have been agreed to if their votes had not been counted.
- 18.4 Any authorisation given by the directors in accordance with **article** 18.3:
- 18.4.1 may (at the time it is given or at any subsequent time) be made subject to such terms and such conditions as the directors consider appropriate; and
- 18.4.2 may be revoked or varied by the directors (any such revocation or variation will not affect anything previously done by the director or alternate in accordance with such prior authorisation).
- 18.5 Where in relation to a director or an alternate, a matter or situation is authorised under **article** 18.2 or specifically authorised by the directors under **article** 18.3, that director or alternate shall, irrespective of his interest in the matter or situation giving rise to the conflict situation, and subject, at all times, to the terms and conditions (if any) of any authorisation:



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- 18.5.1 be entitled to:
- (a) receive any papers or other documents in relation to or concerning, such matter or situation;
  - (b) attend any meeting (or any part of any meeting) of the directors or of a committee of the directors, at which such matter or situation is discussed or absent himself from any such meeting (or any part of any such meeting); and
  - (c) be counted in the quorum and vote at, any such meeting; and
- 18.5.2 not be required to:
- (a) disclose to or use for the benefit of the Company, any confidential information relating to such matter or situation if such disclosure or use would constitute a breach of confidence; and
  - (b) account to the Company for any benefit which he derives from such matter or situation.

### 19. DIRECTORS' INTERESTS IN TRANSACTIONS AND ARRANGEMENTS

- 19.1 A **"situation involving a transaction or arrangement"** means a situation in which a director or an alternate is in any way, directly or indirectly, interested in a transaction or arrangement with the Company in circumstances where the provisions of sections 177 or 182 of the Act apply.
- 19.2 The provisions of **article** 18 shall not apply to a situation involving a transaction or arrangement.
- 19.3 Any person who is appointed under article 21.1 or 21.2 by a Local Authority shall not be regarded as being interested in any proposed contract, transaction or arrangement with such Local Authority.
- 19.4 Any director or alternate may be interested in a situation involving a transaction or arrangement as long as he declares the nature of his interest in accordance with section 177 or, as the case may be, section 182, of the Act.
- 19.5 Where, in relation to a director or an alternate, a situation involving a transaction or arrangement has arisen and the director or alternate has declared the nature of his interest in accordance with section 177 or, as the case may be, section 182, of the Act, that director or alternate shall, irrespective of his interest in the matter giving rise to the situation involving a transaction or arrangement, be entitled to receive any papers or other documents in relation to or concerning, such matter, but shall not be entitled to:
- 19.5.1 attend a meeting (or any part of any meeting) of the directors or of a committee of the directors, at which such matter is discussed, unless invited to do so by the Board; or
  - 19.5.2 be counted in the quorum and vote at any meeting (or any part of any meeting) of the directors or a committee of the directors at which such matter is discussed.

### 20. DIRECTORS' DISCRETION TO MAKE FURTHER RULES

Subject to the articles, the directors may regulate their proceedings and the manner in which they take decisions as they see fit.

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### 21. METHODS OF APPOINTING DIRECTORS

- 21.1 A shareholder or shareholders from time to time holding a majority in nominal value of the issued voting "A" shares shall have power from time to time and at any time to appoint one person as the A director and (subject to article 22.2) to remove from office any director so appointed by them.
- 21.2 A shareholder or shareholders from time to time holding a majority in nominal value of the issued voting "B" shares shall have power from time to time and at any time to appoint one person as the B director and (subject to article 22.2) to remove from office any director so appointed by them.
- 21.3 Any appointment or removal pursuant to articles 21.1 or 21.2 shall be effected by an instrument which shall be in writing signed by the shareholder or shareholders making the same or by their duly authorised attorneys (or in the case of a shareholder being a company or in the case of a shareholder being a Local Authority signed by its Proper Officer) and shall subject to articles 21.4, 21.5 and 22.2 take effect upon such instrument of appointment or removal being lodged with or otherwise communicated to the Company at its registered office. The shareholder or shareholders removing a director pursuant to articles 21.1 or 21.2 respectively shall indemnify the Company against any loss suffered by it arising out of any claim made by such a director for loss of office or otherwise in respect of the termination of his employment or office with the Company arising from such removal.
- 21.4 No appointment under articles 21.1 or 21.2 shall take effect until notice in the form therein described in article 21.3 has also been served on the other shareholders (such notice to be addressed to the proper officer of such shareholders where applicable).
- 21.5 Before the effective date of any removal or subsequent appointment under article 21.1 or 21.2, the shareholder wishing to remove a director or appoint a new director shall notify the other shareholders and the Board of the proposed removal and appointment and such notification shall (save where the urgency of the matter requires otherwise) be given at least 14 days before such removal or appointment to allow consultation between the shareholders and the Board provided always that such consultation shall be without prejudice to the shareholder's right to make such removal or appointment under article 21.1 or 21.2.
- 21.6 The appointment and removal of any directors other than those appointed under article 21.1 or 21.2 shall be effected only by resolution of the Shareholders' Panel and, for the avoidance of doubt, the Shareholders' Panel shall have no right to remove any director appointed under article 21.1 or 21.2 and no appointment shall be made by the Shareholders' Panel in breach of article 3 and it is hereby confirmed that for the purposes of observing article 3 any appointment under articles 21.1 and 21.2 shall take priority over any appointment by the Shareholders' Panel.
- 21.7 Any appointment or removal pursuant to article 21.6 shall be effected by an instrument which shall be in writing signed by the chairman or vice-chairman of the Shareholders' Panel and shall subject to articles 21.8 and 21.9 take effect upon such instrument being lodged with or otherwise communicated to the Company at its registered office.
- 21.8 Save where appointment is pursuant to articles 21.1 or 21.2 and save where appointment is to

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replace an outgoing director or to fill a vacancy, no person shall be appointed a director at any general meeting unless either:

he or she is recommended by the directors; or

not less than fourteen nor more than thirty-five clear days before the date appointed for the meeting of the Shareholders' Panel to consider such appointment, notice signed on behalf of the Shareholders' Panel has been given to the Company of the intention to propose that person for appointment, together with notice signed by that person of his or her willingness to be appointed.

The directors shall have no power to appoint any director.

No director appointed under article 21.1 or 21.2 may be removed other than under those articles or the relevant provisions of article 22.

### 22. TERMINATION OF DIRECTOR'S APPOINTMENT

22.1 A person ceases to be a director as soon as:

22.1.1 that person ceases to be a director in accordance with any provision of the Act or is prohibited from being a director by law;

22.1.2 a bankruptcy order is made against that person;

22.1.3 a composition is made with that person's creditors generally in satisfaction of that person's debts;

22.1.4 he is removed from office under section 168 of the Act;

22.1.5 he is removed from office in accordance with article 21.1 or 21.2;

22.1.6 by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have; or

22.1.7 notification is received by the Company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms.

22.2 Any removal of a director under article 22.1.5 shall not be effective unless and until any requirement of Section 18 of the 2003 Act to obtain the Secretary of State's direction to disregard such removal has been complied with.

### 23. APPOINTMENT AND REMOVAL OF ALTERNATE DIRECTORS

23.1 Any director (other than an alternate director) (in this article, the "**appointor**") may appoint any person (whether or not a director) to be an alternate director ("**alternate**" or "**alternate director**").

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- 23.2 Subject to article 23.3, in the absence of the alternate's appointor, the alternate director may exercise the powers and carry out the responsibilities of his appointor in relation to the taking of decisions by the directors.
- 23.3 An alternate director shall only be entitled to vote at any meeting of the directors if he represents a director appointed under article 21.1 or 21.2.
- 23.4 An alternate director proposed to represent a director nominated under article 21.1 or 21.2 will require the approval of the shareholder or shareholders having the right to appoint or remove the director wishing to appoint such alternate.
- 23.5 Any appointment or removal of an alternate director shall be made by notice in writing to the Company signed by the appointor.
- 23.6 The notice must:
- 23.6.1 identify the proposed alternate director; and
- 23.6.2 in the case of a notice of appointment, contain a statement signed by the proposed alternate that he is willing to act as the alternate director of the appointor.
- 23.7 Subject to article 23.3, an alternate director has the same rights, in relation to any decision of the directors, as the alternate's appointor.
- 23.8 Except as otherwise provided in the articles, alternate directors:
- 23.8.1 are deemed for all purposes to be directors;
- 23.8.2 are liable for their own acts and omissions;
- 23.8.3 are subject to the same restrictions as their appointors; and
- 23.8.4 are not deemed to be the agents of or for their appointors.
- 23.9 Each alternate director shall be entitled to receive notice of all meetings of directors and of all meetings of committees of directors of which his appointor is a member.
- 23.10 A person who is an alternate director, but not a director:
- 23.10.1 may be counted as participating for the purposes of determining whether a quorum is present (but only if that person's appointor is not participating); and
- 23.10.2 subject to article 23.3, may participate in decisions of the directors (but only if his appointor is eligible to participate in relation to that decision and does not himself participate).
- 23.11 Subject to article 23.3, on any decision of the directors, in addition to his own vote, a director who is also an alternate director is entitled (in the absence of his appointor) to a separate vote on behalf of his appointor (provided that his appointor is eligible to participate in relation to that decision).
- 23.12 An alternate director may be paid expenses and may be indemnified by the Company to the same extent as if he were a director. An alternate director shall not be entitled to receive from the Company any remuneration in his capacity as an alternate director except such part (if any) of the remuneration otherwise payable to his appointor as the appointor may by notice in writing to the Company from time to time direct.

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- 23.13 An alternate director's appointment as an alternate terminates:
- 23.13.1 when the alternate's appointor revokes the appointment by notice to the Company in writing specifying when it is to terminate; or
  - 23.13.2 when an event occurs in relation to the alternate which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a director; or
  - 23.13.3 when the alternate director's appointor ceases to be a director for whatever reason.

### **24. DIRECTORS' REMUNERATION**

- 24.1 Directors may undertake any services for the Company that the Company may by ordinary resolution decide.
- 24.2 Directors are entitled to such remuneration as the directors determine:
- 24.2.1 for their services to the Company as directors; and
  - 24.2.2 for any other service which they undertake for the Company.
- 24.3 Subject to the articles, a director's remuneration may:
- 24.3.1 take any form; and
  - 24.3.2 include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.
- 24.4 Unless the directors decide otherwise, directors' remuneration accrues from day to day.
- 24.5 An increase in the remuneration package of the directors shall require prior approval of the Remuneration Committee if the increase is more than that awarded to the workforce in general. The Remuneration Committee shall be made up of the Director of Business Support of the Metropolitan Borough of Solihull, the Executive Director - Resources of the Council of the City of Coventry and the Strategic Director of Resources of Warwickshire County Council (or such successor positions or other officers who are nominated by the Local Authorities from time to time) and the Chairman of the Board of the Company.

### **25. DIRECTORS' EXPENSES**

The Company may pay any reasonable expenses which the directors properly incur in connection with their attendance at:

- 25.1 meetings of directors or committees of directors;
  - 25.2 general meetings; or
  - 25.3 separate meetings of the holders of any class of shares or of debentures of the Company,
- or otherwise in connection with the exercise of their powers and the discharge of their duties and responsibilities in relation to the Company.

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## SHARES AND DISTRIBUTIONS

### 26. ISSUED SHARE CAPITAL

26.1 The issued share capital of the Company at the date of adoption of these articles is £7,725,100 divided into 66 "A" ordinary shares of £1 each, 33 "B" ordinary shares of £1 each, 1 "C" ordinary share of £1 each, 5,150,000 "A" preference shares of £1 each and 2,575,000 "B" preference shares of £1 each.

26.2 The rights attaching to the respective classes of shares shall be as follows:

#### 26.2.1 Income

The distributable profits of the Company shall be applied:

- a) In accordance with the dividend policy set out in clause 12 of the Shareholders' Agreement amongst the holders of the "A" ordinary shares and "B" ordinary shares according to the amounts paid up or credited as paid up thereon (including any premium) *pari passu* as if the same constituted one class of shares.
- b) For the avoidance of doubt no dividend shall be payable to the holders of the preference shares in relation to any financial year commencing on or after 1 April 1999 (but without prejudice to any obligation of the Company arising prior to that date)
- c) For the avoidance of doubt no dividend shall be payable to the holders of the "C" ordinary shares.

#### 26.2.2 Capital

On return of capital on liquidation or otherwise (except on the redemption of shares of any class) the assets of the Company remaining after the payment of its debts and liabilities and of the costs, charges and expenses of any such liquidation where applicable shall be applied in the following manner and order of priority:

- a) first in paying to the holders of the preference shares the sum of £1 per share together with a sum equal to any arrears, deficiency or accruals of dividends payable on the preference shares in relation to any financial year ending on or before 31 March 1999 calculated down to the date of the return of capital and payable whether such dividend has been declared or earned or not;
- b) the balance of such assets shall be distributed amongst the holders of the "A" ordinary shares and the "B" ordinary shares (*pari passu* as if the same constituted one class of shares) in proportion to the amounts paid up or credited as paid up (including any premiums) on the ordinary shares held by them. For the avoidance of doubt the holders of the "C" ordinary shares shall not be entitled to a distribution of the balance of such assets.

#### 26.2.3 Redemption of the preference shares

The Company shall be entitled to elect at any time to redeem the preference shares (subject to the provisions of the Act) at *par* rateably amongst the holders thereof provided

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that in any event the preference shares of a shareholder shall fall due for redemption at par (subject to the provisions of the Act) at the election of that shareholder effected immediately prior to, or at any time after, a restricted acquisition and (subject thereto and subject to the provisions of the Act) in any event at the election of that shareholder effected at any time after the fifteenth anniversary of the date of allotment of the preference shares and the following provisions shall have effect:

- a) election for redemption shall be effected by notice in writing given by the Company to the holders of preference shares or by notice in writing given by a holder of preference shares to the Company (as appropriate) stating the number of preference shares to be redeemed in accordance with such notice (which, for the avoidance of doubt, may be all or some only of that shareholder's preference shares) and redemption shall take place within 28 days following the service of such notice;
- b) on the date fixed for redemption each registered holder of preference shares shall be bound to surrender to the Company the certificate for the preference shares which are to be redeemed in order that the same may be cancelled, and upon such surrender the Company shall pay to such holder the amount payable in respect of such redemption provided that if a certificate so surrendered includes preference shares not then redeemable a fresh certificate for the balance of the preference shares not redeemable shall be issued to the holder by the Company;
- c) there is to be paid on each of the preference shares to be redeemed the sum of £1 together with a sum equal to any arrears, deficiency or accruals of dividends payable on the preference shares in relation to any financial year ending on or before 31 March 1999;
- d) if upon the date or dates fixed for redemption, redemption is not effected because the provisions of the Act do not permit such redemption then the preference shares which were then due for redemption shall be redeemed as soon thereafter as circumstances enable the Company to do so in accordance with the provisions of the Act. Such redemption shall, if necessary, and as often as necessary, be effected partially and rateably amongst the holders of the preference shares and the provisions of this article shall apply accordingly to such redemption;
- e) the Company shall be under no obligation to effect any redemption of the preference shares out of capital and the provisions of this article shall be construed accordingly provided always that the preference shares shall nevertheless have become due for redemption;
- f) if the preference shares in issue at any time fixed for redemption shall have been subscribed on more than one date the redemption of all preference shares subscribed for on the earlier date shall take place before the redemption of the preference shares subscribed for on any later date or dates.

26.3 Whenever the capital of the Company is divided into different classes of shares the special rights attached to any class may be varied or abrogated either whilst the Company is a going concern or during or in contemplation of a winding up with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class but not

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otherwise. To every such separate meeting all the provision of these articles relating to general meetings of the Company shall, mutatis mutandis, apply except that the necessary quorum shall be two persons holding or representing by proxy at least three-fourths nominal amount of the issued shares of the class and any holder of shares of the class present in person or by proxy may demand a poll ( so that if at any adjourned meeting of such holders a quorum as above defined is not present any holder of shares of the class who is present shall be a quorum), and that the holders of shares of the class shall, on a poll, have one vote in respect of every share of the class held by them respectively. For this purpose the "A" ordinary shares, the "B" ordinary shares and the "C" ordinary shares shall be treated as being three separate classes of shares and the "A" preference shares and the "B" preference shares shall be treated as being two separate classes of shares. Without prejudice to the generality of this article, the special rights attached to the preference shares shall be deemed to be varied (save where such prior consent as aforesaid shall have been given):

- 26.3.1 by the calling of any meeting of the Company (which in these articles shall include the issue by the Company of a written resolution) for the purpose of effecting any alteration or increase or reduction or sub-division or consolidation of the authorised or issued capital of the Company or of any of its subsidiaries, or by any variation of the rights attached to any of the shares for the time being in the capital of the Company or of any of its subsidiaries; or
- 26.3.2 by any alteration of the restrictions on the powers of the directors of the Company and its subsidiaries to borrow give guarantees or create charges; or
- 26.3.3 by the calling of a meeting of the Company for the purpose of considering a resolution for the winding up of the Company; or
- 26.3.4 by the calling of a meeting of the Company for the purpose of considering a resolution to approve a contract by the Company to purchase or redeem any of its shares; or
- 26.3.5 by the calling of a meeting of the Company for the purposes of amending or adopting new articles of association of the Company.

### **27. ALLOTMENT OF SHARES**

- 27.1 All shares which the directors propose to issue shall first be offered to the shareholders in proportion as nearly as may be to the number of the existing shares of that class held by them respectively (or where the shares to be issued are of a new class, in proportion to the ordinary shares held by them) unless the Company shall by special resolution otherwise direct. The offer shall be made by notice specifying the number of shares offered, and limiting a period (not being less than 42 days unless all the shareholders agree to any shorter period) within which the offer, if not accepted, will be deemed to be declined. After the expiration of that period, those shares deemed to be declined shall be offered in the proportion aforesaid to the persons who have, within the said period, accepted all the shares offered to them; such further offer shall be made in like terms in the same manner and limited by a like period as the original offer. Any shares not accepted pursuant to such offer



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or further offer as aforesaid or not capable of being offered as aforesaid except by way of fractions and any shares released from the provisions of this article by any such special resolution as aforesaid shall be under the control of the directors, who may allot, grant options over or otherwise dispose of the same to such persons, on such terms, and in such manner as they think fit, provided that, in the case of shares not accepted as aforesaid, such shares shall not be disposed of on terms which are more favourable to the subscribers therefore than the terms on which they were offered to the shareholders. The foregoing provisions of this article 27.1 shall have effect subject to the provisions of the Act.

27.2 In accordance with section 567(1) of the Act, sections 561 and 562 shall not apply to any allotment of equity securities made by the Company.

### **28. COMPANY MAY ISSUE PARTLY PAID SHARES**

The Company may issue shares which are wholly or partly unpaid in respect of their nominal value or any premium to be paid to the Company in consideration for their issue.

### **29. COMPANY'S LIEN OVER PARTLY PAID SHARES**

29.1 The Company has a lien over every share which is partly paid for any part of:

29.1.1 that share's nominal value; and

29.1.2 any premium at which that share was issued,

which has not been paid to the Company, and which is payable immediately or at some time in the future, whether or not a call has been made in respect of it.

29.2 The Company also has a lien over every share, whether fully paid or not, registered in the name of any person indebted or under liability to the Company, whether he shall be the sole registered holder thereof or shall be one of two or more joint holders, for all moneys presently payable by him or his estate to the Company.

29.3 The Company's lien over a share:

29.3.1 takes priority over any third party's interest in that share; and

29.3.2 extends to any dividend or other money payable by the Company in respect of that share and (if the lien is enforced and the share is sold by the Company) to the proceeds of sale of that share.

### **30. ENFORCEMENT OF A LIEN**

30.1 Subject to the provisions of this article, if a lien enforcement notice has been given in respect of a share and the person to whom the notice was given has failed to comply with it, the Company may sell that share in such manner as the directors decide.

30.2 A lien enforcement notice:

30.2.1 may only be given in respect of a share which is subject to the Company's lien, in respect of which a sum is payable and the due date for payment of that sum has passed;

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- 30.2.2 must specify the share concerned;
- 30.2.3 must require payment of the sum payable within 14 days of the notice;
- 30.2.4 must be addressed either to the holder of the share or to a person entitled to it by reason of the holder's death, bankruptcy or otherwise; and
- 30.2.5 must state the Company's intention to sell the share if the notice is not complied with.
- 30.3 Where shares are sold under this article:
  - 30.3.1 the directors may authorise any person to execute an instrument of transfer of the shares to the purchaser or a person nominated by the purchaser; and
  - 30.3.2 the transferee is not bound to see to the application of the consideration, and the transferee's title is not affected by any irregularity in or invalidity of the process leading to the sale.
- 30.4 The net proceeds of any such sale (after payment of the costs of sale and any other costs of enforcing the lien) must be applied:
  - 30.4.1 first, in payment of so much of the sum for which the lien exists as was payable at the date of the lien enforcement notice;
  - 30.4.2 second, to the person entitled to the shares at the date of the sale, but only after the certificate for the shares sold has been surrendered to the Company for cancellation or a suitable indemnity has been given for any lost certificates, and subject to a lien equivalent to the Company's lien over the shares before the sale for any money payable in respect of the shares after the date of the lien enforcement notice.

### 31. CALLS ON SHARES

- 31.1 Subject to the terms of allotment of the relevant shares, the directors may make any call (a **"call"**) upon the shareholders in respect of any sum whether in respect of nominal value or premium that is unpaid on their shares.
- 31.2 Each shareholder shall, subject to receiving at least 14 clear days' notice (a **"call notice"**) specifying when and where payment is to be made (the **"call payment date"**), pay to the Company as required by the notice the amount so called on his shares. A call may be revoked in whole or part before receipt by the Company of any sum due in respect of such call and payment of a call may be postponed in whole or part as the directors think fit.
- 31.3 The holder of a share at the time a call is due to be paid shall be the person liable to pay the call, and in the case of joint holders they shall be jointly and severally liable.

### 32. FAILURE TO COMPLY WITH A CALL NOTICE

- 32.1 If any amount payable in respect of a share on allotment or at a fixed date, whether in respect of nominal value or premium or as an instalment of a call, is not paid:
  - 32.1.1 the directors may issue a notice of intended forfeiture to that person; and

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32.1.2 until the call is paid, that person must pay the Company interest on the call from the call payment date at the relevant rate, together with all expenses that may have been incurred by the Company by reason of such non-payment.

32.2 For the purposes of this **article 32** the "**relevant rate**" is:

32.2.1 the rate fixed by the terms on which the share in respect of which the call is due was allotted;

32.2.2 such other rate as was fixed in the call notice which required payment of the call, or has otherwise been determined by the directors; or

32.2.3 if no rate is fixed in either of these ways, five per cent per annum.

32.3 The directors may waive any obligation to pay interest on a call wholly or in part.

### **33. NOTICE OF INTENDED FORFEITURE**

A notice of intended forfeiture:

33.1 may be sent in respect of any share in respect of which a call has not been paid as required by a call notice;

33.2 must be sent to the holder of that share or to a person entitled to it by reason of the holder's death, bankruptcy or otherwise;

33.3 must require payment of the call and any accrued interest by a date which is not less than 14 clear days after the date of the notice;

33.4 must state how the payment is to be made; and

33.5 must state that if the notice is not complied with, the shares in respect of which the call is payable will be liable to be forfeited.

### **34. FORFEITURE**

34.1 If a notice of intended forfeiture is not complied with before the date by which payment of the call is required in the notice of intended forfeiture, the directors may decide that any share in respect of which it was given is forfeited, and the forfeiture is to include all dividends or other moneys payable in respect of the forfeited shares and not paid before the forfeiture.

34.2 Subject to the articles, the forfeiture of a share extinguishes:

34.2.1 all interests in that share, and all claims and demands against the Company in respect of it; and

34.2.2 all other rights and liabilities incidental to the share as between the person whose share it was prior to the forfeiture and the Company.

34.3 Any share which is forfeited in accordance with the articles:

34.3.1 is deemed to have been forfeited when the directors decide that it is forfeited;

34.3.2 is deemed to be the property of the Company; and

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- 34.3.3 may be sold, re-allotted or otherwise disposed of as the directors think fit.
- 34.4 If a person's shares have been forfeited:
- 34.4.1 the Company must send that person notice that forfeiture has occurred and record it in the register of members;
- 34.4.2 that person ceases to be a shareholder in respect of those shares;
- 34.4.3 that person must surrender the certificate for the shares forfeited to the Company for cancellation;
- 34.4.4 that person remains liable to the Company for all sums payable by that person under the articles at the date of forfeiture in respect of those shares, including any interest (whether accrued before or after the date of forfeiture); and
- 34.4.5 the directors may waive payment of such sums wholly or in part or enforce payment without any allowance for the value of the shares at the time of forfeiture or for any consideration received on their disposal.
- 34.5 At any time before the Company disposes of a forfeited share, the directors may decide to cancel the forfeiture on payment of all calls and interest due in respect of it and on such other terms as they think fit.

### **35. PROCEDURE FOLLOWING FORFEITURE**

- 35.1 If a forfeited share is to be disposed of by being transferred, the Company may receive the consideration for the transfer and the directors may authorise any person to execute the instrument of transfer.
- 35.2 If the Company sells a forfeited share, the person who held it prior to its forfeiture is entitled to receive from the Company the proceeds of such sale, net of any commission, and excluding any amount which:
- 35.2.1 was, or would have become, payable; and
- 35.2.2 had not, when that share was forfeited, been paid by that person in respect of that share,
- but no interest is payable to such a person in respect of such proceeds and the Company is not required to account for any money earned on them.

### **36. SURRENDER OF SHARES**

- 36.1 A member may surrender any share in respect of which the directors may issue a notice of intended forfeiture or which the directors may forfeit.
- 36.2 The effect of surrender on a share is the same as the effect of forfeiture on that share, and a share which has been surrendered may be dealt with in the same way as a share which has been forfeited.

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### **37. POWER TO ISSUE DIFFERENT CLASSES OF SHARE**

- 37.1 Subject to the articles, but without prejudice to the rights attached to any existing share, the Company may issue shares with such rights or restrictions as may be determined by ordinary resolution.
- 37.2 The Company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the Company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such shares.

### **38. COMPANY NOT BOUND BY LESS THAN ABSOLUTE INTERESTS**

Except as required by law, no person is to be recognised by the Company as holding any share upon any trust, and except as otherwise required by law or the articles, the Company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

### **39. SHARE CERTIFICATES**

- 39.1 The Company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.
- 39.2 Every certificate must specify:
- 39.2.1 in respect of how many shares, of what class, it is issued;
- 39.2.2 the nominal value of those shares; and
- 39.2.3 either that the shares are fully paid, or the amount paid up on each share.
- 39.3 No certificate may be issued in respect of shares of more than one class.
- 39.4 If more than one person holds a share, only one certificate may be issued in respect of it.
- 39.5 Certificates must be executed in accordance with the Act.

### **40. REPLACEMENT SHARE CERTIFICATES**

- 40.1 If a certificate issued in respect of a shareholder's shares is:
- 40.1.1 damaged or defaced; or
- 40.1.2 said to be lost, stolen or destroyed,
- that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.
- 40.2 A shareholder exercising the right to be issued with such a replacement certificate:
- 40.2.1 must return the certificate which is to be replaced to the Company if it is damaged or defaced; and
- 40.2.2 must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide.

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### 41. RESTRICTIONS ON TRANSFERS OF SHARES

Notwithstanding any other provision of these articles but subject as hereinafter provided:

- 41.1 Any shareholder wishing to dispose of or to charge or encumber any of its shares in the Company or the beneficial interest therein (“**the transferor**”) shall give notice in writing (“**a transfer notice**”) to the Company that it wishes to dispose of one or more of its shares. A transfer notice may provide that unless all the shares the subject of the transfer notice are sold to the persons offered the same pursuant to sub-articles 41.3 and 41.6 of this article none shall be sold (“**a total transfer condition**”).
- 41.2 Every transfer notice shall specify the number and class of shares to be transferred, shall be accompanied by the certificate for the shares the subject thereof and shall constitute the Company agent for the sale of the shares in accordance with this article at a price to be determined in accordance with article 41.4 (“**the sale price**”). If the capital is divided into separate classes of shares a separate transfer notice shall be given (or be deemed to have been given) for each such class of shares. A transfer notice shall be revocable by written notice to the Company from the proposing transferor within one week after receipt of the Accountant’s certification under article 41.4 whereupon the proposing transferor will be responsible to bear all the Accountant’s costs in so certifying.
- 41.3 Subject to the sale price being agreed or determined (as the case may be) in accordance with article 41.4 within 15 days of receipt of a transfer notice or if later forthwith upon such determination the directors shall:
- 41.3.1 give notice in writing of the transfer notice specifying the sale price (an “**offer notice**”) to all shareholders of the Company (other than the transferor) holding shares of the same class as the shares the subject of the transfer notice in proportion to their respective holdings of shares of that class inter se (a “**first offer**”) and for this purpose the “A” ordinary shares, the “B” ordinary shares and the “C” ordinary shares will be treated as the same class and the “A” preference shares and the “B” preference shares will be treated as the same class.

A first offer shall be limited to a period of 42 days (“**the first period**”) from the date of the offer notice and shall if not accepted within such time be deemed to have been declined. The first offer shall give the shareholders to which it is made the right to claim shares offered in addition to their due proportion. If any such shareholders do not accept their due proportion then the unaccepted shares shall be distributed among those shareholders claiming additional shares in proportion or as nearly as may be to their said holdings (but no shareholder shall be bound to take more shares than those he has claimed) up to the maximum number of shares that each shareholder is prepared to take. If any shares comprised in a first offer remain unaccepted the directors shall issue a further offer notice (a “**second offer notice**”) in respect of such shares to all the shareholders (other than the transferor and the shareholders to whom the first offer was made) in proportion to the nominal value of their holdings of shares inter se (a “**second offer**”) and the provisions of this article shall apply thereto.

Every second offer shall be limited to a period of 15 days (“**the second period**”) from the date of the second offer notice and shall if not accepted by any such shareholders within such time be deemed to have been declined by such shareholders. The second offer shall give the shareholders of the Company to which it is made the right to claim shares offered in addition to their due proportion if any other such shareholders do not accept

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their due proportion. If any such shareholders do not accept their due proportion then the unaccepted shares shall be distributed among those shareholders of the Company claiming additional shares in proportion or as nearly as may be to their said holdings (but no shareholder shall be bound to take more shares than those he has claimed) up to the maximum number of shares that each shareholder is prepared to take. If the number of shares comprised in the transfer notice is insufficient to enable them to be offered exactly pro rata to all the eligible shareholders of the Company then the indivisible balance shall be offered individually to such shareholders by the drawing of lots and the provisions of this sub-article shall apply accordingly;

- 41.3.2 if the Company shall within the first period or the second period (as the case may be) find a transferee or transferees for the shares or any of them it shall give notice thereof to the transferor and he shall be bound upon payment of the appropriate sale price to transfer the shares (or the appropriate number of them) to the relevant transferee or transferees provided always that if the transfer notice contained a total transfer condition then unless the Company shall within such periods and in the manner as aforesaid find a transferee or transferees for all but not some only of the shares offered for sale as herein referred to, the provisions of this article 41.3.2 shall not apply.
- 41.4 The sale price of the shares comprised in any transfer notice shall be either the price thereof agreed between the transferor and all other shareholders within 15 days of the service of the transfer notice or (as the case may be) the date when the transfer notice is deemed to have been served or in default of agreement within such period such price as an independent firm of Chartered Accountants (other than the Auditors of the Company) ("**the Accountants**") shall on the application of the transferor or any of the other shareholders, certify in writing to be the fair value thereof per share as at the date of the relevant transfer notice. For this purpose a firm of Chartered Accountants who are the auditors of any shareholder that is a body corporate shall not merely thereby be regarded as not independent. The fair value shall be calculated on the basis of the fair price of such shares on a going concern basis between a willing seller and a willing buyer and on the basis that no additional or reduced value is attached to a holding of shares by virtue of such holding comprising or after purchase conferring or giving rise to a majority or minority of the total issued equity share capital of the Company and on the basis that for this purpose a value of £1 (plus a sum equal to any arrears deficiency or accruals of dividends payable on the preference shares in relation to any financial year ending on or before 31 March 1999) is attached to the preference shares. The nomination of such Accountants shall in the event of disagreement between the transferor and the other shareholders be made by the President for the time being of the Institute of Chartered Accountants in England and Wales. In so certifying the Accountants shall be considered to be acting as experts and not as arbitrators with regard to their determination and their decision shall be final and binding on the parties. The reasonable costs of the Accountants shall be borne equally by all the shareholders.
- 41.5 If the transferor, after having become bound to transfer its shares as aforesaid, makes default in transferring the same the Company may receive the purchase money tendered by the relevant purchasing shareholders and the proposed transferor shall be deemed to have appointed any one director or the secretary of the Company as his agent to execute a transfer of the shares which are the subject of the transfer notice to the purchasing shareholders and upon the execution of such transfer the Company shall hold the purchase money in trust for the transferor. The receipt of the Company for the purchase money shall be a good discharge to the purchasing shareholders and after their name has been entered

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on the register of shareholders in purported exercise of the powers conferred by this article 41.5, the validity of the proceedings shall not be questioned by any person.

- 41.6 If the Company shall not find a transferee or transferees before the expiry of the second period in accordance with the preceding provisions of this article the Company may, subject to the provisions of the Act and, where appropriate, with the sanction of the shareholders or any class thereof and with or without the consent of the transferor, exercise its power to purchase all or any of the shares comprised in the transfer notice. If the Company declines or is unable to exercise such power it shall promptly notify the transferor who shall be at liberty within a period of two months from receipt of such notification on a bona fide sale to transfer the shares together with the beneficial interest therein (or where there are more shares than one, those not transferred in accordance with the foregoing provisions of this article), to any person at a price not less than the sale price previously determined or to retain them for the transferor's own benefit provided, in the case of sale, that if the transfer notice contained a total transfer condition the transferor shall not be entitled under this article 41.6 to transfer some only of the shares comprised in the transfer notice.
- 41.7 If any shareholder ("**the defaulting shareholder**") shall breach a material provision of the Shareholders' Agreement or of the Waste Disposal Contract to which they are a party a transfer notice shall be deemed to have been served in accordance with article 41.1 provided that:
- 41.7.1 a transfer notice shall only be deemed served if a party to the Shareholders' Agreement or Waste Disposal Contract shall have served notice stated to be for the purpose of this article on the defaulting shareholder within one month of such party discovering such breach; and
- 41.7.2 if notice has been served under article 41.7.1 the transfer notice shall (where such breach is not capable of remedy) be deemed to have been served on the date of service of notice under article 41.7.1 or (where such breach is capable of remedy, and if the defaulting shareholder shall have failed to remedy the breach within 14 days following service of such notice) on the 14<sup>th</sup> day following the party discovering such breach having served on the defaulting shareholder a further notice invoking the deemed service of a transfer notice under this article; and
- 41.7.3 where a transfer notice shall be deemed to have been served then the provision of articles 41.1 to 41.6 shall mutatis mutandis apply subject to the following variation thereto:
- 41.7.3.1 a total transfer condition shall be deemed to have been specified in the transfer notice;
- 41.7.3.2 there shall be no right of revocation of the transfer notice under article 41.2.
- 41.7.4 for the avoidance of doubt, the failure of a party to serve notice under article 41.7.1 (or, where appropriate, article 41.7.2) shall be without prejudice to any other right or remedy available to it and shall not imply that that party has released or waived such breach in any way;
- 41.8 Subject to the preceding paragraphs of this article, any transfer of shares made otherwise than in accordance with the foregoing provisions of this article shall be void and have no



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effect provided that the foregoing provisions of this article may be set aside with the consent in writing of all the shareholders.

### 42. LIMITATION ON TRANSFER OF CONTROL

- 42.1 No sale or transfer of the legal or beneficial interest in any shares in the Company may be made or validly registered without the previous written consent of the holders of at least 75% of the "A" ordinary shares and of at least 75% of the "B" ordinary shares and of at least 75% of the "C" ordinary shares if as a result of such sale or transfer (or as a result of such sale or transfer together with any previous sale or transfer) on registration thereof a controlling interest (as hereinafter defined) is obtained in the Company:
- 42.1.1 by a company (other than a company to which article 42.1.2 applies) or a person or persons (other than a company) who was or were not a shareholder or shareholders of the Company on the date of adoption of these articles unless the proposed transferee or transferees or his or their nominees are independent third parties acting in good faith and has or have offered to purchase all the ordinary shares at the specified price (as hereinafter defined); or
- 42.1.2 by a company in which one or more of the shareholders of the Company or persons acting in concert (which expression shall have the meaning ascribed to in it the January 1988 Edition of the City Code on Takeovers and Mergers) with any shareholder of the Company has or as a result of such sale or transfer will have a controlling interest.
- 42.2 for the purpose of this article 42:
- 42.2.1 the expression "**a controlling interest**" shall mean an interest (within the meaning of sections 820 to 825 of the Act) in shares in a company conferring in the aggregate 50% or more of the total voting rights conferred by all the issued shares in that company.
- 42.2.2 the expression "**the specified price**" shall mean the higher of (a) a price per ordinary share of £1; and (b) a price per ordinary share at least equal to that offered or paid or payable by the proposed transferee or transferees or his or their nominees for any other ordinary shares plus an amount equal to the relevant proportion of any other consideration (in cash or otherwise) received or receivable by the holders of such other ordinary shares which having regard to the substance of the transaction as a whole can reasonably be regarded as an addition to the price paid or payable for such other ordinary shares provided that if any part of the price per share is payable otherwise than by cash the holders of the remaining ordinary shares may at their option elect to take a price per share of such cash sum as may be agreed by them having regard to the substance of the transaction as a whole; and in the event of disagreement the calculation of the specified price shall be referred to an independent firm of Chartered Accountants (acting as expert and not as arbitrator) nominated by the parties concerned (or in the event of disagreement as to nomination, appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales) whose decision shall be final and binding (and whose costs shall be borne as such firm shall decide). For this purpose a firm of Chartered Accountants who are the auditors of any shareholder that is a body corporate shall not merely thereby be regarded as not independent.

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42.3 All other regulations of the Company relating to the transfer of shares and the right to registration of transfers shall be read subject to the provisions of this article 42.

### **43. GENERAL PROVISIONS RELATING TO SHARE TRANSFERS**

43.1 Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor, and unless the share is fully paid, the transferee.

43.2 No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.

43.3 The Company may retain any instrument of transfer which is registered.

43.4 The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.

43.5 The directors shall refuse to register any transfer prohibited by the provisions of articles 41 or 42 unless it is made in accordance therewith and shall refuse to register a transfer unless:

43.5.1 it is in favour of a person who is not, or persons none of whom is, a minor; and

43.5.2 it is lodged at the registered office or at such other place as the directors may appoint and is accompanied by the certificate for the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer; and

43.5.3 it is in respect of only one class of shares (and for this purpose the "A" ordinary shares, the "B" ordinary shares and the "C" ordinary shares shall be treated as different classes of shares and the "A" preference shares and the "B" preference shares shall be treated as different classes of shares); and

43.5.4 it is in favour of not more than four transferees.

But, subject thereto, the directors shall be obliged to register any transfer made in accordance with articles 41 and 42.

43.6 The provisions of these articles 41, 42 and 43 shall apply to transfers, renunciations and nominations of shares and/or of the right to subscribe for shares in like manner as they apply to transfers of shares.

43.7 If the directors refuse to register the transfer of a share the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

### **44. PROCEDURE FOR DECLARING DIVIDENDS**

44.1 The Company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.

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- 44.2 A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors.
- 44.3 No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.
- 44.4 Unless the shareholders' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.
- 44.5 If the Company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear.
- 44.6 The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.
- 44.7 If the directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

### 45. PAYMENT OF DIVIDENDS AND OTHER DISTRIBUTIONS

- 45.1 Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means:
- 45.1.1 transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide;
- 45.1.2 sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;
- 45.1.3 any other means of payment as the directors agree with the distribution recipient in writing or as the directors may otherwise decide.
- 45.2 In this article, the "**distribution recipient**" means, in respect of a share in respect of which a dividend or other sum is payable:
- 45.2.1 the holder of the share; or
- 45.2.2 if the share has two or more joint holders, whichever of them is named first in the register of members; or
- 45.2.3 if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the person entitled to such share.

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### **46. NO INTEREST ON DISTRIBUTIONS**

Subject to the articles, the Company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by:

- 46.1 the terms on which the share was issued; or
- 46.2 the provisions of another agreement between the holder of that share and the Company.

### **47. DEDUCTION FROM DIVIDENDS**

The directors may deduct from any dividend payable on or in respect of a share all sums of money presently payable by the holder to the Company on any account whatsoever.

### **48. UNCLAIMED DISTRIBUTIONS**

- 48.1 All dividends or other sums which are:
  - 48.1.1 payable in respect of shares; and
  - 48.1.2 unclaimed after having been declared or become payable,  
  
may be invested or otherwise made use of by the directors for the benefit of the Company until claimed.
- 48.2 The payment of any such dividend or other sum into a separate account does not make the Company a trustee in respect of it.
- 48.3 If:
  - 48.3.1 12 years have passed from the date on which a dividend or other sum became due for payment; and
  - 48.3.2 the distribution recipient has not claimed it,  
  
the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the Company.

### **49. NON-CASH DISTRIBUTIONS**

- 49.1 Subject to the articles or terms of issue of the share in question, the Company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).
- 49.2 For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution:
  - 49.2.1 fixing the value of any assets;
  - 49.2.2 paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and
  - 49.2.3 vesting any assets in trustees.

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### 50. WAIVER OF DISTRIBUTIONS

Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the Company notice in writing to that effect, but if:

- 50.1 the share has more than one holder; or
- 50.2 more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise,

the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

### 51. AUTHORITY TO CAPITALISE AND APPROPRIATION OF CAPITALISED SUMS

- 51.1 Subject to the articles, the directors may, if they are so authorised by an ordinary resolution:
  - 51.1.1 decide to capitalise any profits of the Company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the Company's share premium account or capital redemption reserve; and
  - 51.1.2 appropriate any sum which they so decide to capitalise (a "**capitalised sum**") to the persons who would have been entitled to it if it were distributed by way of dividend (the "**persons entitled**") and in the same proportions.
- 51.2 Capitalised sums must be applied:
  - 51.2.1 on behalf of the persons entitled; and
  - 51.2.2 in the same proportions as a dividend would have been distributed to them.
- 51.3 Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct.
- 51.4 A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the Company which are then allotted credited as fully paid to the persons entitled or as they may direct.
- 51.5 Subject to the articles the directors may:
  - 51.5.1 apply capitalised sums in accordance with **articles** 51.3 and 51.4 partly in one way and partly in another;
  - 51.5.2 make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments); and
  - 51.5.3 authorise any person to enter into an agreement with the Company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

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## DECISION-MAKING BY SHAREHOLDERS

### 52. NOTICE, ATTENDANCE AND SPEAKING AT GENERAL MEETINGS

- 52.1 General meetings shall be called by at least 14 clear days' notice (that is, excluding the day of the general meeting and the day on which the notice is given).
- 52.2 A general meeting may be called by shorter notice if it is so agreed by a majority in number of the shareholders having a right to attend and vote, being a majority together holding not less than 90 per cent in nominal value of the shares giving that right.
- 52.3 The notice shall specify the date, time and place of the meeting and the general nature of the business to be transacted.
- 52.4 Subject to the articles and to any restrictions imposed on any shares, the notice shall be given to all the shareholders, to all persons entitled to a share in consequence of the death or bankruptcy of a shareholder and to the directors and auditors of the Company.
- 52.5 A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.
- 52.6 A person is able to exercise the right to vote at a general meeting when:
- 52.6.1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
- 52.6.2 that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- 52.7 The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- 52.8 In determining attendance at a general meeting, it is immaterial whether any two or more shareholders attending it are in the same place as each other.
- 52.9 Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

### 53. QUORUM FOR GENERAL MEETINGS

- 53.1 No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.
- 53.2 The number of persons who shall constitute a quorum shall be two persons entitled to vote upon the business to be transacted of whom:
- 53.2.1 (for so long as the preference shares do not entitle any of the holders thereof to vote in general meetings but not otherwise) one shall hold (or represent the holder of) at least one "A" ordinary share and of whom one shall hold (or represent the holder of) at least one "B" ordinary share; and

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- 53.2.2 (for so long as any "A" preference share entitles the holder thereof to vote in general meetings) one shall hold (or represent the holder of) at least one "A" preference share; and
- 53.2.3 (for so long as any "B" preference share entitles the holder thereof to vote in general meetings) one shall hold (or represent the holder of) at least one "B" preference share.

### **54. CHAIRING GENERAL MEETINGS**

- 54.1 If the directors have appointed a Chairman under article 15, the Chairman shall chair general meetings if present and willing to do so.
- 54.2 If the directors have not appointed a Chairman, or if such Chairman is unwilling to chair the meeting or is not present within 10 minutes of the time at which a meeting was due to start:
- 54.2.1 the directors present; or
- 54.2.2 (if no directors are present), the meeting,
- must appoint a director or shareholder to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting.
- 54.3 The person chairing a meeting in accordance with this article is referred to as the chairman of the meeting.

#### **Attendance and speaking by directors and non-shareholders**

- 54.4 Directors may attend and speak at general meetings, whether or not they are shareholders.
- 54.5 The chairman of the meeting may permit other persons who are not:
- 54.5.1 shareholders in the Company; or
- 54.5.2 otherwise entitled to exercise the rights of shareholders in relation to general meetings, to attend and speak at a general meeting.

#### **Adjournment**

- 54.6 If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairman of the meeting must adjourn it.
- 54.7 The chairman of the meeting may adjourn a general meeting at which a quorum is present if:
- 54.7.1 the meeting consents to an adjournment; or
- 54.7.2 it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.
- 54.8 The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.

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- 54.9 When adjourning a general meeting, the chairman of the meeting must:
- 54.9.1 either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors; and
- 54.9.2 have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- 54.10 If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the Company must give at least seven clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given):
- 54.10.1 to the same persons to whom notice of the Company's general meetings is required to be given; and
- 54.10.2 containing the same information which such notice is required to contain.
- 54.11 No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

### **55. VOTING: GENERAL**

- 55.1 A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.
- 55.2 Subject to any special rights or restrictions as to voting attached to any shares by or in accordance with these articles on a show of hands every shareholder who, being an individual, is present in person or (being a corporation) is present by a representative, shall have one vote and on a poll every shareholder who is present in person or by proxy or (being a corporation) is present by a representative or by proxy shall have one vote for each share of which he is the holder provided that the preference shares shall entitle the holders thereof to receive notice of general meetings but shall only entitle the holders to requisition, attend and vote at any general meeting if (subject to article 55.3):
- 55.2.1 at the date of the notice or requisition to convene the meeting any dividend payable on the preference shares in relation to any financial year ending on or before 31 March 1999 is in arrear and has not been either wholly or temporarily waived in writing by the holders of all preference shares; or
- 55.2.2 the Company shall have failed to redeem any of the preference shares in accordance with these articles and the holders of the preference shares in question have not agreed in writing to the deferral of the redemption; or
- 55.2.3 any of the special rights attaching to the preference shares shall be deemed to have been varied in accordance with article 26.3 without the prior consent or approval therein mentioned and the breach has not been wholly or temporarily waived in writing by the holders of all the preference shares.
- 55.3 The right to requisition, attend and vote in the circumstances listed in article 55.2 shall not become exercisable until the holder of any preference shares in question serves written election on the Company electing for such right (or any of them) to become exercisable by that shareholder (and any such shareholder may subsequently serve notice waiving again



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the exercise of such rights or any of them until such later time as such shareholder may service notice electing to exercise such rights or any of them).

### 56. ERRORS AND DISPUTES

- 56.1 No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.
- 56.2 Any such objection must be referred to the chairman of the meeting, whose decision is final.

### 57. POLL VOTES

- 57.1 A poll on a resolution may be demanded:
- 57.1.1 in advance of the general meeting where it is to be put to the vote; or
- 57.1.2 at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- 57.2 A poll may be demanded by:
- 57.2.1 the chairman of the meeting;
- 57.2.2 the directors;
- 57.2.3 two or more persons having the right to vote on the resolution; or
- 57.2.4 a person or persons representing not less than one tenth of the total voting rights of all the shareholders having the right to vote on the resolution.
- 57.3 A demand for a poll may be withdrawn if:
- 57.3.1 the poll has not yet been taken; and
- 57.3.2 the chairman of the meeting consents to the withdrawal.
- 57.4 A demand for a poll which is withdrawn shall not invalidate the result of a show of hands declared before the demand was made.
- 57.5 A poll demanded on the election of a chairman or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time (not being more than 30 days from the date of the meeting or adjourned meeting at which that poll is demanded) and place and in such manner as the chairman of the meeting directs.

### 58. CONTENT OF PROXY NOTICES

- 58.1 Proxies may only validly be appointed by a notice in writing (a "**proxy notice**") which:
- 58.1.1 states the name and address of the shareholder appointing the proxy;
- 58.1.2 identifies the person appointed to be that shareholder's proxy and the general meeting in relation to which that person is appointed;

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- 58.1.3 is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and
- 58.1.4 is delivered to the Company in accordance with the articles and, subject to **article 58.5**, any instructions contained in the notice of the general meeting to which they relate.
- 58.2 The Company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- 58.3 Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.
- 58.4 Unless a proxy notice indicates otherwise, it must be treated as:
- 58.4.1 allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
- 58.4.2 appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.
- 58.5 The last time for delivery of the proxy notice to the Company must not be earlier than the following time:
- 58.5.1 in the case of a meeting or adjourned meeting, 48 hours before the time for holding the meeting or adjourned meeting;
- 58.5.2 in the case of a poll taken more than 48 hours after it was demanded, 24 hours before the time appointed for the taking of the poll; and
- 58.5.3 in the case of a poll taken not more than 48 hours after it was demanded, the time at which it was demanded.
- 58.6 The directors may specify in the notice of meeting that in calculating the time for delivery of proxies, no account has been taken of any part of a day that is not a working day.

### **59. DELIVERY OF PROXY NOTICES**

- 59.1 A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the Company by or on behalf of that person.
- 59.2 An appointment under a proxy notice may be revoked by delivering to the Company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- 59.3 A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- 59.4 If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

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### **60. AMENDMENTS TO RESOLUTIONS**

- 60.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:
- 60.1.1 notice of the proposed amendment is given to the Company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine); and
- 60.1.2 the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.
- 60.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:
- 60.2.1 the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and
- 60.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- 60.3 If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution.

### **ADMINISTRATIVE ARRANGEMENTS**

#### **61. MEANS OF COMMUNICATION TO BE USED**

- 61.1 Subject to the other provisions of these articles, anything sent or supplied by or to the Company under the articles may be sent or supplied in any way in which the Act provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the Company.
- 61.2 Subject to the other provisions of these articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.
- 61.3 A director may agree with the Company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.
- 61.4 The address for service of the Company shall be the office or such other place as the directors may appoint. The address for service of each shareholder shall be his address in the register of members within the United Kingdom or such other address for service, which may include an electronic address, as the addressee may from time to time notify to the Company for the purposes of this article. In the absence of such address the shareholder shall not be entitled to receive from the Company notice of any meeting.
- 61.5 In the case of joint holders of a share, a notice or other document or information shall be sent or given to the joint holder whose name stands first in the register of members in

## Appendix 1

respect of the joint holding and notice or other documents or information so sent or given shall be sufficiently sent to all the joint holders.

61.6 Notices or other documents or information will be deemed to be received:

61.6.1 if personally delivered, at the time of delivery and, in proving service, it shall be sufficient to produce a receipt for the notice or other document or information signed by or on behalf of the addressee;

61.6.2 if by letter, at noon two days after such letter was posted and, in proving service, it shall be sufficient to prove that the letter was properly prepaid or stamped first class, addressed and delivered to the postal authorities;

61.6.3 if by electronic communication to an electronic address, on the same day it is sent and, in proving service, it shall be sufficient to prove that it was sent in accordance with guidance issued by the Institute of Chartered Secretaries and Administrators from time to time; and

61.6.4 if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.

61.7 For the purposes of this article, no account shall be taken of any part of a day that is not a working day.

### **62. COMPANY SECRETARY**

The directors may appoint any person who is willing to act as the secretary for such term and at such remuneration and upon such conditions as they may think fit and from time to time remove such person and, if the directors so decide, appoint a replacement.

### **63. COMPANY SEALS**

63.1 Any common seal may only be used by the authority of the directors.

63.2 The directors may decide by what means and in what form any common seal is to be used.

63.3 Unless otherwise decided by the directors, if the Company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.

63.4 For the purposes of this article, an authorised person is:

63.4.1 any director;

63.4.2 the company secretary (if any); or

63.4.3 any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

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### 64. NO RIGHT TO INSPECT ACCOUNTS AND OTHER RECORDS

Except as provided by law or authorised by the directors or an ordinary resolution of the Company, no person is entitled to inspect any of the Company's accounting or other records or documents merely by virtue of being a shareholder.

### 65. INDEMNITY

65.1 Subject to the provisions of the Act, the Company may:

65.1.1 indemnify to any extent any person who is or was a director, or a director of an associated company, directly or indirectly (including by funding any expenditure incurred or to be incurred by him) against any loss or liability, whether in connection with any proven or alleged negligence, default, breach of duty or breach of trust by him or otherwise, in relation to the Company or any associated company; or

65.1.2 indemnify to any extent any person who is or was a director of an associated company that is a trustee of an occupational pension scheme, directly or indirectly (including by funding any expenditure incurred or to be incurred by him) against any liability incurred by him in connection with the company's activities as trustee of an occupational pension scheme.

65.2 Companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

### 66. INSURANCE

Subject to the provisions of the Act, the Company may purchase and maintain insurance for any person who is or was a director, or a director of any associated company, against loss or liability, whether in connection with any proven or alleged negligence, default, breach of duty or breach of trust by him or otherwise, in relation to the Company or any associated company.

## **The Coventry & Solihull Waste Disposal Company Limited (the "Company")**

### **Annex A**

The following clause 3 (objects of the Company), which on 1 October 2009 was included in the Company's Memorandum of Association, is now treated by virtue of section 28 of the Companies Act 2006 (which came into force on 1 October 2009) as being a provision of the Company's Articles of Association.

3. The Company's objects are:-

- (a) (i) To acquire and take over the relevant part of the undertaking of each of the Council of the City of Coventry and the Metropolitan Borough of Solihull transferred to the Company by and in accordance with a transfer scheme made in accordance with Schedule 2 to the Environmental Protection Act 1990 and the property, rights or liabilities transferred to and vested in the Company by or pursuant to that transfer scheme

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(ii) To carry on all or any of the activities of the disposal, keeping or treatment of waste on behalf of the Local Authorities and any activities incidental or conducive to or calculated to facilitate such activities but excluding the collection of waste (and insofar as any such word used in this sub-clause 3(a) (ii) is defined in the Environmental Protection Act 1990 such word shall bear the same meaning herein).

None of the objects set out in any paragraph of sub-clause 3 (a) shall be restrictively construed but the widest interpretation shall be given to each such object, and none of such objects shall, except where the context expressly so requires, be in any way limited or restricted by reference to or inference from any other object or objects set forth in such paragraph, or by reference to or inference from the terms of any other paragraph or the name of the Company; and none of the paragraphs of sub-clause 3(a) and none of the objects therein specified shall be deemed subsidiary or ancillary to any of the objects specified in any other such paragraph, and the Company shall have as full a power to exercise each and every one of the objects specified in each such paragraph as though it contained the objects of a separate company.

In furtherance of or in connection with the above objects and any of them but not further or otherwise the Company shall have the following powers: -

- (b) To purchase or by any other means acquire and take options over any property whatever, and any rights or privileges of any kind over or in respect of any property.
- (c) To apply for, register, purchase or by other means acquire and protect, prolong and renew, whether in the United Kingdom or elsewhere any patents, patent rights, brevets d'invention, licences, secret processes, trade marks, design protections and concessions and to disclaim, alter, modify, use and turn to account and to manufacture under or grant licences or privileges in respect of the same, and to expend money in experimenting upon, testing and improving any patents, inventions or rights which the Company may acquire or propose to acquire.
- (d) To acquire or undertake the whole or any part of the business, goodwill, and assets of any person, firm or company carrying on or proposing to carry on any of the businesses which the Company is authorised to carry on and as part of the consideration for such acquisition to undertake all or any of the liabilities of such person, firm or company, or to acquire an interest in, amalgamate with, or enter in to partnership or into any arrangement for sharing profits, or for co-operation, or for the mutual assistance with any such person, firm or company, or for subsidising or otherwise assisting any such person, firm or company, and to give or accept, by way of consideration for any of the acts or things aforesaid or property acquired, any shares, debentures, debenture stock or securities that may be agreed upon, and to hold and retain, or sell, mortgage and deal with any shares, debentures, debenture stock or securities so received.
- (e) To improve, manage, construct, repair, develop, exchange, let on lease or otherwise, mortgage, charge, sell, dispose of, turn to account, grant licences, options, rights and privileges in respect of, or otherwise deal with all or any part of the property and rights of the Company.
- (f) To invest and deal with the moneys of the Company not immediately required in such manner as may from time to time be determined and to hold or otherwise deal with any investment made.
- (g) To lend and advance money or give credit on any terms and with or without security to any person, firm or company (including without prejudice to the generality of the foregoing any holding company, subsidiary or fellow subsidiary of, or any other company associated in any way with, the Company), to enter into guarantees, contracts of indemnity and suretyships of all kinds, to receive money on deposit or loan upon any terms, and to secure or guarantee in any manner and upon any terms the payment of any sum of money or the performance of any obligation by any person, firm or company (including without prejudice to the generality of the

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foregoing any such holding company, subsidiary, fellow subsidiary or association company as aforesaid).

- (h) To borrow and raise money in any manner and to secure the repayment of any money borrowed, raised or owing by mortgage, charge, standard security, lien or other security upon the whole or any part of the Company's property or assets (whether present or future), including its uncalled capital, and also by a similar mortgage, charge, standard security, lien or security to secure and guarantee the performance by the Company of any obligation or liability it may undertake or which may become binding on it.
- (i) To draw, make, accept, endorse, discount, negotiate, execute and issue cheques, bills of exchange, promissory notes, bills of lading, warrants, debentures, and other negotiable or transferable instruments.
- (j) To apply for, promote, and obtain any Act of Parliament, order, or licence of the Department of Trade or other authority for enabling the Company to carry any of its objects into effect, or for effecting any modification of the Company's constitution, or for any other purpose which may seem calculated directly or indirectly to promote the Company's interests, and to oppose any proceedings or applications which may seem calculated directly or indirectly to prejudice the Company's interests.
- (k) To enter into any arrangements with any government or authority (supreme, municipal, local, or otherwise) that may seem conducive to the attainment of the Company's objects or any of them, and to obtain from any such government or authority any charters, decrees, rights, privileges or concessions which the Company may think desirable and to carry out, exercise, and comply with any such charters, decrees, rights, privileges, and concessions.
- (l) To subscribe for, take, purchase, or otherwise acquire, hold, sell, deal with and dispose of, place and underwrite shares, stocks, debentures, debenture stocks, bonds, obligations or securities issued or guaranteed by any other company constituted or carrying on business in any part of the world, and debentures, debenture stocks, bonds, obligations or securities issued or guaranteed by any government or authority, municipal, local or otherwise, in any part of the world.
- (m) To control, manage, finance, subsidise, co-ordinate or otherwise assist any company or companies in which the Company has a direct or indirect financial interest, to provide secretarial, administration, technical, commercial and other services and facilities of all kinds for any such company or companies and to make payments by way of subvention or otherwise and any other arrangements which may seem desirable with respect to any business or operations of or generally with respect to any such company or companies.
- (n) To promote any other company for the purpose of acquiring the whole or any part of the business or property or undertaking or any of the liabilities of the Company, or of undertaking any business or operations which may appear likely to assist or benefit the Company or to enhance the value of any property or business of the Company, and to place or guarantee the placing of, underwrite, subscribe for, or otherwise acquire all or any part of the shares or securities of any such company as aforesaid.
- (o) To sell or otherwise dispose of the whole or any part of the business or property of the Company, either together or in portions, for such consideration as the Company may think fit, and in particular for shares, debentures, or securities of any company purchasing the same.
- (p) To act as agents or brokers and as trustees for any person, firm or company, and to undertake and perform sub-contracts.
- (q) To remunerate any person, firm or company rendering services to the Company either by cash payment or by the allotment to him or them of shares or other securities of the Company credited as paid up in full or in part or otherwise as may be thought expedient.

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- (r) To distribute among the Members of the Company in kind any property of the Company of whatever nature.
- (s) To pay all or any expenses incurred in connection with the promotion, formation and incorporation of the Company, or to contract with any person, firm or company to pay the same, and to pay commissions to brokers and others for underwriting, placing, selling or guaranteeing the subscription of any shares or other securities of the Company.
- (t) To support and subscribe to any charitable or public object and to support and subscribe to any institution, society, or club which may be for the benefit of the Company or its directors or employees, or may be connected with any town or place where the Company carries on business; to give or award pensions, annuities, gratuities, and superannuation or other allowances or benefits or charitable aid and generally to provide advantages, facilities and services for any persons who are or have been Directors of, or who are or have been employed by or who are serving or have served the Company, or any company which is a subsidiary of the Company or the holding company of the Company or a fellow subsidiary of the Company or the predecessors in business of the Company or of any such subsidiary, holding or fellow subsidiary company and to the wives, widows, children and other relatives and dependants of such persons; to make payments towards insurance including insurance for any Director, officer or Auditor against any liability as is referred to in Section 310 (1) of the Act; and to set up, establish, support and maintain profit sharing or share purchase schemes for the benefit of any of the employees of the Company or of any such subsidiary, holding or fellow subsidiary company and to lend money to any such employees or to trustees on their behalf to enable any such purchase schemes to be established or maintained.
- (u) Subject to and in accordance with a due compliance with the provisions of Sections 155 to 158 (inclusive) of the Act (if and so far as such provisions shall be applicable), to give, whether directly or indirectly, any kind of financial assistance (as defined in Section 152(1) (a) of the Act) for any such purposes as is specified in Section 151(1) and/or Section 151(2) of the Act.
- (v) To procure the Company to be registered or recognised in any part of the world.
- (w) To do all or any of the things or matters aforesaid in any part of the world and either as principals, agents, contractors or otherwise, and by or through agents, brokers, sub-contracts or otherwise and either alone or in conjunction with others.
- (x) To do all such other things as may be deemed incidental or conducive to the attainment of the Company's objects or any of them.

AND so that: -

- (1) The word "Company" in this Clause, except where used in reference to the Company, shall be deemed to include any partnership or other body of persons, whether incorporated or unincorporated and whether domiciled in the United Kingdom or elsewhere.
- (2) In this Clause the expression "the Act" means the Companies Act 1985, but so that any reference in this Clause to any provision of the Act shall be deemed to include a reference to any statutory modification or re-enactment of that provision for the time being in force.

### Note:

Clauses 1, 2, 4 and 5 of the Memorandum of Association were deleted by the following special resolution of the Company passed by written resolution on 2011:



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"that the Articles of Association of the Company be amended by deleting clauses 1, 2, 4 and 5 of the Company's Memorandum of Association which, by virtue of section 28 Companies Act 2006, are treated as provisions of the Company's Articles of Association."

As a consequence of this deletion, these clauses are no longer treated as provisions of the Company's Articles of Association under section 28 of the Companies Act 2006.

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**DATED**

**2014**

**THE COUNCIL OF THE CITY OF COVENTRY  
THE METROPOLITAN BOROUGH OF SOLIHULL  
THE COVENTRY AND SOLIHULL WASTE DISPOSAL COMPANY LIMITED  
AND  
WARWICKSHIRE COUNTY COUNCIL**

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**SUPPLEMENTAL SHAREHOLDERS' AGREEMENT**

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**THIS AGREEMENT is dated**

**2014**

**And is made BETWEEN:**

- (1) The Council of the City of Coventry** of the Council House, Coventry, CV1 5RR (“Coventry”)
- (2) The Metropolitan Borough of Solihull** of the Council, Solihull, B91 3QS (“Solihull”)
- (3) The Coventry and Solihull Waste Disposal Company Limited** (registered in England number 2690488) having its registered office at Bar Road, Coventry, CV3 4AN (the “Company”)
- (4) Warwickshire County Council** of Shire Hall, Warwick, CV34 4RR (“Warwickshire”)

Together referred to as “the parties”

**WHEREAS:**

- (1) Pursuant to a direction of the Secretary of State for the Environment in exercise of his powers under section 32(2) and paragraphs 4 and 6(1) of Schedule 2 to the Environmental Protection Act 1990, On 24 February 1992 Coventry and Solihull formed the Company to undertake waste disposal functions;
- (2) Coventry, Solihull and the Company have entered into a Shareholders Agreement dated 15 March 1994, as amended by subsequent agreements dated 31 October 1995, 10 June 1999 and 17 March 2011 (“the Principal Agreement”);
- (3) With effect from [ ] Warwickshire became a shareholder of the Company;
- (4) The parties have now agreed to vary further the provisions of the Principal Agreement;

**NOW THIS AGREEMENT WITNESSES AS FOLLOWS:**

1. The Principal Agreement shall be deemed to be amended with the consent of the parties with effect from [ ] as follows.

Parties and Recitals

- (a) Add the details of a new party to the Principal Agreement as follows:  
**“Warwickshire County Council of Shire Hall, Warwick, CV34 4RR (hereinafter called “Warwickshire”);**

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- (b) Insert a new recital as follows: **(3) The parties have agreed that Warwickshire shall become a shareholder in the Company having an authorised share of £1 (fully paid up);**
- (c) Renumber the subsequent recital as **(4)** and after the words “Coventry and Solihull”, add: **“and Warwickshire”**

### Definitions

- (d) Under the definition of “the Shareholders”, after the words “Coventry and Solihull” add: **“and Warwickshire”**;
- (e) Under the definition of “the Proper Officer” delete the existing words and replace with: **“in the case of the Metropolitan Borough of Solihull the Director of Resources for the time being thereof in the case of the Council of the City of Coventry the Executive Director- Resources for the time being thereof in the case of Warwickshire County Council the Strategic Director of Resources for the time being thereof (or such successor positions or officers as are nominated by the Local Authorities from time to time) in the case of the Company a director or the company secretary and in the case of any other company that becomes a shareholder, a director or the company secretary of such company**
- (f) Under the definition of “A” Ordinary Shares and “B” Ordinary Shares”, after those words, add the words **“and “C” Ordinary Shares”**, and at the end of that sentence add the words **“and “C””**. In the next sentence, after the word “Solihull”, add: **“and the “C” Ordinary Shares are to be issued to Warwickshire”**
- (g) After the definition of “Voting “B” Shares” add a new definition, as a new sub-clause: **“Voting “C” Shares” means the “C” Ordinary Shares**
- (h) Add a new definition at the end of the definitions section: **“Warwickshire Admission Date” means the date at which Warwickshire becomes a Shareholder of the Company**
- (i) Add a new definition at the end of the definitions section: **“Waste Disposal Contract” means the contract entered into between each Shareholder and the Company providing waste disposal services to the Shareholder**

### Clauses of the main body of the Principal Agreement

- (j) At the end of clause 2 (2) substitute the section in parenthesis with the following text: **“(and in the case of Coventry and Solihull and Warwickshire issued under the common seal of Coventry and Solihull and Warwickshire respectively)”**
- (k) Renumber the existing clause 5 as **5.1**.

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- (l) After the end of clause 5.1, add a new clause: **“5.2 On the Warwickshire Admission Date, Warwickshire and the Company shall enter into the Waste Disposal Contract in the form agreed between them.”**
- (m) After the end of clause 5.2, add a new clause: **“5.3 For the avoidance of doubt the parties agree and acknowledge that the Waste Disposal Contract entered into between each Shareholder and the Company shall each constitute a separate legally binding agreement between the Shareholder and the Company which shall not be capable of amendment or variation by the other Shareholders and a person who is not a party to the Waste Disposal Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of that Contract.**
- (n) In sub-clause 6 (1) (k) after the word “Solihull” add: **“and Warwickshire”**
- (o) In sub-clause 6 (1) (j) delete the existing words in their entirety and replace with **“The quorum for meetings of the Board shall be three directors (present in person or by alternate) and must include at least one of those nominated under either sub-clause 6 (1) (a) or sub-clause 6 (1) (b) or their alternates”**
- (p) Delete sub-clause 6 (2).
- (q) In sub-clause 8 (2) after the word “Solihull” add **“and Warwickshire”**
- (r) Add a new sub-clause **“8 (3) The Shareholders and the Company hereby agree to undertake such matters as are required to secure compliance by Coventry and Solihull and Warwickshire and the Company with any applicable provisions of the EC Procurement Directives and related procurement law relating to companies owned by contracting authorities provided always that the Company’s obligation under this sub-clause 8 (3) shall relate only to those provisions applicable to the extent that they are within the legal power of the Company to procure**
- (s) In clause 10 delete the word ‘either’ and replace with ‘any’
- (t) In sub-clause 14 (2) wherever the word “Solihull” appears, add after it: **“and Warwickshire”**
- (u) In sub-clause 15 (1) wherever the word “Solihull” appears, add after it: **“or Warwickshire” and after the word ‘other’ in the penultimate line of the clause add ‘shareholders’**
- (v) In sub-clause 18 (2) (c) after the word “Solihull”, add: **“or Warwickshire County Council”**
- (w) In sub-clause 18 (2) (r) after the word “Solihull”, add: **“and Warwickshire County Council”**
- (x) Add a new sub-clause **“18 (2) (y) the entering into by the Company of a waste disposal contract with a customer on terms which, when taken over the anticipated duration of the proposed contract, are more favourable**

## Appendix 2

### **than those enjoyed by the Shareholders under their respective Waste Disposal Contract**

- (y) In sub clause 18(5) delete the words 'from time to time appointed under sub clause 6(2)'
- (z) In sub-clause 26 (2) after the word "Solihull" add: "**or Warwickshire**"
- (aa) In clause 27 after the word "Solihull" in the first line add: "**and Warwickshire**" and in the last line after the word "Solihull" add: "**or Warwickshire**"
- (bb) In clause 29 after the word "Solihull" in the first line add: "**and Warwickshire**" and after the word "Solihull" in the fifth line add: "**and/or Warwickshire**"

### Schedule 1 of the Principal Agreement: Memorandum and Articles of Association

- (o) The parties have agreed to vary the Memorandum and Articles of Association to the extent represented by the redline amendments in the document annexed hereto.

### Schedule 2 of the Principal Agreement: Constitution of the Shareholders' Panel

- (p) Add a new sub-clause "**1 (a) (iii) one elected member (or their substitute) appointed by the holders of the majority of the Voting "C" Shares**
- (q) In sub-clause 1 (b) at the end of the clause and before the full stop, add: "**and from those appointed under paragraph 1 (a) (iii)**
- (r) In sub-clause 1 (c) delete the words "if both Coventry and Solihull" and replace with: "**if all of Coventry Solihull and Warwickshire**"
- (s) In sub-clause 1 (c) (iii) delete the words "either of Coventry or Solihull or both" and replace with: "**if any or all of Coventry Solihull and Warwickshire**"
- (t) Add a new clause at the end of the section: "**5. The meetings and proceedings of the Shareholders Panel shall be conducted with a view to achieving unanimous resolution of the Shareholders on all matters to be determined at the Shareholders Panel. In the event that a matter cannot be determined by unanimous resolution then provided the matter is not reserved for unanimous resolution elsewhere in this Agreement or otherwise, the matter may be voted on at Shareholders Panel in accordance with the rights conferred by the Voting Shares held by the Shareholders.**"

### Schedule 3 of the Principal Agreement

- (u) In the table, below the row marked "Solihull" , add a new row: "**Warwickshire**" and in that row under the corresponding heading "Ordinary Shares" add: "**1**

## Appendix 2

“C” and under the corresponding heading “Preference Shares” add: “0”. Amend the Total under the corresponding heading “Ordinary Shares” deleted “97” and replace with: “98”

2. This Agreement may be executed in any number of counterparts by the different parties to it on separate counterparts, each of which when executed and delivered shall constitute an original, but all of which shall together constitute one and the same instrument.
3. Save to the extent expressly varied by the provisions of this Agreement, the Principal Agreement shall remain in full force and effect and shall not be affected by the execution and delivery of this Agreement.

IN WITNESS whereof the parties have respectively executed this deed the day and year first before written.



Appendix 2

THE COMMON SEAL OF )  
THE COUNCIL OF THE CITY OF COVENTRY )  
Was hereunto affixed )  
In the presence of: )

THE COMMON SEAL OF )  
THE METROPOLITAN BOROUGH OF SOLIHULL )  
Was hereunto affixed )  
In the presence of: )

THE COMMON SEAL OF )  
WARWICKSHIRE COUNTY COUNCIL )  
Was hereunto affixed )  
In the presence of: )

EXECUTED AS A DEED )  
FOR AND ON BEHALF OF )  
THE COVENTRY AND SOLIHULL )  
WASTE DISPOSAL COMPANY LIMITED )

.....Director

.....Director

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**THE COVENTRY AND SOLIHULL WASTE DISPOSAL COMPANY LIMITED**

**COMPANY NUMBER: 02690488**

**PRE-EMPTION WAIVER**

We, the undersigned being all the members of The Coventry and Solihull Waste Disposal Company Limited registered in England and Wales with number 02690488 ("**the Company**") hereby irrevocably waive any rights of pre-emption in respect of the transfer of shares of the Company as set out in the table below, granted to each of us whether by the Articles of Association of the Company or otherwise and irrevocably consent to the sale and transfer of the relevant shares referred to below.

<b>Transferor</b>	<b>Transferee</b>	<b>Number of 'C' Ordinary Shares of £1 each</b>
The Council of the City of Coventry	Warwickshire County Council	1

(1) .....  
**The Council of the City of Coventry** Date:.....2014

(2) .....  
**Solihull Metropolitan District Council** Date:.....2014

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**Dated**

**2014**

- (1) The Council of  
the City of Coventry**
- (2) Warwickshire County  
Council**

**Sale and Purchase Agreement**

relating to

**Shares**

in

**The Coventry & Solihull Waste  
Disposal Company Limited**

**Ref: L/RL**

**SUBJECT TO CONTRACT  
Draft Number: 1  
Cov&Solihull-14-ri**



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**PARTIES**

- (1) **THE COUNCIL OF THE CITY OF COVENTRY** of Council House, Earl Street, Coventry, CV1 5RR ("CCC"); and
- (2) **WARWICKSHIRE COUNTY COUNCIL** of \_\_\_\_\_ ("WCC")

**BACKGROUND**

- (A) The Company has an issued share capital of £ \_\_\_\_\_ divided into 66 'A' Ordinary Shares of £1 each 33 'B' Ordinary Shares of £1 each 1 'C' Ordinary Share of £1 each [ \_\_\_\_\_ ] 'A' Preference Shares of £1 each and [ \_\_\_\_\_ ] 'B' Preference Shares of £1 each
- (B) Further particulars of the Company are set out in Schedule 1.
- (C) CCC is the legal and beneficial owner of, or is otherwise able to transfer, the legal and beneficial title to the 'C' Ordinary Share
- (D) CCC has agreed to sell and WCC has agreed to buy the C Share subject to the terms and conditions of this agreement.

**AGREED TERMS**

**1. INTERPRETATION**

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

<b>Business Day</b>	a day (other than a Saturday, Sunday or public holiday) when banks in the City of London are open for business.
<b>Company</b>	The Coventry and Solihull Waste Disposal Company Limited, a company incorporated and registered in England and Wales with company number 02690488 further details of which are set out in Schedule 1.
<b>Completion</b>	completion of the sale and purchase of the 'C' Ordinary Share in accordance with this agreement.
<b>Completion Date</b>	the date of this agreement.
<b>Consideration</b>	£35,000.00.
<b>Director</b>	each person who is a director of the Company, the names of whom are set out in Schedule 1.
<b>Encumbrance:</b>	any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, hypothecation, security, interest, title, retention or any other security agreement or arrangement.
<b>Warranties</b>	the representations and warranties in clause 5 (Warranties) and Schedule 3 (Warranties).

- 1.2 Clause and schedule headings do not affect the interpretation of this agreement.
- 1.3 A **person** includes a corporate or unincorporated body.
- 1.4 Words in the singular include the plural and in the plural include the singular.
- 1.5 A reference to one gender includes a reference to the other gender.
- 1.6 A reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and subordinate legislation for the time being in force made under it. Provided that, as between the parties, no such amendment or re-enactment made after the date of this agreement shall apply for the purposes of this agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.
- 1.7 Documents in **agreed form** are documents in the form agreed by the parties or on their behalf and initialled by them or on their behalf for identification.
- 1.8 Words shall not be given a restrictive meaning if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or by reason of the fact that they are followed by particular examples intended to be embraced by those general words.
- 1.9 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.10 References to this agreement include this agreement as amended or varied in accordance with its terms.

## 2. **SALE AND PURCHASE**

- 2.1 On the terms of this agreement, CCC shall sell and WCC shall buy, with effect from Completion, the 'C' Ordinary Share with full title guarantee, free from all Encumbrances and together with all rights that attach (or may in the future attach) to it.

## 3. **PURCHASE PRICE**

- 3.1 The purchase price for the 'C' Ordinary Share shall be the Consideration.
- 3.2 The Consideration for the 'C' Ordinary Share shall be payable in cleared funds at Completion to CCC in accordance with clause 4.4.

## 4. **COMPLETION**

- 4.1 Completion shall take place on the Completion Date at the offices of CCC immediately after execution of this agreement;
- 4.2 At Completion CCC shall:
- 4.2.1 deliver or cause to be delivered the documents and evidence set out in Part 1 of Schedule 2; and
- 4.2.2 deliver any other documents referred to in this agreement as being required to be delivered by them.

- 4.3 At Completion WCC shall pay:
- 4.3.1 the Consideration by electronic transfer into CCC's nominated bank account details of which are as follows:

Bank:

Sort code:

Account name:

Account number:

- 4.3.2 payment made in accordance with this clause shall constitute a valid discharge of WCC's obligations under clause 3.

## 5. **WARRANTIES AND UNDERTAKINGS**

- 5.1 WCC is entering into this agreement on the basis of, and in reliance on, the Warranties.
- 5.2 CCC warrants and represents to WCC that each Warranty is true, accurate and not misleading on the date of this agreement.
- 5.3 Each of the Warranties is separate and, unless otherwise specifically provided, is not limited by reference to any other Warranty or any other provision in this agreement.
- 5.4 WCC and CCC acknowledge and agree that CCC shall have no liability under this agreement in respect of any matter of which WCC has actual or imputed knowledge as at the date of this agreement.

## 6. **LIMITATIONS ON CLAIMS**

- 6.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Claim** a claim for breach of any of the Warranties.

- 6.2 Nothing in clause 6 applies to a Claim that arises or is delayed as a result of fraud or wilful misconduct by CCC.
- 6.3 The liability of CCC for all Claims when taken together shall not exceed the Consideration.
- 6.4 CCC is not liable for a Claim unless WCC has given CCC notice in writing of the Claim, summarising as far as is known to WCC the nature of the Claim and the amount claimed within the period of 12 months beginning with the Completion Date.

## 7. **CONFIDENTIALITY AND ANNOUNCEMENTS**

- 7.1 CCC undertakes to WCC to keep confidential and not to use other than for the purposes of this agreement the contents of this agreement.
- 7.2 WCC undertakes to CCC to keep confidential and to use only for the purposes of this agreement the contents of this agreement.
- 7.3 A party does not have to keep confidential or restrict its use of:

- 7.3.1 knowledge of the existence of this agreement (as distinct from its contents) after Completion;
- 7.3.2 information that is or becomes public knowledge other than as a direct or indirect result of a breach of this agreement; or
- 7.3.3 information that it receives from a source not connected with the party to whom the duty of confidence is owed that it acquires free from any obligation of confidence to any other person.
- 7.4 Any party may disclose any information that it is otherwise required to keep confidential under clause 7:
  - 7.4.1 to such of its professional advisers, consultants and employees or officers as are reasonably necessary to advise on or in relation to this agreement, if the disclosing party procures that the people to whom the information is disclosed keep it confidential as if they were that party; or
  - 7.4.2 to confirm that the sale has taken place, and the date of the sale (but without otherwise revealing any other items of sale or making any other announcement);
  - 7.4.3 in the case of information regarding CCC, with CCC's prior written consent.
- 7.5 Clause 7 shall not prohibit disclosure of information to the extent that the disclosure is required:
  - 7.5.1 by law including, without limitation, pursuant to a request made under the Freedom of Information Act 2000; or
  - 7.5.2 by the Council or Cabinet of CCC to the extent required by law;
  - 7.5.3 by the Council or Cabinet of WCC to the extent required by law;
  - 7.5.4 by a regulatory body, Taxation Authority or securities exchange; or
  - 7.5.5 to make any filing with, or obtain any authorisation from, a regulatory body, taxation authority or securities exchange; or
  - 7.5.6 to protect the disclosing party's interest in any legal proceedings,
  - 7.5.7 but the disclosing party shall use reasonable endeavours to consult the other party and to take into account any reasonable requests they may have in relation to the disclosure pursuant to any of clauses 7.5.1 to 7.5.6 before making it; or
  - 7.5.8 to enable the auditors of CCC to undertake a proper review of the affairs of CCC;
  - 7.5.9 to enable the auditors of WCC to undertake a proper review of the affairs of WCC.
- 7.6 This clause shall continue to have effect for the period of twelve (12) years from Completion Date.

8. **FURTHER ASSURANCE**

8.1 CCC shall (at their expense) promptly execute and deliver all such documents, and do all such things, as WCC may from time to time reasonably require for the purpose of giving full effect to the provisions of this agreement.

9. **ASSIGNMENT**

9.1 No party may assign, or grant any Encumbrance or security interest over, any of its rights under this agreement or any document referred to in it.

10. **WHOLE AGREEMENT**

10.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any arrangements, understanding or previous agreement between them relating to the subject matter they cover.

10.2 This agreement together with all documents entered into or to be entered into pursuant to its provisions constitutes the entire agreement between the parties in relation to its subject matter and supersedes all prior agreements, understandings and discussions between the parties, other than representations made fraudulently.

10.3 Each of the parties acknowledges that it is not relying on any statements or warranties given or made by the others in relation to the subject matter of this agreement, save those expressly set out in this agreement and other documents referred to above and that it shall have no rights or remedies with respect to such subject matter otherwise than under this agreement (and the documents executed at the same time as it or entered into pursuant to it) save to the extent that they arise out of the fraud or fraudulent misrepresentation of any party.

11. **VARIATION AND WAIVER**

11.1 Any variation of this agreement shall be in writing and signed by or on behalf of the parties.

11.2 Any waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given and shall not prevent the party who has given the waiver from subsequently relying on the provision it has waived.

11.3 No failure to exercise or delay in exercising any right or remedy provided under this agreement or by law constitutes a waiver of such right or remedy or shall prevent any future exercise in whole or in part thereof.

11.4 No single or partial exercise of any right or remedy under this agreement shall preclude or restrict the further exercise of any such right or remedy.

11.5 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

12. **COSTS**

Unless otherwise provided, all costs in connection with the negotiation, preparation, execution and performance of this agreement, and any documents referred to in it, shall be borne by the party that incurred the costs.

13. **NOTICES**

13.1 A notice given under this agreement:

13.1.1 shall be sent for the attention of the person, and to the address specified in clause 13 (or such other address or person as each party may notify to the other in accordance with the provisions of clause 13); and

13.1.2 shall be:

13.1.2.1 delivered personally; or

13.1.2.2 sent by pre-paid first-class post or recorded delivery; or

13.1.2.3 (if the notice is to be served by post outside the country from which it is sent) sent by airmail.

13.2 Any notice to be given to or by CCC under this agreement is deemed to have been properly given if it is given to or by CCC's representatives named in clause 13.3.1.

13.3 The address for service of notice upon CCC (unless otherwise notified to WCC by notice in writing) is:

13.3.1 CCC's representative:

Address: Council House, Earl Street, Coventry CV1 5RR

For the attention of: Executive Director of Resources

13.4 The address for service of notice upon WCC (unless otherwise notified to CCC by notice in writing) is:

Address: [ ]

For the attention of: [ ]

13.5 A notice is deemed to have been received:

13.5.1 if delivered personally, at the time of delivery; or

13.5.2 in the case of pre-paid first class post or recorded delivery two Business Days from the date of posting; or

13.5.3 if deemed receipt under the previous paragraphs of clause 13.5 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of receipt.

13.6 To prove service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted.

14. **SEVERANCE**

14.1 If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

14.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

15. **AGREEMENT SURVIVES COMPLETION**

This agreement (other than obligations that have already been fully performed) remains in full force after Completion.

16. **THIRD PARTY RIGHTS**

This agreement and the documents referred to in it are made for the benefit of the parties and their successors and permitted assigns and save as otherwise provided herein (including clause 5.5) are not intended to benefit, or be enforceable by, anyone else.

17. **SUCCESSORS**

The rights and obligations of CCC and WCC under this agreement shall continue for the benefit of, and shall be binding on, their respective successors and assigns and in the case of individuals their respective estates.

18. **COUNTERPARTS**

This agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

19. **GOVERNING LAW AND JURISDICTION**

19.1 This agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.

19.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

**SCHEDULE 1****PARTICULARS OF THE COMPANY****The Company**

<b>Name:</b>	The Coventry and Solihull Waste Disposal Company Limited
<b>Registration number:</b>	02690488
<b>Registered office:</b>	The Waste to Energy Plant Bar Road Coventry West Midlands CV3 4AN
<b>Issued share capital</b>	£ divided into: [ ]
<b>Registered shareholders (and number of Sale Shares held):</b>	<ul style="list-style-type: none"><li>• The Council of the City of Coventry - 66 'A' Ordinary Shares [ ] 'A' Preference Shares 1 'C' Ordinary Share</li><li>• Solihull Metropolitan District Council - 33 'B' Ordinary Shares [ ] 'B' Preference Shares</li></ul>
<b>Directors</b>	Mr Richard Gray Mr Christopher Penson Mr Nigel Basford Mr Geoffrey Honeywell Mr David Wilson
<b>Secretary</b>	
<b>Debentures</b>	Seven registered



## SCHEDULE 2

### COMPLETION

#### Part 1. What CCC shall deliver to WCC at Completion

1. At Completion, CCC shall deliver or cause to be delivered to WCC the following documents and evidence:
  - 1.1 transfer of the 'C' Ordinary Share executed by CCC as registered holder in favour of WCC;
  - 1.2 the share certificate for the 'C' Ordinary Share in the name of the registered holder or an indemnity for any lost certificate;
  - 1.3 the waivers, consents and other documents required to enable WCC to be registered as the holder of the 'C' Ordinary Share;
  - 1.4 an irrevocable power of attorney in agreed form given by CCC in favour of WCC to enable the beneficiary (or its proxies) to exercise all voting and other rights attaching to the 'C' Ordinary Share before the transfer of the 'C' Ordinary Share is registered in the register of members of the Company;

**SCHEDULE 3  
WARRANTIES**

**1. POWER TO SELL**

- 1.1 CCC has all requisite power and authority to enter into and perform this agreement and the other documents referred to in it in accordance with their respective terms.
- 1.2 This agreement and the other documents referred to in it constitute (or shall constitute when executed) valid, legal and binding obligations on CCC in the terms of the agreement and such other documents.
- 1.3 Compliance with the terms of this agreement and the documents referred to in it shall not breach or constitute a default under any of the following:
  - 1.3.1 any agreement or instrument to which CCC is a party or by which it is bound; or
  - 1.3.2 any order, judgment, decree or other restriction applicable to CCC.

Signed by C. Forde  
for and on behalf of  
**THE COUNCIL OF THE CITY  
OF COVENTRY**

.....  
Authorised Signatory

Signed by  
for and on behalf of  
**WARWICKSHIRE COUNTY  
COUNCIL**

.....  
Authorised Signatory





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Appendix - 3c  
**Stock  
 Transfer Form**

Consideration Money    £35,000.00		Certificate lodged with Registrar  (For completion by the Registrar)	
Full name of undertaking	The Coventry and Solihull Waste Disposal Company Limited (Company number 02690488)		
Full description of security	£1.00 'C' Ordinary Shares		
Number or amount of shares, stock or other security and, in figures column only, number and denomination of units, if any.	One	Figures  1  (                  units of                  )	
Name(s) of registered holder(s) should be given in full; the address should be given where there is only one holder. If the transfer is not made by the registered holder(s), also write the name(s) and capacity (e.g. Executor(s)) of the person(s) making the transfer.	In the name(s) of  The Council of the City of Coventry Council House Earl Street Coventry CV1 5RR	Holding designation (if any)	
We hereby transfer the above security out of the name(s) aforesaid to the person(s) named:  Signature(s) of transferor(s)  1. ....  2. ....  3. ....  4. .... <b>Bodies corporate may execute under their common seal or otherwise in accordance with applicable statutory requirements.</b>		Stamp of selling broker(s) or agent(s), if any, acting for the transferor(s).	
Date			
Full name(s) and full postal address(es) (including County or, if applicable, postcode) of the person(s) to whom the security is transferred.  Please state title, if any, or whether Mr, Mrs, Ms or Miss.	Warwickshire County Council		Holding designation (if any)
I/We request that such entries be made in the Register of Shareholders as are necessary to give effect to this transfer.			
Stamp of buying broker(s) (if any)		Stamp or name and address of person lodging this form (if other than buying broker(s))	

**FORM OF CERTIFICATE REQUIRED - TRANSFERS NOT CHARGEABLE WITH  
AD VALOREM STAMP DUTY**

**Complete Certificate 1 if:**

the consideration you give for the shares is £1,000 or less and the transfer is not part of a larger transaction or series of transactions (as referred to in Certificate 1).

**Complete Certificate 2 if:**

the transfer is otherwise exempt from Stamp Duty and you are not claiming a relief,  
or  
the consideration given is not chargeable consideration.

**Certificate 1**

*\* Please delete  
as appropriate*

I/We\* certify that the transaction effected by this instrument does not form part of a larger transaction or series of transactions in respect of which the amount or value, or aggregate amount or value, of the consideration exceeds £1,000.

*\*\* Delete second  
sentence if certificate  
is given by transferor*

I/We\* confirm that I/we\* have been authorised by the transferor to sign this certificate and that I/we\* am/are\* aware of all the facts of the transaction.\*\*

Signature(s)	Description ("Transferor", "Solicitor", etc.)
.....	.....
.....	.....
.....	.....

Date .....

**Certificate 2**

*\* Please delete  
as appropriate*

I/We\* certify that the transfer effected by this instrument is otherwise exempt from *ad valorem* Stamp Duty without a claim for relief being made or that no chargeable consideration is given for the transfer for the purpose of Stamp Duty.

*\*\* Delete second  
sentence if certificate  
is given by transferor*

I/We\* confirm that I/we\* have been authorised by the transferor to sign this certificate and that I/we\* am/are\* aware of all the facts of the transaction.\*\*

Signature(s)	Description ("Transferor", "Solicitor", etc.)
.....	.....
.....	.....
.....	.....

Date .....

**NOTES**

- (1) You don't need to send this form to HM Revenue & Customs (HMRC) if you have completed either Certificate 1 or 2 or the consideration for the transfer is nil (in which case you must write 'nil' in the 'Consideration Money' box on the front of the form). In these situations send the form straight to the company or its registrar.
- (2) In all other cases - including where relief from Stamp Duty is claimed - send the transfer form to HMRC to be stamped.
- (3) Information on Stamp Duty reliefs and exemptions and how to claim them can be found on the HMRC website at [hmrc.gov.uk/sd](http://hmrc.gov.uk/sd)



## Appendix 3d

**THIS POWER OF ATTORNEY** is made on the

2014

**BY**

**THE COUNCIL OF THE CITY OF COVENTRY** of Council House, Earl Street, Coventry CV1 5RR (**the "Appointor"**).

**WE HEREBY IRREVOCABLY APPOINT WARWICKSHIRE COUNTY COUNCIL ("WCC")** of [ ] to be our attorney ("**Attorney**") in respect of our 1 'C' Ordinary Share of £1.00 each in the capital of The Coventry and Solihull Waste Disposal Company Limited a company registered in England and Wales with number 02690488 ("**the Share**") to be sold by us to WCC pursuant to the sale and purchase agreement of even date between (1) the Appointor and (2) WCC ("**the Agreement**").

For so long as we remain the registered holder of any of the Shares, the Attorney shall:

- a) hold the Share and the dividends and other distributions of profits or surplus or other assets declared, after completion and all rights arising out of or in connection with it and any successors in title to the Appointor for and on behalf of the Attorney's own benefit as beneficial owner and proposed (but currently unregistered transferee); and
- b) deal with, transfer and dispose of the Share in accordance with the Agreement.

We appoint the Attorney as our lawful attorney for the purpose of receiving notices of and attending and voting in relation to the Share at all meetings of the members of the Company from the date hereof until all the Share has been transferred pursuant to the Agreement.

We hereby irrevocably and unconditionally authorise:

- i) The Coventry and Solihull Waste Disposal Company Limited to send any notices or other communications in respect of our holding of the Share to the Attorney; and
- ii) our Attorney to complete in such manner as it thinks fit and to return proxy forms, consents to short notice and any other document required to be signed by us in our capacity as registered holder of the Share, and
- iii) this power of attorney (which is given by way of security to secure the performance of obligations owed by us to WCC pursuant to the terms of the Agreement) shall be irrevocable, but shall expire on whichever is the earlier of [date] and the date on which the attorney is entered in the register of members of the Company as holder of the Share

The Attorney may delegate one or more of the powers conferred on the Attorney by this Power of Attorney to an officer or officers appointed for that purpose by the board of directors of the Attorney, by resolution or otherwise.

**WE HEREBY UNDERTAKE** to ratify whatever our Attorney may lawfully do or purport to do or cause to be done in our name or on our behalf by virtue of this Power of Attorney.

This Power of Attorney (and any dispute, claim or matter of whatever nature arising out of or in any way relating to this Power of Attorney or its formation) shall be governed by and construed in accordance with the laws of England and Wales.

## Appendix 3d

We and the Attorney irrevocably submit to the exclusive jurisdiction of the courts of England and Wales over any claim, dispute or matter arising under or in connection with this Power of Attorney.

The Common Seal of **THE COUNCIL OF THE CITY OF COVENTRY** was hereunto affixed in the presence of:-

.....  
Authorised Signatory

PowerofAttorney-14-rl



## Public report Cabinet

Cabinet  
Council

8<sup>th</sup> July 2014  
15<sup>th</sup> July 2014

**Name of Cabinet Member:**

Cabinet Member (Children and Young People) – Councillor Ruane  
Cabinet Member (Strategic Finance and Resources) – Councillor Gannon

**Director Approving Submission of the report:**

Executive Director, Resources

**Ward(s) affected:**

None

**Title:**

Establishment of a Cabinet Committee – Children's Services

**Is this a key decision?**

No

**Executive Summary:**

During 2013/14 the Council and its partners received a Report into the Safeguarding Service which identified a number of areas where improvements were required in order to prevent a similar situation occurring in the future. In addition, the Council was subject to an Ofsted inspection which highlighted a number of additional areas of concern within Children's Services.

To help address the issues raised in the Safeguarding and Ofsted reports, when setting its budget for 2014/15, the Council identified additional funding for the People Directorate to support improvements within Children's Services.

When considering the budget proposals, the need for the close monitoring of spending against this additional funding by the Leader, Deputy Leader and relevant Cabinet Members was highlighted. In order to provide that monitoring and make any further specific recommendations arising from the monitoring of the position, it is recommended that a Cabinet Committee – Children's Services be established.

**Recommendations:**

The Cabinet is recommended to:-

1. Endorse the establishment of the 'Children's Services Cabinet Committee', together with its terms of reference and membership.

2. Endorse the delegation of authority to the Children's Services Cabinet Committee to receive and approve reports in relation to Children's Services arising from the additional funding made available and to make further specific recommendations to the appropriate bodies as required.
3. Instruct the Assistant Director Legal and Democratic Services and Monitoring Officer to make the consequential changes needed to the Constitution to include the Children's Services Cabinet Committee's terms of reference and membership.
4. Recommend that Council note the establishment of the Children's Services Cabinet Committee, as a requirement of the Constitution and outlined in paragraph 5.2 of the report.

The Council is recommended to:

1. Note the establishment of the Children's Services Cabinet Committee, as required under the Council's Constitution and outlined in paragraph 5.2 of the report.

**List of Appendices included:**

Appendix 1 – Terms of Reference

**Background papers:**

None

**Other useful documents:**

2014/15 Budget Report - [Report](#)

2013/14 Budgetary Control Period 8 - [Report](#)

2013/14 Outturn - [Report](#)

The Safeguarding Report - [Report](#)

The Ofsted Report - [Report](#)

**Has it been or will it be considered by Scrutiny?**

No

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

No

**Will this report go to Council?**

Yes – 15<sup>th</sup> July 2014

**1. Context (or background)**

- 1.1 During 2013/14 the Council and its partners received a report into the safeguarding service following the tragic death of Daniel Pelka, which identified a number of areas where improvements were required in order to prevent a similar situation occurring in the future.
- 1.2 In addition, the Council was subject to an Ofsted inspection which highlighted a number of additional areas of concern within Children’s Services.
- 1.3 When considering the budget proposals at the Council meeting on 25<sup>th</sup> February 2014, the need for the close monitoring of spending against approved additional funding by the Leader, Deputy Leader and appropriate Cabinet Members, specifically the Children’s Services element, was highlighted.

**2. Options considered and recommended proposal**

- 2.1 In order to provide the monitoring identified at the Council meeting, and make any further specific recommendations arising from the monitoring of the position, it is recommended that a Children’s Services Cabinet Committee be established.
- 2.2 The Children’s Services Cabinet Committee will be able to focus specifically on the work being undertaken within the Children’s Service to improve the service provision and how the additional money allocated is being spent.
- 2.3 With this focus, the Children’s Services Cabinet Committee will be decision making. The Committee will be able to approve spending up to £1.5m within the additional funding , and make further specific recommendations to appropriate bodies regarding the work being undertaken with the funding All other aspects of the Cabinet Member (Children and Young People)’s portfolio responsibilities will remain unaffected by these proposals.
- 2.4 The alternative option would be to include monitoring of the Children’s Service within the regular financial reporting process. This option is not recommended as this would not provide such a detailed focus on the position of the funding within the Children’s Service. In addition, it would not fulfil the political commitment given at the Council Meeting on 24<sup>th</sup> February 2014 in relation to the monitoring of spend against this additional funding by the Leader, Deputy Leader and relevant Cabinet Members.

**3. Results of consultation undertaken**

- 3.1 There has been no specific consultation on the proposals within the report.

**4. Timetable for implementing this decision**

- 4.1 Once the proposals have been approved, arrangements will be made for meetings of the Cabinet Committee to take place on a bi-monthly basis.

## **5. Comments from Executive Director, Resources**

### **5.1 Financial implications**

Although there are no specific financial implications arising from the proposals within this report, it is essential that careful monitoring of the financial position within Children's Services is undertaken. The proposals within this report will enable members to focus on that specific element of the People Directorate's budget and ensure that any spending is appropriate and achieves the desired aims.

The additional resource of £5.6M for the People Directorate is to fund existing pressures as set out in the budget setting report in February (appendix 2). There is also additional resource from reserves for the implementation of the OFSTED Action Plan as set out in the 2013/14 outturn report, which is also earmarked. Any decisions to vary usage will need to be looked at in the context of the overall budgetary control position of the directorate.

### **5.2 Legal implications**

Section 9E(2) of the Local Government Act 2000 provides that the senior executive member of a council operating a leader and cabinet system may arrange for the discharge of executive functions in a variety of prescribed ways. In particular, the Leader of the Council may arrange for the discharge of functions by a committee of the executive. Whether or not to establish a Cabinet Committee for Children's Services is therefore a matter for the Leader to determine.

Under the provisions of the Council's Constitution, the Leader must report any alterations to arrangements for the allocation of executive functions to the next available meeting of full Council. The report is for information only.

## **6. Other implications**

### **6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?**

The proposals within the report will contribute towards the Council's key objectives of ensuring that children and young people within the City remain safe and that value for money is achieved, whilst improving service provision to the most vulnerable in the City.

### **6.2 How is risk being managed?**

The financial situation is regularly monitored and any risks identified. The establishment of the Children's Services Cabinet Committee will provide further resilience to enable mitigation to be undertaken in respect of any risks that may be identified.

### **6.3 What is the impact on the organisation?**

The impact on the organisation will be primarily in respect of officer time in preparing for and servicing the meetings. This will be managed within existing resources.

### **6.4 Equalities / EIA**

There has been no EIA undertaken in respect of the proposal to establish the Children's Services Cabinet Committee.

**6.5 Implications for (or impact on) the environment**

There is no environmental impact.

**6.6 Implications for partner organisations?**

There is no direct impact on partner organisations arising from the establishment of the Children’s Services Cabinet Committee.

**Report author(s):**

**Name and job title:**

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**Directorate:**

Resources

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<b>Contributors:</b>				
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Hugh Peacocke	Governance Services Team Manager	Resources	17/6/14	17/6/14
Adrian West	Members and Elections Team Manager	Resources	17/6/14	17/6/14
Other members				

<b>Names of approvers for submission:</b> (officers and members)				
Finance: Paul Jennings	Finance Manager (Corporate Finance)	Resources	18/6/14	18/6/14
Rachael Sugars	Finance Manager	Resources	18/6/14	18/6/14
Legal: Carol Bradford	Locum Legal Officer	Resources	18/6/14	18/6/14
Director: Chris West	Executive Director	Resources		
Members: Councillor Ruane	Cabinet Member (Children and Young People)		17/6/14	17/6/14
Councillor Gannon	Cabinet Member (Strategic Finance and Resources)		17/6/14	17/6/14
Councillor Townshend	Cabinet Member (Policing and Equalities)		18/6/14	18/6/14

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## **Terms of Reference**

### **Background:**

The Children's Services Cabinet Committee has been established to provide a political focus and accountability for the improvement within the Children's Services, in particular, service delivery arising from the additional money allocated to the People Directorate for the purpose of improvements within the Children's Services section and identify further resources if required.

### **Status of the Committee:**

The status of the Committee will be as a Cabinet Committee.

### **Purpose of the Committee :**

To ensure that best value is achieved through the spending of additional funding to improve Children's Services.

### **Scope of the Committee:**

- To approve spending up to £1.5m within the additional funding allocated by Council to support improvements within the Children's Service.
- To monitor, review and make any further specific recommendations in respect of the additional funding provided to enable improvements within Children's Services to be undertaken.
- To recommend to Cabinet Member, Cabinet and Council any further specific amendments regarding the funding of Children's Services.
- To ensure the funding of improvements within Children's Services and the actions taken to improve the service are transparent, open and fair.

### **Membership:**

The membership of the committee is proposed to be:-

- Cabinet Member (Strategic Finance & Resources) (Chair)
- Cabinet Member (Children and Young People) (Deputy Chair)
- Leader of the Council
- Deputy Leader of the Council

By invitation as Non-voting members:-

- Shadow Cabinet Member (Children and Young People)
- Shadow Cabinet Member (Strategic Finance and Resources)
- Leader of the Opposition
- Deputy Leader of the Opposition
- Chair of the Education and Children's Services Scrutiny Board (2)

*Advisors to the Committee:*

- Executive Directors, Resources and People
- Assistant Directors, Resources and People
- Judge Hamilton

**Quorum:**

The Quorum for the Committee will be three. Committee members are able to nominate alternative Cabinet Members to attend if substitutes are required.

**Decision Making:**

Decisions will be decided by a majority vote with the Chair having the casting vote.

**Frequency of Meetings:**

The Committee will meet bi-monthly or more frequently as is needed.



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Council

15 July 2014

**Name of Cabinet Member:**

Policing and Equalities, Councillor Townshend

**Director Approving Submission of the report:**

Assistant Director for Legal & Democratic Services and Monitoring Officer

**Ward(s) affected: All**

**Title:**

**Ricoh Arena Judicial Review**

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**Is this a key decision?**

No.

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**Executive Summary:**

The Judicial Review brought by Sky Blues Sports & Leisure Limited (and others) against the City Council and Arena Coventry Limited and the Alan Edwards Higgs Charity (as interested parties) was heard in the High Court in Birmingham on 10 – 12 June 2014. Mr Justice Hickinbottom handed down his judgment on 30 June 2014, dismissing the Claimant's application in its entirety. The Claimants have indicated that they will seek permission to appeal the decision. This report seeks authorisation from Members for Officers to defend an appeal in the event permission is granted.

**Recommendations:**

Council is recommended to authorise the Assistant Director for Legal and Democratic Services, and Assistant Director Financial & Section 151 Officer to:-

- (1) defend on behalf of the City Council any application submitted to Mr Justice Hickinbottom of the High Court for permission to appeal to the Court of Appeal
- (2) defend on behalf of the City Council any application to the Court of Appeal for permission to appeal if leave to appeal is refused by Mr Justice Hickinbottom

- (3) defend the appeal on behalf of the Council if permission to appeal to the Court of Appeal is granted
- (4) to make any consequential applications considered necessary as a result of recommendations (1), (2) and (3)
- (5) update the ACL Shareholder Panel as appropriate on developments as to any appeal and estimates on future costs to be incurred

**List of Appendices included:**

Judgment of Mr Justice Hickinbottom of the High Court dated 30 June 2014

**Other useful background papers:**

Judgment of Mr Justice Hickinbottom of the High Court dated 30 June 2014

**Has it been or will it be considered by Scrutiny?**

No

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

No

**Will this report go to Council?**

Yes, 15<sup>th</sup> July 2014

**1. Context (or background)**

1.1 In April 2013, Sky Blues Sports and Leisure Limited and two other parties within the Sisu Group (the Claimants) commenced Judicial Review proceedings against Coventry City Council as the main Defendant and Arena Coventry Limited (ACL) and the Alan Edward Higgs Charity (AEHC) were interested parties. The Claimants sought to challenge the decision by the City Council on 15 January 2013 to grant a £14.4m loan to ACL in order to protect its interest in ACL and the Ricoh Arena.

1.2 The grounds of challenge to that decision were as follows:

Ground 1 A private investor in the shoes of the Council would not have entered into the transaction on the terms agreed by the Council (or, indeed, on any terms) and; consequently, the transaction was State Aid and not notified to the European Commission in advance. It was therefore unlawful as contrary to EU law;

Ground 2 The decision to make the loan was unlawful as being made in bad faith and/or for an improper purpose, namely gaining control of the Club and forcing a sale to a preferred third party;

Ground 3 The decision to make the loan was outside the discretionary powers of local authorities in the conduct of their financial affairs;

Ground 4 The decision to make the loan was irrational, in that a) the Council took account an irrelevant consideration, namely “the partisan views of the Council’s [then] own Leader and senior officers, whose objective has been to oust the Claimants from the club” and b) the decision to make the loan was legally irrational or perverse, in the sense that there is simply no rational explanation for the Council’s decision to make this loan on the terms that it did and no reasonable authority could have entered into such a transaction.

1.3 At the hearing in June, the Claimants abandoned grounds 2 and 3 referred to above. They sought to add an additional ground ostensibly under the umbrella of ground 4 above, namely that in coming to its decision to make the loan, the Council failed to take into account several material considerations because Officers failed to bring them to the attention of Members.

1.4 The Judgment was handed down on Monday 30 June and a copy is attached at Appendix 1. In relation to State aid, Mr Justice Hickinbottom could not say that the loan extended by the Council to ACL would not have been entered into, on the terms agreed, by any rational private market operator in the circumstances of the case. In his judgment, the transaction fell within the wide ambit extended to public authorities in this area. It was therefore not State aid.

1.5 Mr Justice Hickinbottom refused permission for the Claimants to proceed with the new ground referred to at paragraph 1.3 above because did not consider that there was any arguable force in the Claimants’ arguments on this point. He commended the Officer report considered by Members for being focused and succinct.

1.6 The Claimants arguments that the Council’s decision was irrational could not survive the findings in relation to the other matters, particularly in relation to State aid. Therefore, the application for Judicial Review was refused.

1.7 Following the Judgment the Claimants have publicly indicated to the media that they will be applying for permission/leave to appeal the Judgment. Mr Justice Hickinbottom directed that such an application should be made by 4pm on Monday 7<sup>th</sup> July 2014 and that any response to the application by the Defendants and/or interested parties should be filed by 4pm on 14<sup>th</sup> July 2014.

## **2. Options considered and recommended proposal**

**2.1 Not to oppose the Claimants' application for leave and any subsequent appeal should such an application(s) be made.** This is not the recommended option. In the absence of any submissions by the Council, the Court would still need to consider the Claimants' applications. Therefore it is essential that the Court has before it all of the arguments that are necessary in order for the Council to continue to protect its interest in ACL. Failure to defend any appeal may add weight to the Claimants' case.

**2.2 Oppose the application for leave and defend any subsequent appeal (recommended option).** The Judgment is very robust and Officers remain confident of the Council's position. It is important that the Council continues to protect its investment in ACL and the Ricoh Arena by continuing to defend any applications made by the Claimants in the strongest possible terms. The recommendations seek delegated authority to the Assistant Director of Legal & Democratic Services and the Assistant Director Finance who is also the Section 151 Officer in this particular matter.

## **3. Results of consultation undertaken**

3.1 It is not necessary for the Council to conduct a consultation in respect of this matter.

## **4. Timetable for implementing this decision**

4.1 The Claimants have until 4pm on Monday 7<sup>th</sup> July to file their application for permission to appeal the Judgment. The Council have until 4pm on 14<sup>th</sup> July 2014. Assuming an application for leave is received, the Council will ensure that the directions are complied with. It is not clear how long it will take for the Judge to determine the Claimants' application. The Judge has indicated that if the application is refused, the Claimants will have 14 days from the service of that decision to submit an application for permission to appeal to the Court of Appeal. The matter will then be considered by a single Judge in the Court of Appeal on its papers. If permission is refused at that stage, the Claimants have 7 days to apply for permission to be considered at a hearing by three judges.

## **5. Comments from Executive Director, Resources**

### **5.1 Financial implications**

It is currently difficult to estimate how much it will cost to defend an appeal at this stage but the costs of defending an appeal will need to be met from existing budgets. The Council has incurred substantial legal costs to date in the region of £500,000.00 and will be seeking recoupment of as much of those costs as possible.

### **5.2 Legal implications**

Should an application(s) be made to appeal the decision, the Council will instruct Leading and Junior Counsel to provide advice, guidance and support to the Council to submit its defence and any consequential applications.

## **6. Other implications**

### **6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?**

The recommendations will protect the Council's commercial investment in Arena Coventry Limited.

### **6.2 How is risk being managed?**

The Council is safeguarding its interest in ACL by defending any appeal(s) to the High Court decision. The key risk is that the Claimants' application for appeal is granted and the Council is potentially liable for the Claimants' costs. Alternatively, the Claimants application may fail but the Council does not recover its costs in full. These risks will be managed through reviews of the Council's case and by having regard to advice from the legal team.

### **6.3 What is the impact on the organisation?**

None

### **6.4 Equalities / EIA**

No Public Sector Equality Duty implications arise from the content/recommendations in this report.

### **6.5 Implications for (or impact on) the environment**

None

### **6.6 Implications for partner organisations?**

It will be for ACL and AEHC as interested parties in these proceedings to determine whether they intend to take an active role in defending an appeal by the Claimants.

**Report author(s):**

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**Directorate: Resources**

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Christine Forde	AD Legal Services & Monitoring Officer	Resources	03/07/14	03/07/14
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Members: Name	Cllr Phil Townshend		07/07/14	07/07/14

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Neutral Citation Number: [2014] EWHC 2089 (Admin)

Case No: CO/4432/2013

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT IN BIRMINGHAM**

Birmingham Civil Justice Centre  
Priory Courts, 33 Bull Street  
Birmingham

Date: 30/06/14

Before :

**MR JUSTICE HICKINBOTTOM**

Between :

THE QUEEN on the application of  
(1) SKY BLUE SPORTS & LEISURE LIMITED  
(2) ARVO MASTER FUND LIMITED  
(3) COVENTRY CITY FOOTBALL CLUB  
(HOLDINGS) LIMITED

**Claimants**

- and -

COVENTRY CITY COUNCIL

**Defendant**

- and -

(1) ARENA COVENTRY LIMITED  
(2) THE ALAN EDWARD HIGGS CHARITY

**Interested  
Parties**

-----  
Rhodri Thompson QC, Christopher Brown and Nicholas Gibson (instructed by Speechly  
Bircham LLP) for the Claimants

James Goudie QC, Fenella Morris QC and Ronnie Dennis (instructed by the Solicitor,  
Coventry City Council) for the Defendant

Conor Quigley QC (instructed by Wragge Lawrence Graham & Co LLP)  
for the First Interested Party

The Second Interested Party not being represented or appearing

Hearing dates: 10-12 June 2014  
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## **Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE HICKINBOTTOM

**Mr Justice Hickinbottom :**

**Introduction**

1. The Claimants are all members of the SISU group of companies. Between them, they own Coventry City Football Club, which, from 2005 to 2013, played its home games at the Ricoh Arena in Coventry (“the Arena”) under a sublease and licence from the First Interested Party (“ACL”), the leaseholder of the ground. The Defendant (“the Council”) owns the freehold of the Arena, and is the ultimate owner of 50% of ACL.
2. On 15 January 2013, the Council resolved to lend £14.4m to ACL. In this claim, the Claimants seek to challenge the legality of that decision, on the grounds that (i) contrary to European Union (“EU”) law, the loan amounted to State aid which was not notified to the European Commission, and (ii) contrary to domestic law, the Council failed to take into account several material considerations and, in any event, the decision was irrational in the sense that no authority could reasonably have come to it.
3. The Claimants seek an order quashing the decision, and that the Council recovers the loan and commercial interest from ACL. The Claimants also claim damages.
4. Before me, Rhodri Thompson QC with Christopher Brown and Nicholas Gibson appeared for the Claimants; James Goudie QC with Fenella Morris QC and Ronnie Dennis for the Council; and Conor Quigley QC for ACL. At the outset, I thank them for their full and helpful submissions.

**The Factual Background**

5. Coventry City Football Club (“the Football Club”) was founded in 1883. From 1899, its home ground was at Highfield Road, Coventry. In 1917, it became incorporated; and, two years later, it was elected to the Football League. Its most successful period on the pitch was from 1967, when it was in the top flight of English football, being a founder member of the Premiership in 1992. The Club won the FA Cup in 1987.
6. No doubt buoyed by this lengthy period of success, in the late 1990s the Football Club looked to move from Highfield Road to a new stadium. In 1999, it obtained planning permission to develop a brownfield site – a former gas works – in Foleshill, North East Coventry. In 2002, the Council decided to adopt the development as part of its regeneration plans for that area, and it purchased the freehold of the site. It was intended that there would be a joint venture between the Council and the Football Club, owned 50%/50%; and the Council would lease the ground to the joint venture which would then grant a licence to the Football Club to occupy it as its home ground. ACL was to be the corporate vehicle for the joint venture. It was proposed that the new stadium would be a multi-purpose arena that, in addition to being the home of the Football Club, would stage a range of sporting and other events including concerts, with facilities including an exhibition hall and conference suites, hotel, casino and health club. As owners of half of ACL, the Football Club would have the benefit of 50% of the revenues derived from the project, including its own licence fee.

7. The Football Club was owned by Coventry City Football Club Limited (“CCFC”), a wholly-owned subsidiary of the Third Defendant (“CCFCH”), which invested in ACL through its own wholly-owned subsidiary, Football Investors Limited (“FIL”).
8. In 2001, the Club was relegated to the second flight of English football (the Championship) for the first time in 34 years. On 19 December 2003, following the resultant loss of football revenue coupled with the increasing development costs of the new stadium, CCFC sold its interest in FIL to a local charitable trust, the Second Interested Party (“the Higgs Charity”). The sale agreement had an option, under which CCFC could buy back the shares for an amount to be calculated under a formula based on the sale price and notional interest but with a minimum price of £6.5m. Any sale by the Higgs Charity of its shares in FIL (and, hence, its share in ACL) under the option agreement – or, indeed, otherwise – required the consent of the Council. The result of that sale to the Higgs Charity was that the Football Club had no direct interest in the new ground, because, with the sale of its shareholding, CCFC of course sold its right to Arena revenues; but there was the hope and expectation that the Football Club would repurchase the 50% share of ACL from the Charity when it was able to do so.
9. Nevertheless, despite the decline in fortunes on the pitch and the consequent adverse impact on the Football Club’s financial position, the stadium development went ahead. It did so on the following basis:
  - i) The Council invested in ACL through a wholly-owned company, North Coventry Holdings Limited.
  - ii) On 19 December 2003 (the same day as it sold its interest in FIL to the Higgs Charity), CCFC entered into a development agreement which effectively committed it to enter into a lease, licence and rent deposit deed in respect of the new ground; and the Council leased the site to Coventry North Regeneration Limited (“CNR”) (which was wholly owned by North Coventry Holdings Limited and thus ultimately owned by the Council) to enable that company to build the Arena. The Council provided a £21m short-term loan to CNR for this purpose, on commercial terms. In the lease, the Council had extensive protection in the event that a subsequent tenant failed, e.g. the right of re-entry if the tenant was put into administration or appeared unable to pay its debts (clause 4.1.4).
  - iii) ACL took a 50 year sublease of the Arena from CNR, with the option of paying a £1.9m per annum rent or a premium of £21m. In addition, “super rent” was payable, based on ACL’s net profit before tax, of 10% on profits over £3.75m rising to 50% of profits over £7.75m. In clause 3.18, CNR was essentially given a wide right of veto over assignments of the lease.
  - iv) On 13 February 2004, CCFC and ACL entered into a rent deposit deed, requiring CCFC (upon completion of the licence to use the ground and the sublease to it of the offices etc at the stadium) to pay and keep £500,000 in an escrow account in ACL’s name as security for both rent and licence fees (which, in this judgment, I will refer to together simply as “rent”).

- v) The Arena was practically completed on 19 August 2005, and the Football Club played its home games at the new ground from the start of the 2005-6 season.
- vi) On 2 February 2006, ACL secured finance from Clydesdale Bank plc trading as Yorkshire Bank (“the Bank”), in fact drawn down in June 2006. The loan was of £22m, repayable over 20 years; and was secured by fixed and floating charges over all of the assets of ACL, the main asset being the leasehold interest in the Arena. As a condition of drawdown, clause 5.2 of the facility letter required a valuation report from C B Richard Ellis (“Richard Ellis”) of current market value of £37m; and thereafter valuations at regular intervals on various bases, e.g. a valuation of £31m after 20 years, and of £26.9m after 5 years on the basis that the Football Club had ceased to trade. Clause 10 of the loan agreement gave the Bank power to demand repayment of all sums due on any defaulting event. Clause 12.3 allowed the Bank to revalue the security property every three years; and clause 12.5 provided:

“If we [i.e. the Bank] reasonably conclude that the security which we hold for the Facility is no longer sufficient to cover our exposure in respect of the Facility we reserve the right on reasonable notice to require security and/or a reduction in the balance outstanding under the Facility.”

The Bank also (a) had the right to transfer the debt, and to approve any arrangements under the sublease and licence with regard to (e.g.) rent and licence fee; and (b) obtained £250,000 guarantees from each of two directors of CCFC.

- vii) The loan was used to pay a £21m premium to CNR in respect of the lease. CNR used that money to repay its loan from the Council. CNR assigned its leasehold interests to a new company, Arena Coventry (2006) Limited (“ACL 2006”), a wholly-owned subsidiary of ACL. (In this judgment, I shall use the term “ACL” to refer to ACL and ACL 2006, unless the distinction between the two companies is material.)
- viii) The licence and sublease between ACL and CCFC were formally completed on 29 March 2006, and the payment into the escrow account was made.
- ix) ACL’s loan from the Bank of course had to be serviced. The rate was variable, namely the Bank’s base rate plus 1.25%. In addition, in a separate agreement, ACL had hedged changes in interest rates. Initially, the repayments to the Bank were approximately £450,000 per quarter, or £1.8m per year. By 2012, they had dropped to about £1.6m per year. One of ACL’s main sources of revenue was its rent from the Football Club, about £1.3m per year. That rent was fixed, and was not (for example) dependent upon the Club playing its football at any particular level.
- x) ACL had five directors; two nominated by the Council (eventually, Mr Martin Reeves (the Council’s Chief Executive) and Mr Chris West (its Director of Finance and Legal Services)), two nominated by the Higgs Charity (Mr Paul

Harris (a Trustee of the Higgs Charity) and Mr Peter Knatchbull-Hugessen (the Clerk to the Trustees)), and an independent Chairman.

10. The legal mortgage between ACL and the Bank included the following terms:
  - i) The Bank was entitled to transfer the benefit of the mortgage to any person at any time (clause 12).
  - ii) In the event of “Customer Obligations” (which included any sum of money: clause 1.1) becoming due and payable, then the Bank had step-in rights. It was entitled to appoint a receiver (clause 7.3.1) or exercise any of specified powers (clause 7.3.2), including assuming control of ACL’s business and property (i.e. ACL’s interest in the Arena), and taking possession of and even selling that property (clause 8.2).

Materially similar clauses appeared in the respective debentures with the Bank.

### **SISU’s Involvement with the Football Club**

11. By early 2007, the Football Club was in a poor and worsening financial state, and faced possible administration. It entered into negotiations with a number of potential investors including the SISU group of companies (“SISU”), which manages hedge and private equity funds. On 14 December 2007, the First Claimant, a SISU company, reached an agreement to purchase the entire share capital of CCFCH, which was completed in 2008. In 2011, the Second Claimant (“ARVO”), another SISU company, lent funds to the Football Club in return for security over the Club’s assets and a minority shareholding. SISU, of course, bought the Football Club as a commercial investment.
12. At the time of the acquisition:
  - i) SISU were looking to obtain an interest in the Arena. Indeed, an early approach appears to have been to purchase a majority shareholding in ACL. Their primary plan to obtain an interest in the Arena was to acquire the Higgs Charity interest in ACL, but they were unable to do so that stage.
  - ii) As Mr Goudie put it, SISU bought into the Football Club with their eyes wide open: they were well aware of that company’s legal obligations to ACL, notably in relation to rent, which were no doubt reflected in the purchase terms including price. SISU and ACL signed Cooperation Agreement Heads of Terms on 26 November 2007, which emphasised that, although, following the acquisition of the Football Club by SISU all agreements between the Football Club and ACL (except the Licence Agreement) would be reviewed, absent agreed changes, “the primacy of the existing agreements will remain”.
13. I have indicated that, in 2006, Richard Ellis had valued the Arena at £37m. On 18 August 2011, it valued the Arena again, as at 31 March 2011, at £19.6m. At that time, in addition to the £1.3m rent from CCFC, the Arena generated the following annual revenues: £1.425m plus profit share from the catering and management services contractor, Compass Contract Service (UK) Limited (“Compass”), and £880,000 from naming rights. The casino was also due to bring in an income, rising

from nil in year 5 to £200,000 in year 10. ACL had made a profit in every financial year since the opening of the Arena: 2006-7, £0.87m, 2007-8 £0.1m, 2008-9 £3.22m, 2009-10 £0.55m, 2010-11 £0.47m and 2011-12 £1.09m. However, that valuation noted, under the heading “Threats”:

“...

- A significant amount of the revenue is secured against [CCFC], a weak covenant with a history of financial difficulties;
- The income from the Compass Agreement (particularly the profit share) is partly reliant on the performance of CCFC. A demotion to a lower league might reduce visitor numbers to the Arena, threatening revenues from catering and event management activities;

...”.

This report therefore noted the financial dependence of ACL on the performance of CCFC, including its continued willingness and ability to pay the contractual rent. On the basis of that valuation, Richard Ellis later performed a sensitivity analysis, which indicated that, if the anchor tenant rent was nil, the value of the lease would be only £6.4m; at £200,000 rent, £8.6m; and, at £400,000 rent, £10.8m.

14. For the Football Club, things continued to deteriorate. In the Championship, they made losses of £4m-6m per year. In the season 2011-12, the club incurred losses of £5m, expenditure being £15.4m (including £6.1m on players’ wages) compared with revenue of only £10.4m. Furthermore, by the spring of 2012, relegation to the third flight (Football League Division One) with effect from the start of the 2012-13 season loomed, and was confirmed in April 2012. Relegation meant significantly reduced television revenue, with total income reducing to about £5m.
15. The Club’s position was further worsened by the Football League’s introduction of Financial Fair Play rules, in the form of a spending constraint framework known as the Salary Cost Management Protocol, which restricted wages to a percentage of turnover, for Division One 65% later reducing to 60%. “Turnover” is defined by the Football League as including match-day income, commercial income (such as sponsorship) and television revenue, and donations/equity injections by owners, but not loans to the club. The reduction in income as a result of relegation, coupled with the absence of any match-day revenues (because those had effectively been sold to the Higgs Charity in 2003) and the effect of the Financial Fair Play rules, meant that money available for paying players etc would, in any event, be very restricted.
16. The worsening performance of the Football Club – both on the pitch and financially – caused its owners to begin discussions for a fundamental restructure of the business of both the club and ACL from about October 2011. SISU were commercial investors, and were not prepared to put funds into the Football Club without a plan for a return on the substantial investment they had made, which they estimated to have been about £40m. There were a number of strands to their approach, as follows:

- i) In pursuit of their wish to have some ownership of the Arena, SISU would purchase back the 50% share of ACL held by the Higgs Charity. SISU regarded obtaining an interest in the Arena, and hence the revenues from the Arena, as crucial.
  - ii) SISU would discharge the whole of the existing bank debt, by purchase and write off.
  - iii) SISU and the Council would together work as partners in ACL to place the businesses on a sound commercial footing, by (a) increasing usage of the Arena in cooperation with a venue management company, AEG; (b) agreeing commercially sustainable terms for rent and match-day revenues; and (c) the Council extending the lease to ACL to 125 years.
17. There were therefore a number of meetings between representatives of ACL (including Mr Reeves, Mr West and Mr Harris) and of SISU (including CCFC). At these, all parties fully appreciated that the arrangements in place could not continue: CCFC was simply unable to comply with its contractual obligations to ACL (notably the rental payments), and SISU were not minded further to bankroll its subsidiary. At the meeting on 29 March 2012, Ms Joy Seppala (the Chief Executive Officer of SISU Capital Limited, a SISU company which acted as investment manager for certain funds held within the SISU group) “confirmed that [SISU] cannot keep funding ad infinitum to the football club without a resolution with ACL”, and she “added that if [the parties] cannot do a stadium deal, then SISU is finished funding the football club”. At these meetings, for its part, ACL pressed for a credible and sustainable business plan for the Football Club, which it considered CCFC had not provided.
18. At 2 April 2012, there were rent arrears owed by CCFC to ACL of about £89,000. From that date, CCFC went on a rent strike, making it tolerably clear that they did not intend to pay any further rent unless and until a restructuring agreement to their (and SISU’s) satisfaction was made. No further rent was in fact paid; although (i) from April 2012, ACL drew down moneys from the escrow account as and when rent fell due (see paragraph 24(ii) below), and (ii) from August 2012, CCFC agreed to pay ACL up to £10,000 per match in respect of match-day costs (which would have been covered by the rental payments, had they made them) without which ACL made clear they would not be allowed to open the ground for the match.
19. ACL were dependent upon the rental income from CCFC to enable it to make repayments of the Bank loan. Without the rent regularly being paid, as SISU well-knew, ACL would not be able to continue to make those repayments. In those circumstances (or if CCFC were to go into administration or, worse, liquidation, each of which SISU suggested they contemplated as possibilities), SISU and the Council, as well as ACL, knew that ACL would be at the mercy of the Bank or anyone who purchased the loan from the Bank.
20. CCFC’s rent strike thus provoked a financial crisis within ACL which, as 2012 progressed, increased in intensity.

### **The Reaction to the Crisis**

#### **Introduction**



21. ACL and the Council, appreciating how vulnerable ACL was as a result of CCFC's failure to meet its contractual commitments, adopted a two-pronged approach: ACL took formal steps to preserve its legal position, and enforce CCFC's legal obligations to pay the rent, whilst negotiations between the various parties continued.
22. These steps of course occurred over the same time period, and had considerable mutual impact. For example:
  - i) The longer the rent strike went on, the more distressed ACL's commercial position became; and the Bank (whilst continuing negotiations in respect of both loan restructuring and loan buy out) began taking their own steps to enforce their security.
  - ii) However, the worsening of ACL's financial position as a result of the rent not being paid by CCFC assisted in the negotiations to this extent; it provided an argument for use with the Bank to reduce the value of ACL and the loan debt, for the purposes of negotiating a loan buy-out.
  - iii) The Council became increasingly concerned that SISU wished to obtain an interest in (if not control over) ACL and thus the Arena, cheaply and at the Council's expense, by purchasing the Higgs Charity share of ACL and/or the whole or part of the Bank debt; and that SISU were deliberately distressing ACL to drive down the value and price of that share and that debt.
23. However, although it must be borne in mind that they were happening at the same time and with interplay, the following strands of activity can helpfully be considered in turn:
  - i) Formal steps taken by ACL to enforce CCFC's contractual obligation to pay rent, and by the Bank to enforce its security (see paragraphs 24-25 below).
  - ii) The 2 August 2012 Heads of Agreement (paragraphs 26-36).
  - iii) Negotiations with a view to SISU buying the Higgs Charity's share in ACL (paragraphs 37-45).
  - iv) Negotiations with a view to the Bank loan being restructured or purchased (paragraphs 46-66).
  - v) Negotiations in respect of the rent for the Arena (paragraphs 70-75).

#### Formal Enforcement Steps

24. So far as the formal steps taken by ACL were concerned:
  - i) The rent strike started on 2 April 2012. On 10 April, ACL's solicitors wrote a pre-action letter to CCFC, demanding payment of the outstanding rent, then amounting to just over £112,000.
  - ii) On 13 April, ACL withdrew the sum of the outstanding rent from the escrow account; and continued to do so as rent payments fell due, until, by August 2012, the escrow account was empty. These payments of course assisted ACL

with its cashflow, they were not “rent” and they did nothing to diminish CCFC’s liability to pay rent which continued.

- iii) On 9 May 2012, ACL filed a claim against CCFC in the High Court seeking payment of the rent arrears.
  - iv) On 13 August, ACL obtained judgment against CCFC for about £620,000. Enforcement was suspended for as long as CCFC restored the escrow account and kept it topped up; but, in the event, no further payment into that account was ever made.
  - v) On 5 December 2012, ACL served a statutory demand on CCFC requiring payment of £1.1m then owing in rent. The effect of that notice was that, if that sum was not paid within 21 days (i.e. by 26 December 2012) and SISU did not declare CCFC insolvent, ACL would be entitled to commence proceedings to wind up CCFC.
  - vi) Following the loan to ACL from the Council and the subsequent negotiations with SISU referred to below (paragraph 74), ACL applied to put CCFC into administration; and, in response, ARVO put CCFC into administration on 21 March 2013. The administrator sold the assets of the Football Club (including the “golden share” in the Football League, which entitles the holder to have a team in that league) to another SISU company, Otium Entertainment Group Limited. That company currently owns the Football Club. CCFC has now been put into liquidation, and CCFCH has been dissolved.
25. On 11 December 2012, the Bank served ACL with a reservation of rights letter under clause 12.5 of the facility letter (see paragraph 9(vi) above). As at that date, the outstanding balance on the loan was about £15.25m. The letter stated that, in the Bank’s opinion, the security for the loan was insufficient, the Bank relying on ACL’s own valuation of £7m-9m which was deployed at a meeting with the Bank on 20 September 2012 at which the Council was attempting to purchase the debt (see paragraph 55 below). In accordance with clause 12.5 of the facility letter, the Bank required ACL to provide additional security and/or reduce the balance of the debt to the Bank’s satisfaction within 7 days, i.e. by 18 December 2012. On 21 December, no additional security or reduction in debt having been effected, the Bank served a default notice.

#### Negotiations: Heads of Terms

26. So far as negotiations were concerned, a document was prepared by Mr Reeves, headed “Areas of agreement”, which was informed by the principles to which I have referred and which was discussed (and apparently agreed) at a meeting on 19 April 2012 between representatives of the Council, the Higgs Charity, CCFC and SISU. The note states that all parties acknowledged that “the Football Club has been extremely poorly managed in the recent past and... it remains a commercial nightmare”. Given the £5m loss on turnover of £15m in 2011-12, the imminent relegation to League One, and the absence of any plan for a sustainable Football Club, that acknowledgment seems to have been fully justified, the £1.3m rent being only one of the many problems the Football Club faced and arguably not the worst. At that meeting, Mr Tim Fisher (the Chief Executive of CCFC) confirmed that CCFC was

balance sheet insolvent; and Ms Seppala confirmed that no more cash would be forthcoming from SISU, that liquidation of CCFC was “a viable option for ARVO”, which was by now a creditor of CCFC. SISU proposed having discussions with the Bank with a view to the ACL debt being purchased, and there appears to have been consideration at that meeting as to who should in fact attend any discussions with the Bank. Relegation to League One was confirmed two days later. Mr West was still concerned that no business plan had been seen for either the following season in League One, or how SISU proposed to buy out the Higgs Charity.

27. Discussions continued over the summer. On 25 July 2012, there was a meeting of the various parties, including the Leader of the Council, Mr John Mutton, at which it was agreed that an Indicative Term Sheet would be finalised. Draft Heads of Terms were indeed signed by the Council and SISU, on 2 August 2012. Those more or less reiterated the principles of the SISU plan I have already outlined, i.e. (i) SISU would purchase the Higgs Charity’s share of ACL, (ii) SISU would discharge and write off the Bank loan debt, in return for the lease to ACL being extended to 125 years, and (iii) rent was to be agreed between CCFC and ACL.
28. There are three matters of particular note about this document:
  - i) There were a number of conditions precedent, set out in clause 6, including (a) agreement with the Bank on repayment of the bank loan, (b) “100% discharge of all outstanding rent payable for CCFC’s use of the [Arena]”, and (c) agreement on minimum rent payable by the Football Club for use of the Arena. Leaving aside the Council agreement with the Bank to purchase the ACL debt, none of these was in the event ever satisfied.
  - ii) Other than the provision for confidentiality, the terms did not create any legally binding obligations, and the document expressly stated that there was no intention to do so.
  - iii) There was no exclusivity clause, restraining any party from pursuing other commercial options.
29. Mr Thompson submitted that early August 2012 was a pivotal time. Until then, he said, the parties had been proceeding cooperatively with a view to a commercial compromise involving SISU discharging the Bank debt in return for the Council’s consent to SISU buying into the Arena by purchasing the Higgs Charity’s share of ACL. In particular, he relied upon the fact that the parties signed off the Heads of Terms on 2 August. However, from that time, he submitted, whilst SISU endeavoured in good faith to progress a compromise on the basis of the Heads of Terms, the Council pursued an alternative strategy, involving secret negotiations with the Bank with the intent of the Council purchasing the Bank’s debt. This strategy of the Council (suggested Mr Thompson) not only involved conduct irrational and contrary to EU law relating to State aid, but it was also underhand and reprehensible. In the course of his submissions, he only just refrained from expressly describing the Council’s actions as “dishonest”.
30. The extent to which the history of the relations between the Council and SISU is relevant to the Council’s 15 January 2013 decision now challenged is, in my view,

limited; but, given Mr Thompson's particular emphasis upon it, I should make clear that I do not consider the picture he paints is fair or accurate.

31. First, I do not accept that, prior to August 2012, the parties had been cooperating, intent only on a commercial solution for the benefit of all. Rather, whilst there had been discussions, each party (but particularly SISU) had, understandably, been intent on protecting its own commercial interests.
32. The background to the negotiations between (amongst others) SISU, ACL and the Council was that CCFC, which had fallen into a parlous state as a result of mismanagement, had unilaterally refused to pay the contractual rent it was legally obliged to pay to ACL; and SISU had made it clear that no on-going rent or arrears would be paid until a solution satisfactory to SISU had been agreed. SISU increased the pressure on ACL and the Council by making it clear that CCFC moving out of the Arena or even the liquidation of the CCFC (and, with it, the Football Club) were options SISU were willing to pursue. There can be no sensible doubt that cranking up the commercial pressure on ACL was quite deliberate on SISU's part, and was designed to put SISU into the optimal commercial position to broker a deal most advantageous to them.
33. That ACL were able to draw – and did draw – upon the escrow account is not to the point: although it assisted ACL's cash flow for a few months, CCFC was still legally obliged to pay the rent and to make good that draw down (both of which it refused to do); and, in any event, all parties were aware that the escrow account would run out in August 2012, prior to the 2012-13 season (as it did). Nor is it to the point that ACL and CCFC/SISU came to an agreement in August 2012 that CCFC would pay £10,000 per home match to cover ACL's costs of opening up the ground etc. There may be some dispute as to the level of costs actually incurred; but no one suggests that that sum was significant in terms of paying the Bank loan repayments which were running at over £100,000 per month. Nor is it to the point that all parties (including both SISU and the Council) used the absence of a rent agreement in discussions with the Bank, with a view to reducing the amount the Bank would accept to purchase the loan debt. As we shall shortly see, the negotiations over future rent had stalled, with the parties far apart; and, without resolution of the Bank loan issue, they were never going to fruit into an agreement. Indeed, as we now know, even when the Bank loan had been repaid, it proved impossible to agree rent going forward. Throughout, SISU were never in fact going to agree a deal over rent without the other pieces of their jigsaw in place, notably the purchase of the Higgs Charity's share in ACL which gained them access to the Arena revenues and payment off of the Bank loan. But, by the end of August 2012, there was no real prospect of SISU purchasing the Higgs Charity share in ACL (see paragraphs 37-45 below), and SISU's aspirations for paying off the Bank loan very cheaply were never realistic (see paragraphs 46 and following below).
34. The rent strike by CCFC (and SISU's refusal to assist in payment of that rent, or any of it) made ACL (and thus the Council's share in ACL) weak and commercially vulnerable. There can be no real doubt but that it was SISU's intention that the non-payment of rent should have that consequence. SISU refused to consider a resolution that did not involve them having an interest in Arena revenues. That interest was to be obtained by SISU owning a share in ACL. The weaker ACL became, the cheaper a share in it would likely be. Furthermore, SISU were intent on buying the Bank debt,

in whole or part. SISU deny that they ever intended to purchase the debt other than as part of an arrangement following the Heads of Terms. However, the Council considered that, if SISU purchased the debt for themselves, that would greatly increase their commercial leverage over ACL, which risked being caught between a creditor which could not be paid without receipt of the Arena rent and with step-in powers in the event of loan default, and a non-paying lessee/licence holder, both owned by SISU. Again, the weaker ACL's financial position was, the cheaper the price of the Bank debt.

35. Second, the Council was fully entitled to engage in discussions with the Bank, unilaterally and without informing SISU: in English law, there is no general duty to conduct commercial negotiations in good faith, or to refrain from conducting negotiations with more than one counterparty at the same time without disclosure. The Heads of Terms did not impose any specific duty, e.g. as to exclusivity. They made clear that there was no intention to create legal obligations. The Council was here engaged in the commercial field, and (subject to its public duties) it was entitled to act in the way that it considered was best in protecting its own commercial interests, namely its share in ACL. If it considered that its commercial interests would best be served by having discussions with the Bank without SISU being aware of those discussions, or their content, the Council was fully entitled to have such discussions. It owed no duty to SISU. Criticism of the Council's actions is simply misplaced; particularly given that its commercial interests had been placed in jeopardy by SISU and its subsidiary, CCFC, failing to comply with its contractual obligations towards ACL.
36. Third, it soon became apparent that the SISU plan as set out in the Heads of Terms was doomed on virtually every front. It is to the elements of that plan that I now turn.

#### Negotiations for the Purchase of the Higgs Charity Share in ACL

37. It quickly became clear that SISU had unrealistic expectations for the terms on which they could purchase the Higgs Charity share in ACL; and that the Higgs Charity and they would not agree terms for the sale and purchase of that share, with negotiations between them to that end ceasing by mutual consent before the end of August 2012.
38. As I have indicated, from the outset SISU had been interested in obtaining an interest in the Arena, as a way (and, in reality, probably the only way) of obtaining a return on their investment in the Football Club. As the fortunes of the Football Club declined, from October 2011, particular discussions began. SISU needed to deal with both the Higgs Charity, and with the Council whose approval was needed for any transfer.
39. On 18 June 2012, SISU made an offer to the Higgs Charity for its share in ACL, set out in an Indicative Term Sheet, for £5.5m, in the form of £1.5m immediate cash and an additional £4m in future payments. However, there were a number of express conditions precedent, namely that completion would only take place after:
- i) approval of the transaction's commercial terms, structure and legal framework by the Charity's trustees, on advice from its advisors;
  - ii) agreement between the Bank and SISU, as to the buy out of the ACL loan;

- iii) approval of the Council, under the 2003 agreements; and
  - iv) approval of the Charity Commissioners.
40. In the event, these negotiations with the Higgs Charity were unsuccessful: and the Charity brought a claim in relation to the costs of the negotiations, heard by Leggatt J sitting in the Birmingham Mercantile Court. In his judgment (Marilyn Freda Knatchbull-Hugessen and Others as Trustees of the Alan Edward Higgs Charity v SISU Capital Limited [2014] EWHC 1195 (Comm) at [30]), he found that, before the end of August 2012:
- “The negotiations between SISU and the Higgs Charity had ceased by mutual consent or acquiescence as a result of a number of irreconcilable differences”.
41. Leggatt J found (at [31]) that the Trustees did not wish to pursue the negotiations further, because they knew the Council was not prepared to consent to the sale of the shares to SISU, and was pursuing an alternative strategy which they (the Trustees) supported (a matter to which I shall return). However, he also found that the irreconcilable differences between the SISU and the Higgs Charity included:
- i) Following due diligence, SISU did not wish to offer the price set out in the Indicative Term Sheet, being willing to offer only closer to £2m than £5.5m. This difference between the price SISU were prepared to offer and the price the Trustees were prepared to accept was (a) irreconcilable and (b) in itself, a showstopper.
  - ii) The Higgs Charity Trustees sought advice from Pricewaterhouse Coopers (“PwC”). That stressed the jeopardy ACL was in because of CCFC’s inability to pay the rent, which would eventually lead to ACL breaching its banking covenants which would give the Bank a number of enforcement options including administration. PwC advised that there were two options open to the Charity, to agree an immediate sale or to retain the shareholding and agree to some form of restructuring. Neither course was risk-free. Although the Trustees considered that the valuation of ACL may have fallen to £5m-6m (see Minutes of Trustees’ Meeting 17 July 2012, paragraph 3), the SISU offer, as it stood, did not protect the Charity’s position (and was, therefore, in the Trustees’ eyes, unacceptable) because the future payments by way of deferred consideration were only guaranteed against future income streams, which was regarded as a fatal flaw (see, also, paragraph 7.4 of the Statement of Marilyn Knatchbull-Hugessen dated 13 January 2014). The Trustees wished to have a “bulletproof guarantee”, in essence probably only a fully cash transaction (see Leggatt J Judgment, at [18]). SISU were unwilling to offer any other security.
42. Nothing in the evidence before me causes me to doubt any of the findings of fact made by Leggatt J on the evidence before him. Indeed, the evidence I have seen merely confirms them. By the end of August 2012, SISU buying into ACL by purchasing Higgs Charity’s share was simply not an option: SISU were unwilling to pay anywhere near the option price, or anywhere near the price the Trustees would have found acceptable, for the 50% share; nor were they willing to give security for future payments that the Trustees, on advice, would have been willing to accept.

43. As SISU (in the form of SISU Capital Limited) pleaded in their Defence in the litigation with the Higgs Charity (at paragraph 14.3):
- “... [T]here was no commercial rationale for reaching any terms with [the Bank] if, as occurred, [the Higgs Charity] and [SISU] could not reach agreement on the terms of a [Sale & Purchase Agreement for the Charity’s share of ACL].”
44. Thus, SISU’s inability to reach agreement with the Higgs Charity on the purchase of their share of ACL was fatal to SISU’s whole plan. Without being able to purchase a share of ACL and hence the Arena, SISU were not interested in any deal: in the absence of a deal to purchase the Higgs Charity’s share in ACL, SISU had no interest in either purchasing the Bank loan, or coming to a deal on rent for the Arena. That was so from 31 August 2012 at the latest, and it remained their view (as we shall see) until they withdrew from further negotiations with ACL and the Council in February 2013 (see paragraphs 74-75 below). Whatever their hopes might have been, from as early as the end of August 2012, SISU’s plan of a consensual agreement on the principles set out in the 2 August 2012 Heads of Terms was never going to come off.
45. Given the showstopping nature of the failure to agree terms for the purchase of a share in ACL, it is strictly unnecessary to deal with the other aspects of SISU’s plan; but I shall do so because, in any event, none proved practical.

#### Negotiations for the Restructuring or Purchase of the Bank Debt

46. As I have indicated, SISU were of the view that there was no commercial rationale for a deal with the Bank over purchase of the ACL debt, without agreement on the purchase of a share in ACL. However, SISU’s aspirations for the debt purchase too were unrealistic.
47. SISU considered that the Bank debt could be purchased for £2m-5m. It was part of their plan that the debt be purchased – in whole, or at least as to 50%, by them – for that sum. They were not prepared to offer more. The Heads of Terms supposed that, the debt having been purchased, it would be entirely written off; although the Council was sensible to the possibility that SISU might purchase the debt from the Bank (which had no constraints on the person to whom the loan and mortgage might be transferred) and use their position as creditor to put further pressure on ACL and thus the Council.
48. So far as the Heads of Terms were concerned, shortly after 2 August 2012, it became clear there was another showstopper to the overall plan: given its fears, the Council was not prepared to agree to SISU buying out 50% or more of the Bank loan, whilst SISU were not prepared to allow the Council to buy out more than 50% of the loan. The Council had no confidence in CCFC’s ability to put forward and implement a sustainable plan for the Football Club, and became increasingly concerned that SISU intended to purchase the Bank loan with a view to taking over ACL. Thus, the Council were only prepared to consider the SISU plan on the basis that all of the other elements were in place, before SISU bought and discharged the loan.
49. That was a further cause of stalemate, which led Mr West to write to Mr Reeves on about 16 August 2012, suggesting that the Council (at least initially) purchase the

whole of the debt; although it should be said that, in addition to the loan balance, the hedging agreement required a payment of some £3.6m to buy it out, so that the full buy out price was £19m, something not appreciated at this early stage. That memorandum makes clear that who was to purchase the Bank debt was an irreconcilable difference between SISU and the Council; although, Mr West said:

“It is also clear that there is very significant animosity in the [Labour Group of councillors] towards SISU that even if a working financial solution could be found, it will be very difficult to get consensus on that as a way forward.”

50. In terms of pursuing the suggestion that the Council buy the debt, he said that:
- “We will need to paint a picture [i.e. to the Bank] of significant potential woe for the future of ACL. The lack of rent agreement and the Court judgment against the Football Club will of course be of significant help here.”
51. However, Mr West had developed a model for showing the financial implications of the worst-case scenario of the Council refinancing the full £15.4m balance of debt outstanding and the Football Club going into liquidation or at least not paying rent in the future, each of which was considered to be a real possibility.
52. Mr West prepared a note for the ACL Board Meeting on 29 August 2012, which asked for the Board’s approval for ACL, the Council and the Higgs Charity approaching the Bank with a view to buying out the loan, hopefully for £5m-9m, but saying that, even if at full value and even if SISU put the Football Club into liquidation, the model suggested that ACL would be sustainable. In the meantime, the Board were also asked for agreement to information being released to SISU, so that the original planned deal could also be pursued. However, the Board Minutes note that SISU had still not provided a business plan for the Football Club, nor any investment proposition for the purchase of the Higgs Charity share. The Board agreed to those proposals, and also that PwC be commissioned to provide a report.
53. On 3 September 2012, Mr Reeves gave a presentation to the Labour Group of councillors, who were a majority on the Council. The presentation set out why the parties had deadlocked, and the fact that, if CCFC failed to pay the judgment debt which ACL had by then obtained against them by 12 September, ACL would need to consider next steps. The Council’s objective since August was stated to be: “Primarily to protect our investment in ACL”. The SISU deal was set out in some detail; as was the fact that, “All aspects of the proposed deal on the rocks... SISU desperate to approach the Bank as this is where they create value for themselves... Lack of trust – would we ever agree to the deal?...”. It was said that: “An alternative strategy to the SISU proposal is needed NOW”. That alternative was for the Council to approach the Bank to buy out the loan, without SISU, which would, amongst other things, reduce “SISU’s power and threats”. The range to buy out the debt was said to be: “£6-9m?? [Worst case the full £15m]”. It was stressed that the “rate must be commercial”. The councillors were asked to give officers authority to open negotiations with the Bank to refinance the loan with Council funds – which they did.



54. PwC prepared a report dated 14 September 2012 for ACL, the Higgs Charity and the Council, for the purposes of buying out the debt (“the PwC Report”). The Claimants rely heavily on the figures given in the Report, which adopted the sensitivity analysis figures derived from the Richard Ellis report referred to above (paragraph 13), which valued the Arena with no CCFC rent at £6.4m, with a rental of £200,000 at £8.6m, and with a rental of £400,000 at £10.8m. The PwC Report said that a commercial loan would typically be 60-65% Loan to Value (“LTV”), at a rate of 5% above LIBOR, and an average of 7-10 years repayment period. At a LTV ratio of 65%, at £200,000 per annum rent, the maximum loan would be £5.6m. It noted that there had been a large number of non-cash (non-recurring) income items. It said that cash flow projections for ACL suggested that £4m-6m debt could be serviced, with a £6m loan at commercial rates over 25 years having an annual service cost of £426,000.
55. On 20 September, Mr West and Mr Harris met the Bank. With a view to achieving a good price for the debt, as planned, they did portray a tale of commercial woe, including not only the rent strike but also SISU’s threat to liquidate CCFC. They used the Richard Ellis/PwC Report figures – notably the valuation of £6.4m with no rent – to stress that the company was valued at less than the outstanding loan and ACL simply could not service the Bank loan of £15m. They put forward an offer of £6m to purchase the debt.
56. The Bank formally rejected that offer on 28 September. It said that it would consider its position and options with regard to its £19m exposure, including obtaining a valuation. It appointed Deloitte to look at cash flow and consider future lending strategy towards ACL. The Council repeated its £6m offer at a further meeting with the Bank on 6 November, Mr West recording:
- “I stressed that we were in no way considering increasing our offer on the basis of the numbers available, and that the offer was at this size not on the basis of pure commercials, but because of the Council’s policy desire to protect the jobs and business base of the Arena, and to use its continued survival as a stimulus for further regeneration in the North East of the City.”
57. As part of their investigations, in November, Deloitte met SISU; so that, from then, SISU were aware that the Council was making its own attempt to purchase the Bank debt. Mr West gave the Council Cabinet an update on 14 November, and told them that it must be assumed, “SISU know all”. There was a further Cabinet update on 20 November.
58. The Council were still meeting with SISU. On 28 November, Mr Reeves and Mr West met Ms Seppala, who said that Deloitte had said that the Bank had not written down the ACL loan at all, which surprised her; and she was of the view that Deloitte would eventually advise the Bank that the debt should be valued in the range £3m-5m. The Council was unimpressed by SISU’s business plans for the Football Club, considering they were an attempt to exploit the Council and the Bank to propagate cash flows in CCFC. The Council continued to be suspicious that SISU’s long term aim was to gain control of the Arena, on the cheap, and then sell it to recover the cash invested.

59. The Council's plan of persuading the Bank that ACL's cash flows meant that the Bank loan could not be serviced was strikingly unsuccessful. The Bank simply did not accept that ACL was in such a financial state as ACL had portrayed. On 3 December, the Bank wrote to ACL proposing a restructuring of the loan of £15.5m, so that £8m was amortised over 20 years, whilst £7.5m continued as interest-only. That would have reduced the yearly payments from £1.6m to just over £1.3m. On the basis of Deloitte's work (which had apparently calculated a figure of nearly £1.3m cash flow available to service debt), the Bank clearly considered that, with appropriate cost savings and an agreement on rent at a dramatically reduced rate, ACL could afford such repayments. The fact that the Bank were refusing a deal on purchasing the loan because they considered ACL was able to service it was reported to the Labour Group of councillors at a meeting the same day. It was also reported that SISU had not moved, and were themselves in discussion with the Bank. The risk of SISU purchasing the loan was still a real concern, expressed at the meeting.
60. ACL responded to the Bank's proposed restructuring on 6 December, indicating that it did not consider the repayments on that basis were sustainable, and expressing concern that, under the proposal, half the debt would remain in place because it would be serviced on an interest-only basis. That letter maintained ACL's stance with the Bank as to value, saying:
- “At rent levels of £200K, [Richard Ellis's] analysis indicated a value of £8.4m. That would mean that the current and proposed loans are well outside the LTV parameters of normal bank finance.”
61. The previous day (5 December), of course, ACL served CCFC with a statutory notice (see paragraph 24(v) above); and ACL understood that SISU had made an offer to purchase the Bank debt, they thought with a view to seizing control of ACL. The Council Cabinet were informally briefed accordingly, that day.
62. ACL further responded to the Bank's offer by letter of 14 December, which offered £12m to purchase the debt, saying that this was “higher than any third party would be prepared to pay”. The Bank rejected that offer on 17 December, saying:
- “The increased offer is noted but remains unacceptable to the Bank. If there is to be a refinancing, the Bank is unwilling to accept anything less than repayment in full.
- We are disappointed to note your comments in respect of [ACL's] cashflow forecasts. As you are aware we take the view that, with appropriate cost savings, a solvent debt restructuring could be agreed without any impairment of the Bank's debt.
- The Bank is concerned that [ACL's] directors appear to be focusing on achieving a discounted settlement of the Bank's facilities rather than making the operational savings required to support the level of [ACL's] debts...”

Therefore, despite the valuations of ACL's interest in the Arena, the Bank continued to have confidence in ACL's ability to service the full £15.5m loan on commercial terms, with repayments of £1.3m per year.

63. On 20 December, through PwC, ACL made a final offer to the Bank, that it would pay the December capital and interest payment (£0.4m), and a lump sum of £14m in full and final settlement of all sums owed to the Bank, including paying off the hedging arrangement. It was said that that offer had already been approved by the majority Labour Group on the Council, although full Council approval would be required. The offer was accepted by the Bank the following day.
64. Mr Reeves and Mr West made a further presentation to the Labour Group of councillors on about 7 January 2013. That indicated:
  - i) The arrangement with ACL was "commercial".
  - ii) The "game changer" was "lower loan, longer period, lower interest".
  - iii) Although in the short term (3-5 years) cash balances could be used to delay the need to borrow externally, the Council intended to borrow at lower rates than that agreed on the loan to ACL. It was estimated that there would be a surplus of £100,000 per year over the life of the loan. The loans would be balance sheet neutral: a loan in, and a loan out of similar amount.
  - iv) The loan would be secured against all of ACL's assets, including its lease on the Arena which "gives us significant protection".
65. The loan of £14.4m to ACL was approved by the ACL Board and the Higgs Charity Trustees on 14 January, the day on which Mr Reeves and Mr West also gave a presentation to the Conservative Group of councillors in similar terms to that earlier given to the Labour Group.
66. As the Council's Director of Finance and Legal Services (Mr West) was a director of ACL, Mr Barrie Hastie (the Council's Assistant Director (Financial Management) since 2008) had been advising the Council; and it was he who prepared a report for Cabinet and the full Council, in which he recommended approval of a loan of £14.4m by the Council to ACL to enable it to repay its commercial loan ("the Hastie Report"). The Council's Cabinet met on 15 January 2013, and approved the loan; and, later that same day, the full Council unanimously approved the recommendations in the Report. It is of course that decision of the Council that the Claimants challenge in this claim.
67. The loan facility letter was in similar form to the earlier Bank facility letter. However, it had no provision for valuations of ACL's assets (i.e. the lease of the Arena). The loan was of £14.4m, for a similar term to the lease (nearly 41 years, the final repayment date being 16 December 2053), at a rate of 5% per annum for the first five years of the facility, and thereafter at the discretion of the Council but no less than 5% nor more than 2% above PWLB rate (the PWLB rate being, in effect, the rate at which the Council could borrow money). The annual repayments amounted to approximately £0.8m, compared with the £1.6m ACL had been paying and the £1.3m they would have paid under the Bank's restructuring proposal.

68. Although SISU were in discussions with the Bank, and the Council feared that they had made their own offer to purchase the debt and they were effectively in competition, there is little available evidence as to SISU's negotiations with the Bank. However, what is now clear is that SISU considered that they may have been able to purchase the ACL debt – for which the Bank was exposed to the tune of £19m – for perhaps as low as £2m, but no more than £5m. On the other hand, the Bank were satisfied that ACL could in fact service the entire debt albeit restructured, and were not prepared to accept any figure in that area. The Bank (which was aware of the relevant valuations) appears to have considered that ACL could service a restructured loan of at least £15m, and that the debt was worth more than £12m. The Bank had not made any provision for any of the debt. In the circumstances, it is inconceivable that the Bank would have accepted an offer to purchase the debt for £5m. In considering the Bank would (or might) accept an offer of £2m-5m for the debt, SISU had entirely unrealistic expectations. They were not prepared to offer more.
69. Thus, this element of SISU's plan, too, was doomed to fail.

#### Negotiations for the Arena Rent

70. CCFC was contractually obliged to pay ACL about £1.3m rent for its use of the Arena. However, all parties appreciated that that level of rent was not commercially sustainable, especially with the Football Club's relegation to Division One, unless SISU continued to subsidise the Club which it was unwilling to do. They also all appreciated that an absence of agreement going forward might assist in reducing the value of ACL and of the Bank debt.
71. However, they also knew that in practice an agreement on rent was unlikely without the issue of the Bank loan – and ACL's inability to continue to make repayments under that loan, without the full contractual rent for the Arena being paid – being resolved. We now know that, from the end of August 2012, that issue was never going to be resolved satisfactorily, because it was dependent upon SISU purchasing the Higgs Charity's share in ACL – and negotiations there had met with irreconcilable differences.
72. From the start of the rent strike in April 2012, there was therefore a general impasse with regard to agreement of rent going forward. As I have indicated, CCFC/SISU refused to pay any rent or arrears. ACL and the Council required payment of all arrears as a condition of any agreement.
73. Generally, at the impasse, the parties were left a long way apart on future rental figure, CCFC/SISU saying that they would not pay more than £200,000 (or even, at one stage, apparently £100,000) per year, and ACL insisting on £550,000-600,000. By December 2012, if there was to be a rent deal as part of a wider agreement, the figure of £400,000 appeared the most likely conclusion. That figure was discussed at a meeting between SISU and Deloitte for the Bank on 10 December 2012, but clearly not agreed; SISU wishing it to be a permanent future rent (albeit subject to a reduced allocation of rates and food and beverage revenues for CCFC), whilst the Bank (like ACL, at that time) considered that there should initially be a three year rental reduction to £400,000 from the contractual figures. The SISU proposal was calculated to be worth only about £180,000 per year to ACL. Therefore, until the

Bank loan issue had been resolved, the negotiations as to rent were immovably stuck. Payment of rent arrears was also still a bone of contention.

74. After the Council had purchased the Bank debt, thereby resolving that immediate sticking point, negotiations over rent continued between CCFC and ACL. On 29 January 2013, Heads of Terms were agreed, involving rent at £400,000 from 1 January 2013 with an agreement on arrears taking into account a reduced escrow account sum (which left arrears of about £0.5m to be paid) and an in-principle agreement for CCFC to benefit from match-day food and beverage revenues and ACL paying a larger share of the rates on the Arena. The Directors of CCFC and ACL representatives shook hands on that; but the deal was rejected on 4 February 2013 by Ms Seppala (who, as described by Mr Thompson, “sat at the top of the tree in terms of [SISU] decision making”) on the basis that she was not prepared to accept any deal that excluded SISU from holding a stake in ACL.
75. From that point, although there were some discussions about CCFC using the Arena for three years while a new football stadium was built, CCFC were determined to leave the Arena. An agreement was eventually reached for the Football Club to share Sixfields Stadium in Northampton, with Northampton Town Football Club. That is where the Football Club currently plays its home matches.

#### ACL’s Business Plan

76. It is true that, as at the date of the Council’s decision to make the loan (15 January 2013), there were a number of uncertainties as to the future. However, it was a condition precedent of the loan from the Council to ACL that ACL provide a business plan (paragraph 5.2.2 of the facility letter). In December 2012/January 2013, ACL prepared a 5-year Business Plan (“the ACL Business Plan”), which it shared with the Council prior to the decision to make the loan.
77. Two initial points are of note.
- i) The ACL Business Plan showed that, since the PwC September 2012 Report, ACL had considered its position, and had made/planned substantial cost cuts, including employment cost reductions of about £0.6m (which included not replacing the Chief Executive Officer) and other overhead reductions of £0.25m.
  - ii) Although both ACL and the Council had real hopes that the resolution of the Bank loan issue would give positive impetus to the rental negotiations – with £400,000 per year being the likely result – the Plan assumed no future rental income from CCFC or any other anchor tenant.

#### Summary

78. Whilst there were clearly some misunderstandings as between the various parties, I find the following in respect of the period from April 2012:
- i) The Football Club had been seriously mismanaged. By April 2012, it was in a truly parlous state. CCFC was balance sheet insolvent, incurring regular substantial annual losses, and a loss of £5m on the annual turnover of £10m in

2011-12. The contractual rent and licence fee for the Arena of £1.3m per year was significant, but less than 10% of total expenditure. Relegation to League Division One and the introduction of the Financial Fair Play rules compounded these difficulties.

- ii) CCFC/SISU had no strategy for maintaining a sustainable football club, except one which involved (i) the purchase, at a knock down price, of at least a 50% share in ACL and thus the Arena, and (ii) the purchase from the Bank, at a knockdown price, of the ACL loan. SISU considered that there was no commercial rationale for purchasing the Bank loan without having a stake in the Arena revenues, by having a share in ACL. By the end of August 2012, that strategy had failed, because the negotiations for purchasing the Higgs Charity's share in ACL had broken down over differences between the parties that were irreconcilable. There was no plan B: CCFC/SISU had no alternative strategy for maintaining a sustainable football club at the Arena.
- iii) SISU distressed the financial position of ACL by refusing to pay ACL any rent or licence fee. That made ACL commercially vulnerable, because it could not service its Bank loan. It also had the effect of reducing the value of the share in ACL that SISU coveted. SISU imposed more commercial pressure on ACL by indicating that they were prepared to see CCFC put into administration or liquidation, which (SISU believed) would have a cataclysmic effect on ACL because of ACL's inability to service its loan without revenue from the Football Club. SISU's strategy of distressing ACL's financial position in these ways was quite deliberate. They considered this strategy was necessary if they were to recover their investment in the Football Club.
- iv) The Council was increasingly concerned to protect its interest in ACL. It considered that that interest had some long-term value. ACL had been profitable until the rent strike. The rent strike by CCFC inevitably resulted in ACL being unable to service its loan with the Bank, with the inevitable consequence that the Bank began taking enforcement procedures against ACL; which placed the Council's interest in ACL in jeopardy, notably that the Bank (or anyone else to whom the Bank transferred the loan) would use their step-in rights to take over the Arena lease.
- v) ACL and the Council were concerned about SISU's long-term commitment to the Football Club. The Football Club had been badly managed. ACL (and, as 50% shareholder in ACL, the Council) was persistently looking for a plan from CCFC under which the Club could sustainably compete, first in the Championship and, following relegation in 2012, in Division One. Such a plan was not forthcoming.
- vi) The Council was increasingly concerned that SISU wished to buy into ACL and thus the Arena, effectively at the expense of the long-term interests of ACL shareholders including the Council itself. The Council also considered that SISU may attempt to purchase the Bank loan for themselves, which would have put them (SISU) into a very strong position to purchase a share or the whole of ACL. SISU deny that this was ever their intention: but, given SISU's strategy in relation to ACL, the Council was understandably and reasonably concerned.

- vii) Some of these concerns, at least, with the benefit of hindsight, were not warranted; because (i) SISU's attempt to buy the Higgs Charity share in ACL had failed by the end of August 2012, and (ii) SISU were not prepared to buy the Bank debt at a price anything like the price for which the Bank was prepared to sell it. The Bank considered that ACL could service the full £15.5m loan, restructured. However, at the time and without the benefit of hindsight, the Council's concerns about SISU were reasonable: the only way in which SISU were likely to obtain a return on their substantial investment was to obtain a share in the Arena, and cheaply. That was an essential part of their plan.
  - viii) The Council lacked faith in CCFC/SISU's ability to run the Football Club sustainably. The Council – and, notably, some particular councillors who made their views clear – did not trust SISU. SISU deny that they adopted an aggressive strategy for buying into the Arena cheaply: but it is undoubtedly the case that their strategy was dependent upon buying into the Arena cheaply. The Council's lack of faith and trust were at least reasonably held.
  - ix) The Council was driven by the need to protect its commercial interest in ACL. It saw that interest as long-term. It reasonably considered that SISU posed a commercial threat to that interest.
79. In making the loan to ACL, Mr Goudie submitted (and I agree) that the Council had a number of interrelated commercial objectives, identified in the Hastie Report as follows:
- i) to remove the risk of the Bank (or anyone else, including SISU, who might purchase the debt and therefore obtain for themselves the Bank's rights) enforcing the debt by exercising step-in rights (Hastie Report, paragraphs 2.12.2 and 3.4.2);
  - ii) to remove the risk of the Bank putting ACL into administration (paragraph 2.13.3);
  - iii) to improve ACL's financial position and enhance the value of ACL (paragraph 3.4.2.1), which would in turn enhance the value of the Council's shareholding in ACL and improve its prospects for achieving other returns on its investment including by way of dividends and "Super rent";
  - iv) to provide the Council with a commercial rate of return over the lifetime of the loan (paragraph 3.4.4.3); and
  - v) to obtain the transfer of ACL's lease of Car Park C (which had development potential) back to the Council from ACL, for nil consideration (paragraph 3.5.1.1).

### **The Grounds of Challenge**

80. In seeking to challenge the Council's decision of 15 January 2013 to loan ACL £14.4m on the terms I have briefly described, initially, the Claimants relied on four grounds:

Ground 1: A private investor in the shoes of the Council would not have entered into the transaction on the terms agreed by the Council (or, indeed, on any terms); and, consequently, the transaction was State aid within the meaning of article 107(1) of the Treaty on the Functioning of the EU (“TFEU”), not notified to the European Commission in advance as required by article 108(3). It was thus unlawful as contrary to EU law.

Ground 2: The decision to make the loan was unlawful as being made in bad faith and/or for an improper purpose, namely gaining control of the Club and forcing a sale to a preferred third party.

Ground 3: The decision to make the loan was outside the discretionary powers of local authorities in the conduct of their financial affairs.

Ground 4: The decision to make the loan was irrational in the Wednesbury sense), in that (a) the Council took into account an irrelevant consideration, namely “the partisan views of the... Council’s own leader and senior officers, whose objective has been to oust the Claimants from the Club...” (Statement of Grounds, paragraph 65); and (b) more generally, in all the circumstances, the decision to make the loan was legally irrational or perverse, in the sense that there is simply no rational explanation for the Council’s decision to make this loan on the terms that it did and no reasonable authority could have entered into such a transaction (paragraph 64).

81. Permission to proceed was refused on the papers by Males J on 31 July 2013. On 1 October 2013, Silber J refused an application by the Claimants for disclosure prior to the renewed application ([2013] EWHC 3366 (Admin)). On 29 November 2013, Thirlwall J granted permission on all four grounds. On 14 May 2014, I heard the Claimants’ application for specific disclosure of documents in the Council’s control, and also for an order permitting them to adduce further factual evidence and expert evidence, which I refused ([2014] EWHC 1747 (Admin)).
82. On 27 May 2014, the Claimants served their skeleton for this substantive hearing; and, in paragraph 26, abandoned old Grounds 2 and 3. Ground 1 (State aid) is maintained. Further, a new ground was advanced, ostensibly under the umbrella of old Ground 4 and Wednesbury irrationality, namely that, in coming to its decision to make the loan, the Council failed to take into account several identified material considerations because senior officers of the Council (particularly Mr Reeves and Mr West) failed to draw them to the attention of Council members. Given the abandonment of the other old grounds, in the rest of this judgment I shall refer to this new ground as simply “Ground 2”. Insofar as it is maintained, I shall refer to the general irrationality ground (residual old Ground 4), as Ground 3.
83. At the beginning of the hearing, I rejected Mr Thompson’s submission that new Ground 2 was merely a re-cast of old Ground 4. It is, in substance, a very different ground. The old ground was based upon the Council taking into account a specific irrelevant consideration (upon which reliance is no longer placed), and perversity in the general sense that no authority could have decided to make this loan on the terms it was made. The new ground is based upon seven specific material matters that were not brought to the attention of councillors by the relevant Council officers.



84. Mr Thompson was, however, ready to make a formal application to amend on the first day of the hearing, which he did. Mr Goudie and Mr Quigley, whilst complaining about lateness and delay, were fully prepared to deal with the substance of the new ground. New Ground 2 therefore went forward on the basis that I would consider it on a rolled-up basis, i.e. it would be fully argued and, in my judgment, I would consider the application for permission and, if granted, would deal with the substantive application.
85. I therefore have before me the substantive application on Ground 1 (State aid) and Ground 3 (irrationality), for which permission has been granted; and Ground 2 (failure to take into consideration material considerations) on a rolled-up basis.

### **Ground 1: State Aid**

#### The Law

86. In support of the principle of a common market within the EU, article 107(1) TFEU (formerly article 92 of the European Economic Community Treaty (“the EEC Treaty”)) provides that:
- “... [A]ny aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings... shall, in so far as it affects trade between Member States, be incompatible with the internal market.”
87. If an EU Member State (in any of its manifestations) wishes to grant State aid to a particular undertaking, then it must notify the Commission of its intention to do so. Article 108(3) TFEU (formerly article 93 of the EEC Treaty) states that:
- “The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid.... The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.”
88. In applying this test, the following principles can be derived from the case law. They are uncontroversial.
- i) A public authority such as the Council is elected to serve the overall public interest in the area it serves. In pursuit of that obligation it is required to act prudently with regard to public money.
  - ii) In exercising its functions, a public authority may undertake and invest in economic operations in the same way as private companies.
  - iii) However, when it does so, articles 107-109 TFEU prohibit the State engaging in “State aid”. Whether action by the State amounts to State aid is a “global question” (R v Customs & Excise Commissioners ex parte Lunn Poly [1999] 350 at 360); but it has several well-recognised characteristics set out in cases such as R (Professional Contractors Group Limited) v Inland Revenue

Commissioners [2001] EWCA Civ 1945 at [28], and in guidance prepared by the European Commission (e.g. Commission Communication – Application of Articles 92 and 93 of the EEC Treaty and of Article 5 of the Commission Directive 80/723/EEC to Public Undertakings in the Manufacturing Sector (1993) (OJ C307/3) (“the 1993 Communication”) and Draft Commission Notice on the Notion of State Aid pursuant to Article 107(1) TFEU (2014) (“the 2014 Draft Communication”), and by the Department for Business, Innovation and Skills (“BIS”) (e.g. The State Aid Guide: Guidance for State Aid Practitioners (June 2011), especially at paragraphs 76 and following). The BIS guidance (at page 2) identifies the characteristics in these terms, namely that, so far as the aid is concerned:

- a) it is granted by the State or through the State resources;
  - b) it favours certain undertakings;
  - c) it distorts or threatens to distort competition; and
  - d) it affects trade between Member States.
- iv) Whether aid distorts or threatens to distort competition, depends upon the objective test of whether a rational private investor, creditor or vendor (as the case may be) might have entered into the transaction in question on the same terms, having regard to the foreseeability of obtaining a return and leaving aside all social and policy considerations (Cityflyer Express Limited v Commission [1998] ECR II-757, [1998] 2 CMLR 537 at [51], and Neue Maxhütte Stahlwerke GmbH v Commission [1999] ECR-II 17 at [120]-[122], and [131]-[133]) (“the private investor test” or “the market economy operator test”). Where the State acts in a way that corresponds to normal market conditions, its transactions cannot be regarded as State aid.
- v) The court is concerned with whether a transaction is or is not State aid. It is not concerned with the different question of whether, if it is State aid, it is justified. That is a question for the Commission; hence the standstill provisions whilst the Commission makes such a determination, in article 108 TFEU.
- vi) Whether the transaction was one which a rational private market operator might have entered into in the same circumstances is a question for the court to consider objectively and to decide, on the basis of the information available at the time of the decision, and developments then foreseeable (Commission v Électricité de France [2012] 3 CMLR 17 at [105]). Therefore, where a Member State seeks to argue that a transaction was one which a market operator might have entered upon, it must be on the basis of evidence showing that the decision to carry out the transaction was taken at the time on the basis of economic evaluations comparable with those which a rational market investor would have carried out in the same circumstances, which will normally include a business plan justifying the decision (the 2014 Draft Communication at paragraphs 81-82). Subsequent justification is irrelevant: the transaction cannot be evaluated on the basis of whether it was in the event actually profitable or not.

- vii) The market economy operator comparator is, of course, hypothetical; but whilst, for the purposes of applying this test, all policy considerations relating to the State's role as a public authority have to be ignored, the comparator rational private operator must be assumed to have similar operational characteristics to the public body concerned. For example, if the transaction is a loan by a public authority with a shareholding in the relevant undertaking, then the comparator is, not a new incoming private investor, but a private investor with a similar shareholding.
- viii) Some private investors look to speculative or other short-term profit. However, some have long-term objectives with a structural policy and are guided by a longer-term view of profitability; and, if an investor is a shareholder in the relevant undertaking, he may be more likely to have such long-term objectives (see 1993 Communication, paragraph 20). As the General Court put it in Corsica Ferries France SAS v Commission (2012) Case T-565/08:

“However, in making that distinction between economic activities, on the one hand, and public authority intervention, on the other hand, it is necessary to take account of the fact that the conduct of a private investor, with which the intervention of a public investor must be compared, need not necessarily be the conduct of an ordinary investor laying out capital with a view to realising a profit in the relatively short term. That conduct must, at least, be the conduct of a private holding company or a private group of undertakings pursuing a structural policy – whether general or sectoral – and guided by prospects of profitability in the longer term...”

State investment may therefore satisfy the market economy operator test where there is a “reasonable likelihood” that the assisted undertaking will become profitable again (Neue Maxhütte at [116]).

- ix) In particular, the European cases draw a distinction between a private creditor and a private investor: the creditor is primarily concerned with the most effective means of recovering his debt, whereas the investor's commercial interests may well include ensuring that the undertaking concerned avoids going into liquidation because, in the investor's view, profitability might reasonably return in the future (see, e.g. Re Déménagements-Manutention Transport SA [1999] ECR I-3913; [1999] 3 CMLR 1: Advocate General Jacob's Opinion at [35]-[36], and Court Judgment at [24]-[25]). Summarising the relevant jurisprudence, the 1993 Communication therefore says:

“20. ... A private investor may well inject new capital to ensure the survival of a company experiencing temporary difficulties, but which after, if necessary, a restructuring will become profitable again...

30. ... Where this call for finance is necessary to protect the value of the whole investment the public authority like

a private investor can be expected to take account of this wider context when examining whether the commitment of new funds is commercially justified...”.

- x) Although the test is an objective one, the law recognises that there is a wide spectrum of reasonable reaction to commercial circumstances in the private market. Consequently, a public authority has a wide margin of judgment (see, e.g. the 1993 Communication at [27] and [29] (“... a wide margin of judgment must come into entrepreneurial investment decisions...”)); or, to put that another way, the transaction will not fall within the scope of State aid unless the recipient “would manifestly have been unable to obtain comparable facilities from a private creditor in the same situation...” (Déménagements-Manutention Transport at [30]: see also Westdeutsche Landesbank Girozentrale v Commission [2003] ECR II-435 at [260]-[261]). Therefore, in practice, State aid will only be found where it is clear that the relevant transaction would not have been entered into, on such terms as the State in fact entered into it, by any rational private market operator in the circumstances of the case.

### The Relevant Issues

89. Mr Quigley submitted that the loan transaction in this case was not State aid because it did not favour ACL, nor did it affect trade between Member States. However, the main ground of contention between Mr Thompson for the Claimants and Mr Goudie for the Council (fully supported by Mr Quigley) was whether the transaction distorted or threatened to distort competition. I shall deal with that issue first.
90. Mr Thompson submitted that no rational private market operator would have entertained a loan to ACL for £14.4m on the terms entered into by the Council. Although a “global” issue, in respect of the elements of the transaction he submitted:
- i) No rational private investor would have advanced £14.4m to ACL in January 2013 on any terms, given the value of ACL, which was less than half of that sum. The valuation of the company was further diminished by the fact that, since April 2012, ACL faced the imminent significant risk of becoming insolvent.
  - ii) Given the valuation of ACL, the security for the loan was hopelessly inadequate.
  - iii) The term of the loan (about 41 years) was very substantially longer than any term which a private investor would have countenanced.
  - iv) The interest rate and rate of return inadequately reflected the commercial risk taken by the Council in making the loan.
  - v) There was no commercial justification for the loan. In making its decision to make the loan, the Council took into account policy objectives. Furthermore, a rational market operator would have taken into account and pursued one of the commercial alternatives to a loan which created no value in its shareholding in ACL, namely (a) pursuing SISU’s plan to purchase and then write off the

Bank loan in return for a shareholding in ACL and thus the Arena, (b) restructuring the Bank loan or (c) the insolvency of ACL.

91. In respect of these, Mr Thompson relied particularly upon the PwC Report of 14 September 2012, prepared for ACL, the Higgs Charity and the Council, for the purposes of buying out the debt. As I have indicated (see paragraph 54 above), that report adopted the valuations of Richard Ellis, which as at March 2011 valued the Arena with no CCFC rent at £6.4m, with a rental of £200,000 at £8.6m, and with a rental of £400,000 at £10.8m. The PwC Report said that these figures “could be discounted by up to 30% in an insolvency scenario”. It said that a commercial loan would typically be 60-65% Loan to Value (“LTV”), at a rate of 5% above LIBOR, and an average of 7-10 years repayment period.
92. Although interwoven, I will deal with these strands in turn, before finally considering the overall question of whether any rational private market operator would have made the loan to ACL for £14.4m on the terms entered into by the Council in the circumstances of this case.
93. However, before I do, I would make three overarching points.
94. First, I emphasise that I must compare the Council’s action in making the loan on the terms that it did with a hypothetical private market economy investor with the same characteristics as the Council. Those notably include the fact that the Council was not a new investor: it was also a 50% shareholder in ACL. Much of the evidence (including the PwC Report) concerns the criteria by which a new investor would or may have made a loan to ACL in December 2012/January 2013. I have little doubt that a new investor would not have made a £14.4m loan to ACL on the terms that the Council did; but that is not the question that I have to consider, which is whether a private market economy operator, with a 50% shareholding in ACL, would have effectively restructured its business by making a £14.4m loan to ACL on the terms that the Council made the loan. I emphasise that point because many of Mr Thompson’s submissions were based on a comparison with a new investor. As I have said, the data in the PwC Report, upon which he heavily relied, concerned a loan by such an investor.
95. Second, as I have described, several parties were negotiating on a number of fronts. In relation to different counterparties, they adopted different approaches. For example, when discussing a loan buy-out with the Bank, it was of course in the interests of the Council (as well as those of ACL and SISU) to talk down the value of ACL and thus the value of the loan the Bank held. For example, ACL and the Council used the Richard Ellis analysis and the PwC Report figures for the value of the Arena lease to a third party when negotiating with the Bank, in an attempt to persuade the Bank that the company was valued at less than the outstanding loan and ACL simply could not service the Bank loan of £15m. So, at the 20 September 2012 meeting with the Bank, in support of his offer to buy the loan for £6m, Mr West relied upon the PwC Report figures (based on the earlier Richard Ellis analysis), notably the valuation of £6.4m with no rent (see paragraphs 13 and 55 above); and, on 6 December, in response to the Bank’s £15.5m loan restructuring proposal, ACL relied on Richard Ellis’s analysis that, with a rent of £200,000 from the anchor tenant, the Arena lease was valued at £8.4m (ibid).

96. Mr Thompson relied upon these as evidence, akin to admissions, that ACL's worth was £6.4m, £8.4m or at least only a relatively small proportion of the £14.4m of the loan. However, leaving aside the corporate difference between the Council and ACL (upon whose Board the Council-nominated directors were a minority), what was said by a party to negotiations at a time when they were attempting to persuade the Bank to sell the loan for as low a price as possible is scant evidence of the true value of the Arena to the Council as a shareholder. It is clear that the Bank was not persuaded by these representations: the Bank, in possession of the relevant valuations and analyses, refused to sell the loan for £12m (because it considered it was, in all the circumstances, worth more) and offered to restructure the whole £15.5m loan (because it considered ACL could, in all the circumstances, service it).
97. The third point concerns the court's approach.
98. At first blush, the Claimants' submissions appear inherently unattractive. SISU are a commercial organisation, committed (and entitled) to pursue their own commercial interests. Until April 2012, ACL had been profitable: its balance sheet showed a profit every year (see paragraph 13 above). On the other hand, the SISU company CCFC had incurred substantial losses – regular losses of £4m-6m per year including, in 2011-12, a £5m loss on a turnover of £10m – and was clearly balance sheet insolvent. It appears to be common ground that poor management greatly contributed to these commercial problems of CCFC. SISU invested about £40m in CCFC until 2012, and, as I understand it, another approximately £10m from April 2012 until CCFC's demise.
99. SISU now seek to blame these financial woes on the rent for the Arena which they had to pay, which, they have been at pains to stress at every opportunity, was considerably higher than CCFC's competitors in the Championship yet alone League Division One, but that is to look at only one small part of the whole canvas. In this case, (i) CCFC had sold their right to revenues from the Arena, to the Higgs Charity for good consideration; (ii) when SISU bought CCFC, they did so in full knowledge of the absence of any right to Arena revenues and CCFC's contractual commitments including the commitment to pay rent at £1.3m to ACL; and (iii) the outgoings on rent were only a relatively small percentage – less than 10% – of the Football Club's expenditure. ACL, the Council and SISU agreed to negotiate towards a restructuring; but ACL and the Council were under no legal compulsion to restructure them in any particular way, and SISU had no proper legal expectation that they would be restructured after negotiations in the manner in which they wished.
100. In April 2012, the crisis in ACL was triggered by CCFC/SISU refusing to pay rent which CCFC was legally obliged to pay, in pursuit of the SISU strategy to obtain a return on their investment by buying into ACL cheaply. SISU took that action quite deliberately to distress ACL's financial position, with a view to driving down the value of ACL and thus the price of a share in it, which they coveted. Indeed, as I have indicated, in these proceedings, the Claimants' use the argument that ACL's impending insolvency (which SISU provoked) drove the value of ACL down by up to 30%. Those were commercial decisions that SISU were entitled to take.
101. SISU now seek to show that, in making a £14.4m loan to ACL in which it owned a half-share, the Council acted in a way which no rational private investor would act. However, they invested perhaps £50m in the hopelessly loss-making Football Club –

£10m after April 2012 – in the speculative hope that they could make profits in the future, by buying into the Arena. The documents make clear that, by the relevant time, all of the investment made in the Football Club had been written off by SISU and the investors who invested through them.

102. Mr Goudie expressed himself, as ever, in modest terms – but it is quite clear from his submissions and the documents I have seen that the Council considers SISU’s approach to these matters to have been outrageous. For their part, the Claimants have made very serious allegations against the Council and its officers (e.g. that they were motivated by improper considerations, and acted all but dishonestly), most of which were not pursued to a conclusion. As between the parties – and, as shown by the press cuttings to which I was referred, others including the supporters of the Football Club who have reacted to events with bemusement and anger – emotions have, at times, run high.
103. However, although it has a commercial background and one ground requires consideration of how a rational private market economy operator might have acted in the place of the Council, this is a public law claim. In such a claim, of course it is not unusual for the Claimant or other party to be driven by its own private interests – because decisions of the State often impact on private interests – but that too does not detract from the inherent nature of these proceedings. I have to determine whether the Council erred in law by granting State aid to ACL, or by determining to make the loan to act without taking into account all material considerations. That is a task that I must – and will – tackle dispassionately, applying the law (which is uncontroversial) to the facts of this case.

#### The Amount of the Loan and Security for the Loan

104. Mr Thompson submitted that no private investor would have made a loan of £14.4m to ACL on any terms, given the value of the company. The PwC Report suggested that, as no rent was coming in from the anchor tenant, the lease of the Arena (ACL’s only substantial asset) was worth £6.4m, and a private lender would be prepared to lend no more than 65% LTV, i.e. £4.1m (see paragraph 54 above). However, he submitted, in reality, even this figure was substantially higher than the figure probably achievable in January 2013; because ACL’s financial position had deteriorated since September 2012. By January 2013, it was on the verge of insolvency as a result of the unsustainable debt burden upon it, with the result that its value may have diminished to less than £3m. The Council recognised that the value of ACL was significantly less than £14.4m: in ACL’s letter to the Bank of 14 December 2012 (see paragraph 63 above), it was said that the £12m offer made was “significantly in excess of the property valuation and in the light of the ongoing uncertainty over the relationship with CCFC would be higher than any third party would be prepared to pay”. Mr Thompson also relied on other documents in which the Council, ACL and the Higgs Charity confirm that no third party would lend ACL £14.4m or anything like.
105. However:
  - i) The Richard Ellis/PwC valuation figure of £6.4m was based on ACL obtaining no rent from an anchor tenant. However, by January 2013, to the Council, the most likely outcome of the rent negotiations with CCFC was that a rent of £400,000 would be agreed. Although it was assumed in ACL’s Business Plan

that CCFC would quit the Arena and pay no more rent (see paragraphs 76-77 above), the Council was not to know that SISU would not agree any rent figure unless they achieved access to ACL revenues, and that that access had been effectively closed since August 2012. On 11 December 2012, CCFC/SISU had offered to pay a rent of £400,000 for the rest of the lease period; and, albeit after the event, on 29 January 2013 (i.e. after the Bank loan purchase by the Council), an on-going rent of £400,000 was agreed between CCFC and ACL, subject to SISU approval. I do not accept Mr Thompson's submission that no private investor would have lent money to ACL without final resolution of the rent negotiations with the anchor tenant. The Council had considered the risk of losing CCFC as an anchor tenant, concluding that ACL was sustainable without rent from CCFC; and, in any event, the Council reasonably considered that, by solving the problem of loan repayment payments to the Bank, that would remove the impasse in the rent negotiations between ACL and CCFC/SISU. With an anchor tenant rent of £400,000, the Richard Ellis/PwC valuation rose to £10.8m.

- ii) In any event, the £6.4m valuation was based upon the premise that the Arena had no anchor tenant for the rest of the 41 year lease period: even if CCFC left the Arena, there was the possibility that ACL would obtain another anchor tenant in the future.
  - iii) The Richard Ellis/PwC valuations (which were valuations as at March 2011) did not take into account ACL's ability to increase revenues and decrease expenditure, identified in ACL's Business Plan. SISU themselves considered that the value of ACL could be considerably increased by marketing the Arena better; and Deloitte and the Bank recognised the possibilities of making significant cost savings.
  - iv) Mr Goudie also relied upon assets of ACL, other than the Arena lease, notably the £3.4m debtors and cash shown in the ACL balance sheet as at 31 December 2012. The debtors presumably included CCFC; but as at January 2013, the Council was entitled to consider CCFC would pay at least something towards arrears of rent (as was provisionally agreed in January 2013), although the £3.4m figure would have to be discounted to take into account trade and other creditors (excluding the Bank), i.e. nearly £1.7m. The net asset here is therefore less than Mr Goudie suggested, but nevertheless not insignificant.
106. Mr Goudie submitted that, in the circumstances, I could be satisfied that the value of the ACL business as at January 2013 was likely to be equal to or greater than the loan provided. Although I accept that the value was considerably higher than the figures relied upon by Mr Thompson – the valuations of £6.4m and less were worst-case scenarios on the basis that the Arena would not earn any rent from an anchor tenant for the next 41 years, and the Council was entitled to proceed on a more realistic basis than that – I would not go that far. On all the evidence, a realistic valuation of ACL as at January 2013 was no less than £10.8m, but less than £14.4m. But a private investor in the position of the Council would not focus exclusively on LTV. The Council was entitled to consider the longer-term, as a private investor would. I have to consider whether a private investor in its place would restructure its commercial business by making the loan on the terms it did make and on the basis of additional steps (as to increasing revenues and reducing costs) that it required ACL to make



through its business plan. Such an investor might do so, if the immediate burden on the company could be mitigated by reducing its expenditure (including its annual expenditure on loan repayments) and increasing income. That is precisely what the Council wished to do, and the ACL Business Plan proposed.

107. Two further matters can usefully be dealt with under this heading.
108. First, Mr Thompson criticised ACL for not having obtained independent advice on the commercial pros and cons of making the loan on the terms that they did, and for not having a business plan from ACL before the event.
109. However, it would be too much to expect for independent advice to be obtained as to precisely what a hypothetical private investor in the position of the Council would do. The Council had the advantage of advice from PwC; and the Council did obtain a Business Plan from ACL before 15 January 2013. Indeed, as I have indicated (see paragraph 76 above), it was a condition precedent of the loan that a business plan would be provided. That was clearly to ensure that ACL could service the loan. The Business Plan evidenced that: it showed that, on the basis of the adopted assumptions (which included the worst-case scenario of there being no anchor tenant and CCFC not paying any further rent), ACL could meet its repayment obligations and still be in a positive cashflow position at the end of each financial year. As both 50% shareholder with two seats on ACL's Board, and major creditor, the Council was able to exercise considerable scrutiny over the commercial activities of ACL. Of his consideration of the commercialities of the loan, Mr Hastie confirmed that:
- “This involved a detailed assessment of the ACL business plan, careful consideration of its ability to finance any proposed loan repayment and the development of a financing proposal.” (31 January 2014 Statement, paragraph 75).
110. Second, the security for the loan is closely linked to the value of ACL. For the reasons I have given, although I accept that ACL may not have been worth £14.4m in January 2013, nor do I accept that its value was as low as £6.4m. In addition, the Council had the benefit of the two guarantees that had initially been given for the Bank loan, in the aggregate sum of £0.5m. The private investor in the shoes of the Council would have been properly entitled to take the view that ACL was capable of servicing a loan for £14.4m over 41 years, and the security was sufficient to make the risk of it failing to do so commercially worthwhile. It is noteworthy that, in December 2012, the Bank was not prepared to accept £12m for the loan and (having had all of the relevant valuation evidence) considered ACL capable of servicing a larger loan over a shorter period with annual repayment of £1.3m, and leaving £7.5m (to be serviced on an interest-only basis) outstanding as at 20 years. Although it served the formal default notice based on a lack of security, it appeared to consider that a restructured loan with the security in place was at least preferable to continuing with the enforcement proceedings.
111. Mr Thompson criticised the Council for saying that it was “uniquely well secured” because of its ownership of the freehold of the Arena. I accept that that phrase, used in briefings of councillors, was not one which a commercial lawyer would perhaps have used: the fact that the Council was freeholder was not relevant to the adequacy of the security for its loan to ACL as leaseholder. However, it must be seen in the

context of an officer briefing councillors. In considering whether to make the loan as a commercial transaction, the Council was entitled to take into account its position as freeholder of the Arena, just as much as a private market operator would have been. If for any reason ACL failed, the lease of the Arena would almost certainly revert to the Council as freeholder, and it would have the opportunity to re-let it.

#### The Term of the Loan

112. Mr Thompson submitted that the term of the loan (for the balance of the lease period, about 41 years) was substantially longer than any term which a private investor would have countenanced. The effect of the loan facility was that capital repayments well above SISU's valuation for the Arena lease would remain outstanding for over 30 years; and a private investor would not have been prepared to have advanced the loan on that basis. The PwC Report confirms that a term of 7-10 years was likely to have been the maximum available from an outside private lender.
113. However, this again ignores the position of the Council as a shareholder. It was not an outside investor. Just as the Bank were prepared to put forward a debt restructuring proposal that would have meant £7.5m capital (much higher than the SISU valuation) would have been outstanding after 20 years – because it was to be serviced for that time on an interest-only basis – assuming the terms as a whole to have been appropriate, it would have been reasonably open to a private investor rationally to make a loan over the whole term of the lease, on the basis of a restructuring of the business.

#### The Interest Rate and Rate of Return

114. Mr Thompson submitted that no private market investor would have made the loan, for that amount and for that term, for the rate of return the Council could reasonably have expected. The loan was to be made initially out of cash reserves, but at some stage was to be funded by prudential borrowing at an average rate of return of £100,000 per year on the whole £14.4m loan (i.e. 0.69%). PwC had said that a private lender would have required a rate of 5% above LIBOR, even if the loan were restricted to 65% LTV over no more than 10 years.
115. However:
- i) The interest return is not as low as Mr Thompson suggested. The loan is at a fixed rate of 5%, and then variable upwards only at the Council's discretion. The Council's net interest return whilst it uses its cash balances to fund the loan (estimated to be for at least 3-5 years) would be about 4% or £500,000 per year. When it becomes necessary for the Council to borrow to fund the loan, its rate of return will be the minimum loan rate of 5% less its cost of borrowing, which was 1.85% as at January 2013. As it is entitled to charge ACL at least 2% above its own borrowing rate, it will always achieve a net rate of return of 2%.
  - ii) The EU Commission uses a particular methodology to assess whether an interest rate is at market rate for the purposes of applying State aid rules. This is set out in the Commission's Communication on the Revision of the Method for Setting the Reference and Discount Rates (OJC14/6) (19 January 2008)

(“the 2008 Communication”). Of course, this can only be a proxy for the real market rate; but in circumstances in which the comparator is necessarily hypothetically placed in the unique circumstances of the State organ in the actual transaction, it is clearly worthy of note and the Commission and the European Court appear to accord it considerable weight. The methodology sets reference rates by taking a base IBOR rate, and applying margins to it that are informed by the borrower’s credit rating and the security used as collateral. In his skeleton argument (at paragraph 156 and following), Mr Goudie shows that, on a £10.8m valuation of the Arena and even if ACL was considered to have a “bad” credit rating (which, he contends, would not apply to ACL), the private investor rate would be 5.19% compared with the 5% minimum rate required by the Council’s loan to ACL. Mr Thompson submitted that these proxy reference rates are of limited value when there is other available evidence as to the applicable private investor rate. However, the Commission has said that there are policy reasons why there should be reference to the rate assessed by use of this methodology, notably legal certainty and equal treatment (see Belgium v Commission [2003] ECR I-6931); and, for what it is worth, the minimum loan rate of 5% appears to accord approximately to the reference rate.

- iii) In respect of other evidence, the PwC Report rate was for an incoming new property lender, with no interest in ACL. It is again of very limited assistance here. In any event, the 12 month LIBOR rate in January 2013 was just less than 1%, and so the PwC rate would be less than 1% more than the minimum loan rate in fact agreed. The Bank offer of December 2012 was at an effective rate of 5.91%. Furthermore, prior to disclosure of the actual rate, SISU appear to have assumed a rate of 5% on a £14m loan may be reasonable (Statement of Laura Deering of 17 April 2013, paragraph 6.1 and 6.5: Ms Deering is an Investment Manager with SISU Capital Limited, who was directly involved in the purchase and management of CCFC).

116. In any event, obtaining a commercial interest rate of return was only one of the commercial objectives of the Council: the other objectives included obtaining the opportunity to benefit from dividends and/or Super rent from ACL in the future, and the transfer of Car Park C back to the Council for nil consideration (see paragraph 79 above).

117. Whilst all of these factors must be considered together, looked at discretely, the commercial return for the Council on the transaction could not in itself be regarded as one which no rational private market operator would have countenanced.

#### Commercial Justification for the Loan

118. Mr Thompson made two submissions.

119. First, he submitted that the Council’s decision to make the loan was to a substantial extent based on policy objectives. He referred to the Hastie Report, where these factors featured large. In paragraph 6.1, the Report said:

“The recommendations of this report aim to secure the original and ongoing objectives of the Arena project through the

existence and effective operation of the stadium business, which are:

- To deliver regeneration/inward investment
- To create jobs
- To promote Coventry
- To provide a major sporting and cultural venue

These objectives are contributing towards the Council achieving the following of its core aims – a prosperous Coventry, making Coventry an attractive and enjoyable place to be; and encouraging a creative, active and vibrant city.”

120. This criticism is, at root, misconceived. The Council is responsible for the local government of its area and those who live in it, to which it owes substantial duties. For any decision it makes, it is likely to begin with its political objectives and aspirations. The Council adopted the Arena as part of its policy for the regeneration of North-East Coventry. It is entitled – if not bound – to have continuing regard to its policies in that regard. Even when, in pursuing its objectives, it considers entering the commercial arena, it is fully entitled to take into account its political agenda.
121. Of course, in determining a course of action, it is subject to the constraints of both EU law and domestic law – it cannot, for example, grant State aid. However, the Council is perfectly entitled to consider what transaction it wishes to enter into as a political matter, and then consider whether it would be constrained by EU law on State aid not to proceed with the course it wishes to follow. Only in considering whether a transaction is State aid, must the Council leave out of account matters of policy.
122. Mr Thompson submitted that the documents showed that the only reasons that the Council made an offer to the Bank to purchase the loan for the amount that it did were political in nature. For example, he referred to Mr West’s note of the 6 November 2012 meeting with the Bank, which was in these terms:
- “I stressed that we were in no way considering increasing our offer [of £6m] on the basis of the numbers available, and that the offer was at this size not on the basis of pure commercials, but because of the Council’s policy desire to protect the jobs and business base of the Arena, and to use its continued survival as a stimulus for further regeneration in the North East of the City...”
123. However, this note was of a discussion with the Bank in which the Council was trying to persuade the Bank to sell the ACL loan cheaply: it is not an admission by the Council that the only reason it purchased the loan at over £6m was because of political considerations. The other documents – including the commercial justification of the loan in, e.g. the Hastie Report – belie that. These make clear that, from April 2012, the major driver for the Council was the protection of its commercial interest in ACL.

124. Mr Thompson submitted, second, that there was in any event no commercially plausible basis for the Council having made the loan that it did. As a shareholder in ACL, if the loan was for more than the worth of the company, it did nothing to create a positive value in the Council's shareholding, the value of that shareholding remained at zero. The Hastie Report acknowledged that, conceding that the value of the Council's shares was "likely to be negative in value as a result of the withheld rent and existing Bank loan" (paragraph 2.10); and, Mr Thompson said, it was obvious to the ACL shareholder directors (including Mr Reeves and Mr West, the Council officers) that no value would be created in the shareholding unless the Bank debt could be discharged for a sum less than the value of ACL itself. That is further recognised by the Council's own accounts for the period 2012-3, which record the shareholding in ACL as having "net value of nil".
125. In those circumstances, Mr Thompson submitted that no rational private investor with a shareholding in ACL would have contemplated making a loan of £14.4m to ACL. They would have pursued other options.
126. Mr Thompson suggested that such an investor would rather have pursued the SISU plan, and/or the Bank's offer to restructure the loan. However, for the reasons I have given, the SISU plan had by September 2012 irretrievably run aground, and ACL had rejected the Bank's offer on the basis that they did not consider they could service the loan on the basis put forward. In this context, Mr Goudie compellingly stressed the difference in corporate personality between ACL and the Council; but, whoever made that commercial decision, it was reasonable. Indeed, SISU do not suggest that the restructured loan could have been serviced in practice, without CCFC rent which was not to be forthcoming because SISU were only prepared to agree a new rental agreement as part of an overall package that was doomed for the other reasons I have given.
127. Therefore, Mr Thompson's main alternative to buying out the loan, as the Council did, was insolvency: he submitted that there was no commercial purpose in the Council avoiding ACL's insolvency, because its shareholding in ACL was of no value and remained of no value after the loan had been made.
128. However, this submission fails to give appropriate weight to the European jurisprudence which recognises that not all private market operators invest for speculative or short-term gain: some private investors (as opposed to creditors) are guided by a longer-term view of profitability, and are willing to retain (and, if necessary, restructure and refinance) investments because they consider there is a realistic prospect of longer-term profits (see paragraph 88(viii)-(ix) above). In this case, even if the value of the share in ACL was still nil, the new financing enhanced the position of ACL and its shareholders by reducing the negative equity in the company. The Council reasonably concluded in January 2013 that ACL could, and likely would, be able to repay the loan at £0.8m per year, and return to profitability, particularly on the basis of ACL's Business Plan which showed an intention to increase non-anchor tenant revenue streams (including its hotel, catering, conferencing and events businesses) and reduce costs. In my view, a rational private investor in the position of the Council might have come to that same conclusion. Deloitte and the Bank were of course confident that, with such steps, ACL would be able to service a loan at £1.3m repayments per year for at least 20 years; and the Claimants appear to accept ACL's business could have been put on a sound footing if

“drastic measures” were taken and ACL had been able to agree “sensible and sustainable” terms with its anchor tenant (Skeleton Argument, paragraph 87 (footnote 29)). For the reasons I have given, in January 2013, it was reasonable to assume that a long-term rent deal with CCFC was possible – probably at £400,000 per year. There was a substantial risk that no such deal would come to fruition, but even then there was substantial evidence that ACL would remain sustainable.

129. On the basis of all the evidence, in my judgment, a rational private market operator in the position of the Council might well have considered that refinancing ACL on the terms in fact agreed was commercially preferable to allowing ACL to become insolvent.

### Discussion

130. Although I have taken the relevant elements as Mr Thompson saw them in turn, as I stressed at the outset, whether action by the State amounts to State aid is a “global question” which must be considered in the round. Having considered the matter in that way, I have firmly concluded that a rational private economic operator may have made the loan to ACL on the terms the loan was in fact made by the Council; and thus the loan was not State aid.
131. In coming to that conclusion, I have taken into account all relevant matters, including those to which I refer above, but particularly the following.
- i) The failure of CCFC/SISU to pay rent – and their refusal to consider paying any rent except on SISU’s terms – put the Council in an invidious commercial position. As it was intended to do, it placed ACL in considerable financial distress, compounded by the indications that CCFC/SISU were unwilling to pay any rent unless and until a commercial deal was struck on their terms, including a significant (at least 50%) share in ACL; and by SISU’s indications that they were fully prepared to put CCFC into administration or even liquidation.
  - ii) In fact, as we now know, restructuring the Bank loan and the SISU plan were not viable options. Undoubtedly, even if the Council pursued them more than they did (as Mr Thompson suggested they ought to have done), they would have borne fruit. The Council’s options were to buy out the loan on the terms that they did – because there is no evidence that the Bank would have accepted any lesser terms, and plenty of evidence that they would not – or to wind up ACL.
  - iii) Winding up ACL would have meant that, although the lease may have ultimately reverted to the Council as freeholder, the Council’s investment in ACL would have failed. Although the worth of ACL on paper was, as at January 2013, nil, I consider a rational private market economic operator, with a view to longer-term returns, may have considered (as the Council in fact considered) that the failure of the company was temporary, brought on by the refusal of CCFC to pay any rent; and restructuring involving both the refinancing of the ACL debt by the investor himself and steps to improve ACL’s cashflow – in terms of cutting costs and increasing revenue – would result in a realistic prospect and reasonable likelihood of future profits.

- iv) In coming to that view, he would have taken into account (i) the likelihood of retaining CCFC as an anchor tenant at a rent of £400,000, together with a significant contribution towards the rent arrears, (ii) the risk of CCFC going into administration/liquidation, and paying no further rent, (iii) the ACL Business Plan, which indicated that, even if CCFC left the Arena, ACL was sustainable on a worst-case scenario, without any anchor tenant rents; and (iv) the possibility in any event of obtaining another anchor tenant within the course of the 41 years left of the lease. He would also have taken into account the scope for cost savings and increased income, as identified in the ACL Business Plan; and the probable return of £500,000 per year for the first 3-5 years of the loan, and a minimum net return of 2% thereafter, over the whole of the 40 years of the lease, together with the possibility of further returns from the development of Car Park C and from the dividends or Super rent, in due course.
  - v) In January 2013, such an investor would have considered it likely that rent would be agreed with CCFC at £400,000 per annum. The Richard Ellis/PwC analysis would have valued the lease at £10.8m on that basis; but the private investor would have taken into account the fact that the valuations were made as at March 2011 without the benefit of the cost cutting and non-football income exercises that had intervened. He would have considered the value of ACL to be probably less than £14.4m, but probably more than £10.8m.
  - vi) Such an investor would be alive to the mismanagement and failure of the Football Club, whilst in SISU's hands; and the failure of CCFC to produce a convincing business plan for a sustainable football club. His faith and trust in SISU would have been less than full. He would also have been alive to the commercial risk of SISU attempting to buy the Bank loan, with a view to gaining access to ACL; and SISU's wish to recoup their investment, which could probably only be done through buying into ACL.
  - vii) He would also have taken into account the fact that, in August 2012, having taken advice from PwC, the Higgs Charity valued its share in ACL at £5m-6m (see paragraphs 37 and following above). Furthermore, in December 2012, the Bank had considered the debt to be worth over £12m; and the Bank were willing to restructure the Bank loan over 20 years, with confidence that ACL could service the loan repayments of £1.3m per year.
132. Whilst I accept that the Council were put to some hard decision-making over this commercial enterprise in 2012, in all of the circumstances and given the wide margin properly allowed in such matters, I simply cannot say that the loan extended by the Council to ACL would not have been entered into, on the terms in fact agreed, by any rational private market operator in the circumstances of the case. In my judgment, the transaction fell within the wide ambit extended to public authorities in this area; and clearly so. It was not State aid.

#### Other Matters

133. Mr Quigley adopted the submissions of Mr Goudie in relation to the above; but he also relied on two further grounds for contending that the loan was not State aid.

Given my finding above, which is determinative of the ground, I can deal with these very shortly.

134. First, he submitted that the loan did not benefit the recipient (ACL) but rather its shareholders, including the Council. I was unpersuaded that this would deny a finding of State aid.
135. Second, he submitted that the loan did not affect trade between Member States. He stressed that the adverse effect on trade must be evidenced. He submitted that the Claimants had put forward no, or no sufficient, evidence.
136. I understand that this is a matter for the national court to decide, and each case is fact-specific. Nevertheless, whilst I was referred to a number of cases which suggest that the application of this criterion has in practice been challenging, it seems to me that the European Court generally has little difficulty in finding a distortion of trade is liable to affect trade as between Member States. It appears to be settled that a transaction that strengthens the position of one undertaking compared with others competing within the EU is sufficient to conclude that it is liable to distort competition and affect trade between Member States (Philip Morris Holland BV v Commission [1981] 2 CMLR 321 at [11]). The 2014 Draft Communication says, at paragraph 188:

“For all practical purposes, a distortion of competition within the meaning of article 107 TFEU is thus assumed as soon as the State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be competition.”

137. In this case, the Arena is not simply a local facility: it was designed to be a facility that would attract national and international events. There is evidence before me of the Arena hosting events in respect of which stadiums in different Member States are likely to be in competition, and that are likely to attract individuals from different Member States; and that the operation of such stadiums is conducted on a cross-border basis. In the light of my findings above, I do not need to determine this issue: but my provisional view would be that, had this loan distorted or threatened to distort competition, then it would have affected trade as between Member States.

### Conclusion

138. However, for the reasons I have given above, I do not consider that the Council’s loan to ACL was State aid. Ground 1 consequently fails.

### **Ground 2: Failure to Take into Account Material Considerations**

#### The Law

139. The relevant principles of domestic law are again uncontroversial:
- i) A local authority acts unlawfully if, in making a decision, it fails to take into account a material consideration (R (Alconbury Investments Limited) v Secretary of State for the Environment, Transport and the Regions [2001] UKHL 23 at [50]). For these purposes, a consideration is material if the



decision-maker might have decided the matter differently had he taken it into account (R v Royal Borough of Kensington and Chelsea ex parte Kassam (1994) 26 HLR 455 at page 465).

- ii) Decision-makers in a local planning authority (usually councillors, in full Council or in a committee to which decision-making is delegated) often act on the basis of information provided by its officers in the form of a report. Such a report usually also includes a recommendation as to how the application should be dealt with. In the absence of contrary evidence, it is a reasonable inference that, where a recommendation is adopted, the decision-making councillors follow the reasoning of the report.
- iii) The councillors are not deemed to know something that the officers know, but which is not transmitted to them (R (National Association of Health Stores) v Department for Health [2005] EWCA 154 at [29] and following, [73] and [88], citing and adopting guidance from the High Court of Australia in Minister for Aboriginal Affairs v Peko-Wallsend (1986) 162 CLR 24 at pages 30-1).
- iv) The officers' report is therefore often a crucial document. It has to be sufficiently clear and full to enable councillors to understand the important issues and the material considerations that bear upon them; and decide those issues within the limits of judgment that the law allows them. However, the courts have stressed the need for reports also to be concise and focused, and the dangers of reports being too long, elaborate or defensive. The councillors do not have to be provided with every detail of every relevant matter, but only those matters which are so relevant that they must be taken into account, i.e. the salient facts which give shape and substance to the matter such that, if they are not considered, it can be said that the matter itself has not been properly considered (Health Stores at [62]-[63], and Peko-Wallsend at page 61). The dangers of reports being too full have been emphasised thus:

“... [T]he courts should not impose too high a standard upon such reports, for otherwise their whole purpose will be defeated: the councillors either will not read them or will not have a clear enough grasp of the issues to make a decision for themselves.” (R (Morge) v Hampshire County Council [2011] UKSC 2 at [36], per Baroness Hale).

“The court should focus on the substance of a report by officers given in the present sort of context, to see whether it has sufficiently drawn councillors' attention to the proper approach required by the law and material considerations, rather than to insist upon an elaborate citation of underlying background materials. Otherwise, there will be a danger that officers will draft reports with excessive defensiveness, lengthening them and overburdening them with quotation of materials, which may have a tendency to undermine the willingness and ability of busy council members to read and digest them

effectively.” (R (Maxwell) v Wiltshire Council [2011] EWHC 1840 (Admin) at [43], per Sales J).

The assessment of how much and what information should go into a report to enable it to perform its function is itself a matter for the officers, exercising their own judgment (R v Mendip District Council ex parte Fabre (2000) 80 P&CR 500 at page 509; and Health Stores at [69])

- v) Of course, if the material included is insufficient to enable the decision-making councillors to perform their function, or if it is misleading, a decision taken on the basis of a report may be challengeable. However, when challenged, officers’ reports are not to be subjected to the same exegesis that might be appropriate for the interpretation of a statute: what is required is a fair reading of the report as a whole (R (Zurich Assurance Limited trading as Threadneedle Property Investments) v North Lincolnshire Council [2012] EWHC 3708 (Admin) at [15]). Furthermore, in the context of planning cases, it has been said:

“[A]n application for judicial review based on criticisms of the planning officers’ report will not normally begin to merit consideration unless the overall effect of the report significantly misleads the committee about material matters which thereafter are left uncorrected at the meeting of the planning committee before the relevant decision is taken” (Oxton Farms, Samuel Smiths Old Brewery (Tadcaster) v Selby District Council (18 April 1997) 1997 WL 1106106, per Judge LJ).

The same is true in non-planning cases, where the authority’s decision-makers rely upon an officer’s report.

- vi) In construing reports, it also has to be borne in mind that they are addressed to a “knowledgeable readership”, including councillors “who, by virtue of that membership, may be expected to have a substantial local and background knowledge” (Fabre at page 509, per Sullivan J as he then was). As in this case, they may have been given briefings prior to the meeting at which the decision is taken. Furthermore, in deciding whether they have got sufficient information to make a properly informed decision or request further information or analysis, again that involves the exercise of judgment on their part. They are entitled to ask for more. Given the experience and expertise of councillors, coupled with the fact that they are democratically elected, the judicial approach to challenges to their decisions should be marked by particular prudence and caution (see Bishops Stortford Civic Federation v East Hertfordshire District Council [2014] EWHC 348 (Admin) at [40]-[41] per Cranston J).

#### The Claimant’s Case: Introduction

140. Mr Thompson submitted that the decision-making councillors in full Council failed to take into account a number of material considerations, because senior officers (particularly Mr Reeves and Mr West, but presumably including Mr Hastie) failed to

draw their attention to them. He relies upon seven such matters, which I will deal with in turn.

### The First Matter

141. The first material consideration relied upon as one which was wrongly kept from the councillors is the fact that the Council was in receipt of advice from PwC that a private investor would not have been prepared to lend above 65% of the value of ACL or to lend for more than a term of 7-10 years.
142. The Hastie Report refers to the fact that PwC had been commissioned jointly by the Council, the Higgs Charity and ACL to provide analysis of ACL's financial position and the options for the Bank. The Report said that the Council in the form of its officers had reviewed this work, discussed the detail with ACL and arrived at a view on the amount of cash that ACL would have to meet loan repayments to underpin the recommendations of the Report. The Report also indicated that the worst-case scenario Arena valuation, based on no rent from CCFC, was £6.4m so that there was a significant negative equity. That figure was of course based on the Richard Ellis analysis which had been adopted in the PwC Report.
143. That was all true, and no complaint is made of it. However, it is submitted that the Hastie Report erred in failing to set out the PwC opinions as to the loan and the terms upon which a private property investor without a shareholding in ACL (i.e. a private investor in different circumstances from those of the Council) might have been willing to make a loan to ACL. Leaving aside the changes that had occurred since March 2011 (the effective valuation date), e.g. the cost cutting steps etc, it is not arguable that this was something to which the Council, as an ACL shareholder, was bound to have regard in deciding whether to lend ACL the money on the terms proposed. A valuation on a basis entirely different from the circumstances in which the Council found itself would be of no – or, at most, bare peripheral – relevance.

### The Second Matter

144. The second material consideration relied upon is the fact that ACL had recognised on 14 December 2012 that a lower offer of £12m was more than any private investor would be prepared to pay for the Bank loan.
145. There is no merit in this. First, ACL were indicating only that a private investor in a position different from the Council – namely, again, a new investor, without a shareholding in ACL – would not pay more than £12m for the loan, which could not arguably be described as crucial to the decision the Council, as an ACL shareholder, had to make. Second, the indication by ACL was made in the course of negotiations with the Bank, and therefore cannot be of assistance as any sort of admission or proper indication as to the true value of the loan to the Council.

### The Third Matter

146. The third material consideration relied upon is the fact that the Bank had been in negotiation with ACL's shareholders and SISU, with a view to restructuring the Bank's debt; and particularly that these negotiations had reached an advanced stage on 10 December 2012 when (it is said) the Football Club agreed in principle to a

revised rent as part of a solvent restructuring of ACL's debt on terms which alleviated the risk of ACL becoming insolvent.

147. This too is hopeless. Mr West updated the Labour councillors on 3 December, to the effect that the Bank considered ACL would be able to pay the loan, although ACL did not think that that was the case. ACL rejected the Bank's restructuring proposal on 6 December, on the basis that it could not safely service the repayments proposed (£1.3m per year). The Claimants do not say how they consider such repayments could reasonably have been made. It is also simply not correct to say that CCFC had agreed a revised rent on 10 December: the parties were still far apart on proposals for on-going rent and rent arrears (see paragraph 73 above). The Hastie Report properly recited that SISU had failed to reach an agreement to pay future rent or arrears (paragraph 3.1.3).
148. Mr Goudie submitted, rightly, that this is not a public law ground of challenge: in essence, it is a plea by the Claimants and SISU that the only proper course the Council could have followed would have been to have agreed to the commercial course that SISU were pursuing. For the reasons I have already given, that course was fundamentally flawed; and, in any event, the Council was not bound to pursue the course preferred by SISU – it was entitled to pursue the course it considered was in its own best interests.

#### The Fourth Matter

149. The fourth material consideration relied upon is that substantial payments of rent had been received by ACL by virtue of the draw down of £500,000 from the escrow account and the £10,000 "pay per play" interim agreement for the 2012-13 season.
150. However, such rent had not been paid. Paragraph 2.12 of the Hastie Report accurately set out the position with regard to rent; as did Mr Reeves' presentation to the majority Labour councillors on 3 December 2012. No rent had been paid since April 2012, and it is recited that the escrow account of £0.5m had been exhausted in August 2012. No rent having been paid, a judgment for it had been obtained and (by the time of the Hastie Report) a statutory notice served. The next step would be for a winding up petition to be served, with the likely result that CCFC would enter insolvency proceedings. That précis cannot be faulted. It refers to the escrow account being used, and the £10,000 per match was not an "interim rent agreement": it was a payment in respect of expenses. It is true that such expenses had not been payable in addition to rent whilst contractual rent was being paid; but that rent was not being paid. Past payment towards expenses did not touch upon the question of rent.
151. Again, it is unarguable that the report was deficient or misleading.

#### The Fifth Matter

152. The fifth material consideration relied upon is the fact that the Council's officers had recognised the commercial advantage of not reaching a permanent agreement on rent, because it strengthened the Council's bargaining position with the Bank.
153. However, these were statements used in the course of negotiations, and thus very little weight (if any) could possibly be attached to them. In the task in which the

councillors were engaged, these statements were insignificant. Certainly, the Hastie Report was not deficient in making no reference to them.

#### The Sixth Matter

154. The sixth material consideration relied upon is the fact that ACL faced on-going financial difficulties independently of the rent issue.
155. However, although PwC had indicated that some of ACL's income was non-recurring, historically ACL had been profitable year-on-year whilst the Arena rent was being paid. It was in the nature of the Arena that some of its revenues would result from non-recurring items, that would have to be replaced; but, as Mr Goudie put it, "ACL was going along quite nicely until the rent strike".
156. It was not arguably misleading to say that ACL's financial distress resulted from CCFC withholding rent.

#### The Seventh Matter

157. The seventh material consideration relied upon is the fact that the Council had been party to Heads of Agreement on 2 August 2012, based on principles of cooperation between (amongst others) SISU and the Council, whilst the Council's officers had, without informing SISU, acted in a way to undermine that course by commencing unilateral negotiations with the Bank to purchase the ACL loan.
158. The Council do not accept that its officers acted in a manner "calculated fundamentally to undermine" the SISU negotiations. But, in any event, as I have explained, the SISU plan had terminally stalled by the end of August 2012, because it was impossible for them to agree to purchase the Higgs Charity share in ACL, which was vital to the plan as a whole. This ceased being a material consideration well before January 2013.

#### Conclusion

159. Consequently, I do not consider there is any arguable force in any of the seven discrete elements of Ground 2.
160. However, it would be remiss of me if I left Ground 2 there. As I have indicated, officer's reports are to be read broadly and as a whole. Reading the Hastie Report thus, I consider the belated criticism of it unfounded. In my view, it set out, properly and succinctly, the important relevant matters that the councillors were required to take into account, including the relevant risks of the proposal as well as the potential benefits. The courts have been rightly cautious about requiring officers' reports to be too full (see paragraph 139(iv) above): the dangers of such a requirement are obvious. A focused and succinct report, such as Mr Hastie's Report in this case, is in my judgment positively to be commended.
161. Mr Goudie and Mr Quigley submitted that, the Third Claimant (CCFCH) having been dissolved, the First and Second Claimants have insufficient standing to bring this new claim. I did not find that submission strong. However, they submitted, with considerably more force, that the Claimants were simply too late to make this entirely

new claim, and permission should be refused on the grounds of delay alone. Had I considered any part of Ground 2 to be arguable, I would have taken into account the extraordinary delay in making this claim to which (contrary to Mr Thompson's submission) I do not consider any failure on the Council's part to give disclosure materially contributed. However, for the reasons I have given, I do not consider any element of Ground 2 to be arguable, on the merits; and, on that basis, I refuse permission to proceed.

### **Ground 3: Irrationality**

162. Mr Thompson maintained, if but very faintly, the submission that, even if his other grounds failed, I should find that the Council's decision to make the loan was irrational, in the sense that no local authority could reasonably have made it.
163. I can deal with that ground very shortly: it clearly cannot survive my findings in relation to the other grounds, particularly those in respect of State aid.

### **Conclusion**

164. This claim fails in its entirety. Formally, I refuse the application on Grounds 1 and 3, and refuse permission to proceed on Ground 2.