

**Time and Date**

2.00 pm on Tuesday, 15th January, 2013

Place

Council Chamber - Council House

1. **Apologies**

2. **Minutes of the Meeting held on 4th December 2012** (Pages 5 - 20)

3. **Exclusion of the Press and Public**

To consider whether to exclude the press and public for the items of private business for the reasons shown in the report.

4. **Coventry Good Citizen Award**

To be presented by the Lord Mayor and Judge Griffith-Jones, Honorary Recorder

5. **Correspondence and Announcements of the Lord Mayor**

6. **Petitions**

7. **Declarations of Interest**

Matters Left for Determinations by the City Council/Recommendations for the City Council

8. **Medium Term Financial Strategy** (Pages 21 - 38)

From the Cabinet, 11th December 2012

It is anticipated that the following matters will be referred as Recommendations from Cabinet on 8th January 2013. 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:

9. **Sexual Entertainment Venues Policy - Consultation Results** (Pages 39 - 134)

Report of the Director of Community Services.

Note: A briefing note detailing the Streets and Neighbourhoods Scrutiny Board (4)'s consideration of this item is attached at page 133.

10. **Coventry Tenancy Strategy 2013-18** (Pages 135 - 204)

Report of the Director of Community Services

11. **Caludon Castle School - Proposed Academy Conversion** (Pages 205 - 362)

Report of the Director of Children, Learning and Young People

12. **Approval of Community Support Grants Policy** (Pages 363 - 416)

Report of the Director of Finance and Legal Services

Note: A briefing note detailing the Health, Social Care and Welfare Reform Scrutiny Board (5)'s consideration of this item is attached at page 415.

13. **Technical Changes to Council Tax (supplementary)** (Pages 417 - 430)

Report of the Director of Finance and Legal Services

14. **Shelton Square - Investment Acquisition** (Pages 431 - 438)

Report of the Director of City Services and Development

Item(s) for Consideration

15. **Appointment to Outside Body - Local Enterprise Partnership: Local Transport Body** (Pages 439 - 442)

Report of the Director of Customer and Workforce Services

Other Business

16. **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 on any matter

17. **Statement (if any) by the Leader of the Council**

Private Business

Matters Left for Determinations by the City Council/Recommendations for the City Council

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

18. **Shelton Square - Investment Acquisition** (Pages 443 - 450)

Report of the Director of City Services and Development

(Listing Officer: P. Beesley, telephone 024 7683 1377)

19. **Capital Refinancing** (Pages 451 - 452)

Report of the Assistant Director, Financial Management (to be circulated)

(Listing Officer: B. Hastie, telephone 024 7683 3710)

Bev Messinger, Director of Customer and Workforce Services, Council House Coventry
Monday, 7 January 2013

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, S Bains, L Bigham, J Blundell, K Caan, D Chater, J Clifford, G Crookes (Deputy Chair), G Duggins, C Fletcher, K Foster, D Galliers, D Gannon, A Gingell, M Hammon, 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, J O'Boyle, E Ruane, R Sandy, T Sawdon (Chair), H S Sehmi, B Singh, D Skinner, T Skipper, H Sweet, K Taylor, R Thay, S Thomas, P Townshend, S Walsh, D Welsh and A Williams

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language please contact us.

Carolyn Sinclair/Suzanne Bennett

024 7683 3166/3072

Minicom: (024) 7683 3029

Fax: (024) 7683 3266

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Agenda Item 2

COUNCIL OF THE CITY OF COVENTRY

4th December 2012

PRESENT

Lord Mayor (Councillor Sawdon)

Deputy Lord Mayor (Councillor Crookes)

Councillor Mrs Abbott	Councillor Lancaster
Councillor Akhtar	Councillor Mrs Lepoidevin
Councillor Ali	Councillor Mrs Lucas
Councillor Auluck	Councillor McNicholas
Councillor Bains	Councillor Maton
Councillor Mrs Bigham	Councillor Mrs Miks
Councillor Blundell	Councillor Mulhall
Councillor Caan	Councillor J. Mutton
Councillor Chater	Councillor Mrs M. Mutton
Councillor Clifford	Councillor Noonan
Councillor Duggins	Councillor O'Boyle
Councillor Mrs Fletcher	Councillor Ruane
Councillor Foster	Councillor Sandy
Councillor Galliers	Councillor Sehmi
Councillor Gannon	Councillor Singh
Councillor Gingell	Councillor Skinner
Councillor Hammon	Councillor Skipper
Councillor Harvard	Councillor Mrs Sweet
Councillor Hetherton	Councillor Taylor
Councillor Innes	Councillor Thay
Councillor Kelly	Councillor Thomas
Councillor Kershaw	Councillor Townshend
Councillor A. Khan	Councillor Walsh
Councillor T. Khan	Councillor Welsh
Councillor Lakha	Councillor Williams

Honorary

Alderman Present: J. Gazey
T. Webb
J. Wright

Apologies: Councillor Andrews
Councillor Howells

Public Business

85. Minutes

The minutes of the meeting held on 23rd October 2012 were signed as a true record.

86. 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 items of business indicated below on the grounds that the items involve the likely disclosure of exempt information as defined in the Paragraphs of Part I of Schedule 12A of that Act as indicated:

Minute No.	Subject	Relevant Paragraphs(s) of Part 1 of Schedule 12A
106	Coventry's District Heating Scheme, Heatline – Outcome of Procurement Process	3 and 4
107	Short Term Services for Homeless and Ex-Offender Accommodation and Floating Support	3 and 4

87. Coventry Good Citizen Award – Terry Harvey

On behalf of the Council, the Lord Mayor and his Honour, Judge Griffith-Jones, Honorary Recorder, presented Mr Terry Harvey with the Coventry Good Citizen Award. His citation read:

"Terry Harvey, who retired in 2005, is a champion for the people – all his adult life he has helped the people in his community in a variety of ways.

He regularly attends ward forums and the safer Neighbourhood Group representing the views of the community and making sure that their concerns are resolved, working with both councillors and the police. He updates display boards on the history of the Tile Hill North estate which he started in the 50s, and attends events which promote the area.

Terry is well-respected in Tile Hill and regularly receives invitations to judge garden competitions, present medals to young children for reading, cook at barbecues – which he carries out with great aplomb.

He is a very caring person and looks out for his elderly neighbours by cutting grass, delivering newspapers, changing light bulbs. He has even built a ramp for a disabled neighbour. He worked with the Young People's group to create the murals in Jardine Crescent and the boxing mural alongside the library.

He has been a member of the Massey Ferguson Running Club for almost 30 years and is a committee member and subscriptions secretary. His running days have stopped now but he offers his services as steward – putting up signs and setting out the course.

Although a stroke affected his vision it did not affect his voluntary activities - he now helps to organise outings and lunches and collect 'subs' for the Stroke Club! He also recently trained as a walk leader and conducts walks for the patients from the Medical Centre.

Terry Harvey is a very giving and caring person and fully deserves to be called a Good Citizen of Coventry."

88. **Congratulations to Tom Wood**

The Lord Mayor referred to Tom Wood, former pupil at Woodlands School and Sports College, who was named 'Man of the Match' as England defeated world champions New Zealand 38-21 at rugby at Twickenham on Saturday, 1st December 2012. The Lord Mayor had already written to Tom sending congratulations on behalf of the City Council.

89. **FIFA Pennant**

The Lord Mayor presented to the Council a FIFA Pennant, which had been given to him shortly after meeting Sepp Blatter, FIFA President, during the Olympic Football Tournament at the City of Coventry Stadium to mark that Coventry and the Ricoh Stadium had been chosen as an Olympic City to host world class football. The Pennant would be displayed in the Council House as another legacy of the Olympic Games 2012 and the role Coventry played.

90. **Petitions**

RESOLVED that the following petition be referred to the Cabinet Members (City Services) and (Community Safety and Equalities):

- (a) **Cars and Commercial Vehicles Parking on Grass Verges in Haytor Rise – 7 signatures – presented by Councillor Fletcher.**

91. **Declarations of Interest**

The following Members declared disclosable pecuniary interests in the items indicated below. The Members withdrew from the meeting during consideration of those items.

- (a) Approval of Council Tax Support Scheme (Minute 93)
Councillor Hammon
- (b) Debates (Minute 105)
Councillor O'Boyle

92. **Statement of Gambling Policy**

Further to Minute 65/12 of the Cabinet, the City Council considered a report of the Director of Community Services, which set out the outcome of the consultation on the draft revised Statement of Gambling Policy under the Gambling Act 2005. The Gambling Policy had to be renewed every three years and needed to be approved and published by 3rd January 2013.

Under Section 349 of the Gambling Act 2005, each licensing authority must prepare and produce a statement of Gambling Policy, detailing the principles that they proposed to apply in exercising their functions under the Act. The Policy must be renewed at least every three years. The current Gambling Policy took effect on 31st January 2010 and will expire on 30th January 2013.

Before determining a policy for any three year period, licensing authorities were required to carry out a consultation process. The consultation took place from 10th September to 7th October 2012, in accordance with the guidance issued by the Gambling Commission and the requirements of Section 349 of the Gambling Act 2005

The report submitted outlined the proposed changes and a copy of the amended Policy was appended to the report, along with details of the consultation responses received.

The Council noted that the report had also been considered by the Licensing and Regulatory Committee at their meeting held on 13th November 2012 and they indicating that they supported the recommendations contained in the report and did not wish to request any changes or amendments.

RESOLVED that the City Council adopts the revised Statement of Gambling Policy for the purposes of Section 349 of the Gambling Act 2005.

93. **Approval of Council Tax Support Scheme**

Further to Minute 66/12 of the Cabinet, the City Council considered a report of the Director of Finance and Legal Services, which set out proposals for the replacement of Council Tax Benefit with a localised 'Council Tax Support' from April 2013.

Council Tax Benefit was a means tested benefit to help low income households with the cost of council tax payments. The benefit was administered by the Council under a national framework prescribed by the Department for Work and Pensions. The Council awarded £29.6m of Council Tax Benefit annual to more than 37,000 households in the City, with £26.6m related to the Council's share of council tax revenue and £3m to the West Midlands Police and Fire Authorities that were also funded through council tax.

From April 2013, Council Tax Benefit would be abolished and replaced with a localised Council Tax support. Every billing authority would have responsibility for designing its own scheme of support. In localising support, the Department for Communities and Local Government were cutting funding by 10 per cent. Based on expenditure for 2011/12, the Council would receive funding of £24m towards the Council's share of cost of awards, which currently totalled £2.6m per annum.

The Cabinet noted that the rules governing support for pensioners, who comprised approximately 40 per cent of the caseload in Coventry, would continue to be prescribed nationally so that people of pensionable age do not receive any reduction in entitlement under a local scheme. As a result, the 10 per cent reduction would equate to a 17 per cent reduction in Coventry when applied only to working age people.

It was further noted that, in October 2012, the Department for Communities and Local Government announced transitional funding for the first year of Council Tax Support Schemes. To receive the additional funding, worth approximately £650k to Coventry, local authorities must ensure that their schemes do not pass on more than an 8.5 per cent reduction in support for Council Tax payments.

Three broad options were considered for the Council Tax Support Scheme, which were detailed within the report and, in summary, were:-

1. To replicate the current Council Tax Benefit Scheme and find savings from other areas to fund the 10 per cent cut so that the local system provided the same level of support as the current national system.
2. To pass the 10 per cent cut on as a blanket reduction for all working age people.
3. To pass the reduction on based on household income levels.

It was considered that options 2 and 3 would place significant financial pressures on low income households, many of whom would be impacted adversely by other changes to the welfare system. It was therefore recommended that option 1 should be approved.

RESOLVED that the City Council:

- (1) Take into account the consultation responses, Equality Impact Assessment and other information in the report and approve the proposed Council Tax Support Scheme set out in Appendix 1.**
- (2) Delegate authority to the Director of Finance and Legal Services to make final detailed changes to the Scheme and to implement the scheme from 1st April 2013.**

94. Council Response to Government Consultation on the Arrangements for Consideration of Proposals in the Fluoridation of Drinking Water

Further to Minute 67/12 of the Cabinet, the City Council considered a report of the Joint Director of Public Health, which outlined a proposed response to a Government Consultation on the arrangements for consideration of proposals on the fluoridation of drinking water.

The Health and Social Care Act 2012 introduced a number of organisational changes including the transfer of public health responsibilities to local authorities. The Act also transferred the responsibility for fluoridation scheme and conducting consultations on such schemes from Strategic Health Authorities, which would be abolished from 2013, to local authorities.

In order to introduce the relevant regulations to facilitate new arrangement, the Government published 'Healthy Lives, Healthy People: Consultation on the arrangements for consideration of proposals on the fluoridation of drinking water'. The consultation document included proposals for the participation in initial decision-making on a fluoridation proposal, suggested arrangements for joint committees of local authorities where these might be necessary, decision making processes (including consultation and ascertaining opinions) and proposals for how the variation, termination and maintenance of fluoridation schemes might be administered.

Given that Coventry currently benefited from the fluoridation of drinking water, the proposals for the City were of particular interest and it was expected that the outcome of this consultation would determine what steps, if any, the Council would need to undertake to maintain a fluoridation scheme in the future.

The report summarised the key elements of the proposed response, with the Council's full response to each of the 43 consultation questions provided at Appendix 1.

RESOLVED that the City Council approve the consultation response.

95. Response to Government Consultation: Adoption and Fostering – Tackling Delay

Further to Minute 68/12 of the Cabinet, the City Council considered a report of the Director of Children, Learning and Young People, which set out the Council's proposed response to the Government Consultation: 'Adoption and Fostering: Tackling Delay'.

The Cabinet noted that reducing delay in children being adopted was a key priority for Government and for the Council. The Government had also made the reduction of time it took to approve foster carers a priority, along with the reduction and improvement of the process so that it was clear and less bureaucratic.

The consultation 'Adoption and Fostering: Tackling Delay' was issued by the Government on 18th September 2012. The consultation covered a wide range of proposals which aimed to improve and speed up the process for approval of prospective adopters, the role of the National Gateway for Adoption, a fast track procedure for previous adopters, changes to how the adoption register worked, a rapid approval process for approved adopters as foster carers, changes to how case records for foster carers were shared between agencies, the approval process for foster carers and how adoption and fostering panels work, along with a variety of other detailed changes to processes, all aimed at reducing unnecessary causes of delay.

The Council's proposed response to the consultation was appended to the report submitted and, in summary, supported the majority of the proposals.

RESOLVED that the City Council approve the consultation response, as appended to the report.

96. Coventry's Super Connected City Plan – Urban Broadband Fund (Round 2)

Further to Minute 70/12 of the Cabinet, the City Council considered a report of the Director of City Services and Development and the Director of Customer and Workforce Services, which set out proposals for progressing the Coventry Super-Connected City Plan should the Council's bid for funding through Round 2 of the Urban Broadband Fund be successful.

The 2011 Autumn Statement by the Chancellor announced the creation of a new £100m Urban Broadband Fund (UBF), the aim of which was to create up to ten Super-Connected Cities across the UK with Ultrafast (80-100 Mb/s) broadband connectivity. The funding for these ten cities has since been allocated.

In the Budget of 2012 the Chancellor announced an extension of the fund with a further £50m of funding for round two, with the aim of enabling smaller cities to become super-connected. Eligibility for this phase was restricted to cities with Royal Charters and more than 45,000 core urban dwellings, which included Coventry, among a group of 27-cities.

Coventry's Super-Connected City Plan was submitted to the Department for Culture, Media and Sport (DCMS) on 17th September 2012, with a decision expected to be announced in the Chancellor's Autumn Statement on 5th December 2012.

For Coventry the total capital expenditure for this programme was estimated to be £10m. The bid submitted on behalf of the Council requested £5.05m from the UBF. In addition the Council anticipated leveraging £4.03m (40%) capital contribution from the private sector and up to £1m being required from the Council to match other resources. To deliver the project, internal and external resources would be required to support the procurement of a private sector partner and the delivery of ultra fast broadband across the City. To support this, in addition to using existing internal resources to deliver this programme, it was proposed that the Council contribute up to £1m to cover revenue costs (internal and external), working with partners where possible to manage the resource requirements.

A number of funding combinations had been explored as part of the bid submission work with Analysys Mason. The mix of external grant funding from the Urban Broadband Fund, private sector funding and Council resources was seen as the most appropriate mix to secure funding through the bid process.

If Coventry was successful in its application for funding through the UBF, it was recommended that the Council accept the funding and pursue the delivery of the plans set out in Coventry's Super Connected City Plan. To enable this to take place, delegated authority would be required for the Director of Finance and Legal Services to enter into a grant for the funding from DCMS and allocate up to £1m of Council resources towards the capital costs and up to £1m of resources to cover revenue costs.

RESOLVED that the City Council:

- (1) Delegate responsibility for acceptance of an offer of grant funding to Director of Finance and Legal Services and completion of the grant funding agreement.**
- (2) Approve the recruitment of a Project Manager, a technical officer and a support officer to co-ordinate the implementation of Coventry's Super-Connected City Plan (SCCP).**
- (3) Authorise a contribution of up to £2m from the Council Award a contract following the receipt of funding and completion of the procurement process.**

97. City Deal – Invitation to Participate in the Second Wave

Further to Minute 71/12 of the Cabinet, the City Council considered a report of the Chief Executive, which sought approval to develop an expression of interest for a Coventry and Warwickshire City Deal for submission to the Cities and Policy Unit.

In July 2012, the Government agreed the first wave of City Deals with the eight largest cities outside London and their wider economic area. The purpose of City Deals was to drive local economic growth and jobs, with each one negotiated separately to produce bespoke agreements to reflect the different needs of their functional economic

geography. City Deals were intended to be a transaction between cities and their wider area and central Government and aimed to give cities the powers and tools they need to drive local economic growth, unlock projects or initiatives that would boost economies, and strengthen local governance arrangements. The Cabinet noted that the City Deals agreed so far had focussed on investment, infrastructure (including transport), employment and skills.

The Government launched a second wave of City Deals on 29th October 2012 and, unlike the previous round, this would be a competitive process. The Government had advised that, to be successful, second wave deals needed to focus on a single economic issue requiring an 'innovative and transformative response'. Coventry and Warwickshire was one of the twenty places that had been invited to bring forward proposals for a City Deal in their area.

Cities and their wider economic area were asked to submit a draft expression of interest to the Cities Policy Unit in the Cabinet Office by 30th November 2012 to facilitate feedback and support from Government to develop the proposition in advance of the formal submission of expressions of interest by 15th January 2013. These would be assessed by Government with results announced in February 2013. Successful propositions would then go forward to a negotiations stage and it was expected that the final deals would be agreed by November 2013.

The Cabinet noted that early discussions with potential partners about the possible focus for a Coventry and Warwickshire City Deal had been based on the functional economic geography of Coventry and the wider area and the strengths and opportunities identified in existing regional economic analysis and strategies. Initial consideration of the potential theme of a City Deal highlighted the real opportunity for growth around advanced engineering and high-end manufacturing.

Whatever key theme the City Deal focuses on it was likely to result in the development of a range of policy responses which could include infrastructure investment including transport, support for key regeneration projects, job creation and skills development, support for business and trade, and the provision of housing. It was therefore recommended that the City Council develop an expression of interest in a City Deal for submission to Government.

It was acknowledged that this work would need to proceed with pace and involve a range of partner organisations. It was therefore proposed that a Cabinet Advisory Panel – City Deal be set up to direct this work, to be chaired by the Leader of the Council, the Cabinet Member (Policy, Leadership and Governance). Membership of the Advisory Panel should reflect the progress of the City Deal and the partners involved. In addition to key Cabinet Members it was likely to include the Chair of Coventry and Warwickshire LEP and Leaders from the neighbouring local authorities that were taking part in the development of the City Deal.

As the timetable for the submission for an expression of interest was very tight to meet the required deadlines it was recommended that a draft expression of interest be submitted to the Cities Policy Unit by 30th November 2012 and therefore Council would be asked for their retrospective approval of recommendation 3b within the report. Following discussions with Government, this submission would be developed this into an expression of interest for submission to Government by the deadline of 15 January 2013.

The Leader of the Council, Councillor John Mutton, confirmed that the Leader of the Opposition, Councillor Kevin Foster, would be a Member of the Cabinet Advisory Panel.

RESOLVED that the City Council:

- (1) Approve that Coventry City Council develop an expression of interest for a Coventry and Warwickshire City Deal.**
- (2) Set up a Cabinet Advisory Panel – City Deal, chaired by the Leader of the Council, to direct this work and ensure that the development of a City Deal meets the economic needs of the City.**
- (3) Delegate authority to the Leader of the Council in consultation with the Cabinet Member (City Development) and Chief Executive to:**
 - a) identify proposed partners for the City Council and enter into discussions with them and Government about its submission of an expression of interest;**
 - b) prepare a draft expression of interest for a Coventry and Warwickshire City Deal for submission to the Cities Policy Unit by 30 November 2012;**
 - c) submit an expression of interest for a Coventry and Warwickshire City Deal to Government by 15 January 2013 and/or meet any amended submission timetables;**
 - d) enter into discussions and negotiations with Government after the submission of an expression of interest to further develop and finalise the content of the City Deal prior to formal approval of Council by November 2013.**

98. Coventry's District Heating System, Heatline – Outcome of Procurement Process

Further to Minute 72/12 of the Cabinet, the City Council considered a report of the Director of City Services and Development, which outlined the outcome of the procurement process, details the route, the programme of works and the revised financial position in respect of Coventry's District Heating Scheme, Heatline.

A corresponding private report detailing financially confidential aspects of the scheme was also submitted to this meeting (Minute 106 below refers).

As part of driving the sustainability and low carbon agenda for the City, the Council agreed to pursue a project to develop an innovative District Heating Scheme for Coventry, using the excess heat generated by the Energy from Waste Plant, to heat buildings across the City Centre. In 2010 the Council secured a grant of £1.6m from the Home and Communities Agency (HCA) Low Carbon Infrastructure Fund to support the delivery of the project, with a further £0.7million secured in 2012. Heatline was a key way for the Council to lead on the carbon reduction agenda and to cement the City's green credentials.

In November 2011, the Council tendered for a Commercial Partner to deliver the scheme on a design, build, finance and operate contract. In February 2012 Cabinet and Council delegated authority to the Cabinet Member (Sustainability and Local Infrastructure) and the Directors of City Services and Development and Finance and Legal Services to award a contract for Heatline based on the outcome of the evaluation from a technical and financial perspective, subjective to delivering a key set of requirements.

Cofely District Energy Limited were appointed as the Council's preferred bidder in April 2012. Following a period to bring the commercial and legal process to close, Coventry University formally withdrew from the scheme. However, the Council worked closely with Cofely to understand the commercial position without the University and was still in a position to proceed with the project having satisfied the requirements under the delegated authority. On the 31st July 2012, the Council agreed and signed a contract with Cofely District Energy to implement the scheme with an official go live date of 1st September 2013. The scheme was now in implementation, a final route map had been agreed and physical work would begin imminently at the Energy from Waste Plant.

RESOLVED that the City Council:

- (1) Endorse its commitment to Coventry's District Heating Scheme (Heatline) under the delegated approval to officers in consultation with the Heatline Member Panel to award the contract to Cofely District Energy Ltd acting through its 100% owned company Coventry District Energy Company Limited as the operator for the next 25 years.**
- (2) Ratify the Council as the anchor customer without Coventry University.**
- (3) Endorse its commitment to support the expansion of Heatline under the contract with Coventry District Energy Company Limited to help the Council achieve the Government-set carbon reduction targets of 80% by 2050 and 34% by 2020.**

99. Short Term Services for Homelessness and Ex-Offender Accommodation and Floating Support

Further to Minute 73/12 of the Cabinet, the City Council considered a joint report of the Director of Community Services and the Director of Finance and Legal Services, which sought approval to merge the Homeless and Ex-Offender contracts, scope potential shared contractual opportunities and procure the service via open and competitive tendering.

A corresponding private report detailing financially confidential aspects of the proposal was also submitted to this meeting (Minute 107 below refers).

The Cabinet noted that the Council currently commissioned twenty two separate services across Public Safety and Housing within the Community Services Directorate. These services provided supported accommodation and floating support for the homeless and ex-offenders. The services were commissioned in order to fulfil statutory obligations

or were a requirement of City Wide partnership strategies to prevent and reduce instances of homelessness and re-offending.

The Council could continue to commission these services separately. However, this would lead to fragmented services for the individuals and inefficiencies in terms of contract management and service provision. The proposal to merge the contracts would provide a range of services which would respond to the complex needs of the individuals concerned.

Following consultation with providers, service users and examining existing needs analysis data some key high level principles had been established for the re-commissioning of the new Homelessness contract. There should be a single awarded contract rather than the 15 disparate, disjointed contracts that currently existed. Greater efficiencies and customer care would be created through a single assessment process, which would initially capture citizens' details once and should be added to as required. The single assessment process should ideally be administered through a single agreed, shared IT system. The re-commissioned homelessness services should more greatly complement the statutory duties of the Authority around homelessness.

RESOLVED that the City Council:

- (1) Combine contracted short term homeless and ex-offender services into one procurement process which enables better outcomes for the service users and improvements in operational allocation and value for money.**
- (2) Maintain funding at the current existing budget provision of £1,446,286 per annum for homelessness and to realise efficiencies from the existing budget of £518,612 for ex-offender contracts.**
- (3) Delegate to Cabinet Member in consultation with Director of Community Services approval to consider and discharge the duty under section 149 of the Equality Act 2010 following completion of the consultation and approve the specification for the procurement.**

100. London 2012 in Coventry - Evaluation

Further to Minute 9/12 of the Cabinet Member (Policy Leadership and Governance), the Council considered a report of the Chief Executive and Director of City Services and Development which outlined some of the main findings from the London 2012 in Coventry research and evaluation work. Appended to the report was the 'Olympic Impact Assessment – Analysing the Impact of London 2012 on the City of Coventry and Surrounding Areas'.

The City of Coventry played a unique role in helping to deliver a successful London 2012 Olympic Games. As a co-host city for the Olympic football tournament, home of the regional Cultural Olympiad project Godiva Awakes and host for a torch relay evening event and Paralympic Flame event, Coventry was the centre for more Olympics activity than any other city outside London.

Throughout the period leading up to, during and after the Olympics, officers had monitored and evaluated the impact of games related initiatives and activity which had

shown that, from an overall investment of less than £5million contributed by Coventry City Council (including public realm work), London 2012 in Coventry helped to deliver an overall benefit to the city and surrounding area of over £50 million.

In addition, total funding of £7,570,344 came from external sources, which included the European Regional Development Fund (ERDF), the London Organising Committee for the Olympic Games (LOCOG) and the Olympic Delivery Authority (ODA), to provide infrastructure and environmental improvements. Much of this investment would continue to provide a lasting benefit to local people.

The report contained key statistics and also stories behind the statistics. 2012 touched peoples' lives in different ways, and although the evaluation work reflected the quantity and scale of involvement in the games across the city and sub-region, a number of case studies and stories were included in the report which captured the spirit and significance of London 2012 on the people of Coventry.

Consultation with residents, partners and key contributors (such as Coventry Ambassadors) played a key part in developing the details in the Draft Olympic Impact Assessment. This included survey work, both face to face and through questionnaires carried out both locally and across the region.

It was recommended that a Cabinet Advisory Group to develop legacy plans, using the evaluation report as key evidence, for the city post-Olympics was established and met from January 2013 (Minute 15/12 below refers).

The Cabinet Member and officers discussed the positive evaluation report and noted that the financial benefits were increasing as contract figures were being confirmed and that this report was not the end of the evaluation.

RESOLVED that the City Council accept the evaluation report and that a further update report be considered by the Cabinet Member (Policy, Leadership and Governance) in 6 months time including new financial benefit figures.

101. London 2012 – Legacy of the Games

Further to Minute 14/12 of Cabinet Member (Policy Leadership and Governance), the Council considered a report of the Chief Executive and the Director of City Services and Development which indicated that Members had requested that Coventry's commitment to the opportunities offered through the London 2012 Olympics should leave a lasting legacy for the city. A number of themes had emerged as key areas for development and further exploration in terms of an Olympics legacy for Coventry. Some of these could be achieved more quickly and easily than others, and some would require significant resourcing. A summary of some of the areas that could be explored further were detailed in the report.

A key role for the Cabinet Advisory Group was to ensure that work carried out for London 2012 had a lasting legacy for the city. Detailed evaluation work on all key Olympics related initiatives and activities had been carried out so that Members could understand the implications of developing and continuing the success of London 2012 in Coventry in the future.

The report detailed Legacy work now underway which included city centre improvements, tourism and marketing and sports and leisure activities. While some work

was well under way to build on Olympic successes, others were less defined at this stage, and it was proposed that a new Cabinet Advisory Group was established to ensure that the Council learnt from and builds on some of the city's greatest successes over the summer.

The Cabinet Member and officers congratulated those involved in the public realm works and the positive impact it had had for the people of Coventry and future events and discussed the importance of the legacy work.

RESOLVED that the City Council established a Scrutiny Panel for the Olympics Legacy and proposals developed for a lasting Olympics legacy for Coventry reporting back to the appropriate Cabinet Members with specific recommendations. The membership and terms of reference of the Panel to be determined by Cabinet Members, in consultation with the Chair of Scrutiny Co-ordination Committee.

102. Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012: Consequential and Other Changes to the Constitution

Further to Minute 19/12 of Cabinet Member (Policy Leadership and Governance), the Council considered a report of the Director of Finance and Legal Services which detailed the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 which came into force on 10 September 2012. The Regulations amended requirements for publicity for and access to meetings and information about executive decisions taken by Cabinet, Cabinet Members and officers. These amendments would require changes to the Constitution, particularly Part 4.2, and (the Access to Information Procedure Rules). The report sets out the changes that were needed and requested approval for those amendments. The changes to the Constitution were appended to the report.

RESOLVED that the City Council:

- 1) Approve the changes to the Constitution set out in section 2 and in the Appendix 1 of the report; and**
- 2) Approve that the Council Solicitor be given delegated authority, in consultation with the Cabinet Member, Policy, Leadership and Governance to make additional corrections and amendments to the Constitution arising as a result of the provisions of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.**
- 3) Approve that Authority be delegated to the Council Solicitor to write to the Local Government Association to seek clarity in relation to those matters referred to in paragraphs 2.4 (officer executive decisions) and 2.5.1 (conflicts of interest) of the report.**

103. **Care Quality Commission's Strategy for 2013-2016 – Consultation Response**

The Council considered a report of the Director of Community Services detailing the City Council's response to a Care Quality Commission (CQC) consultation on its strategy for 2013 to 2016, which was appended to the report.

CQC was the independent regulator for health care and adult social care services in England. Its role was to regulate health and adult social care providers to "protect and promote the health, safety and welfare of people who use health and social care services."

This role was carried out through registering providers against a common set of standards, monitoring and inspecting providers against those standards, taking action where a service was found to be not meeting standards, involving people in its work and publishing information about the services it regulates.

Since its creation in 2009, CQC had focused on registering providers into the new regulatory system. The strategy document outlined six strategic priorities for the next phase of its development, which CQC believed would see a renewed focus on monitoring and inspecting these organisations.

Due to the short period of time allowed by the consultation it had not been possible for a draft response to be considered by Cabinet therefore with the agreement of the Leader of the Council the report was only being considered at the Council meeting.

RESOLVED that the City Council approve the consultation response, as appended to the report.

104. **Appointments of the City Council**

The Council considered a report of the Director of Customer and Workforce Services which sought approval to the appointment of a City Council representative and deputy on the Council of Governors of the Coventry and Warwickshire Partnership Trust that has been established to manage their transition to become an NHS Foundation Trust.

In addition, at the meeting, in accordance with paragraph 4.1.35.13 of the City Council's Constitution, an additional appointment was proposed by Councillor Gannon and seconded by Councillor Fletcher in respect of the Local Transport Body.

RESOLVED that the City Council:-

- a) **Appoint Councillor Hetherton and M. Godfrey (Deputy) as the City Council representatives on the Council of Governors of the Coventry and Warwickshire Partnership Trust.**
- b) **Appoint Councillor Kelly as the City Council representative on the Local Transport Body.**

105. Question Time

The Leader of the Council provided a written response to a question as set out in the Questions Booklet, together with oral responses to supplementary questions put to him at the meeting.

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

No	Question Asked By	Question Put To	Subject Matter
1	Councillor Blundell	Councillor J. Mutton	Arena Coventry Ltd
2	Councillor Lepoidevin	Councillor Kershaw	Primary School Places
3	Councillor Lepoidevin	Councillor Kershaw	Expansion of Primary School Places
4	Councillor Lepoidevin	Councillor O'Boyle	Audit Assessment Service – Early Intervention

105. Debate – LTI

Councillor Gannon moved the following motion which was seconded by Councillor Kelly:

"Coventry City Council calls on Price Waterhouse Coopers, the administrators managing the sale of LTI's assets, to ensure that any potential buyer commits to manufacturing black cabs in Coventry. It is unthinkable that the historic black cab could be built anywhere else but in Coventry. Coventry City Council supports Unite the Union, which represents the laid-off workers at Manganese Bronze and also the black cab drivers, in campaigning to save the black cab and to continue to have them built in Coventry."

RESOLVED that the motion, as set out above, be unanimously adopted.

Private Business

106. Coventry's District Heating Scheme, Heatline – Outcome of Procurement Process

Further to Minute 98 above, the City Council considered a private report of the Director of City Services and Development, which outlined the outcome of the procurement process, details the route, the programme of works and the revised financial position in respect of Coventry's District Heating Scheme, Heatline.

RESOLVED that the City Council:

- (1) Endorse its commitment to Coventry's District Heating Scheme (Heatline) under the delegated approval to officers in consultation with the Heatline Member Panel to award the contract to Cofely**

District Energy Ltd acting through its 100% owned company Coventry District Energy Company Limited as the operator for the next 25 years.

- (2) Ratify the Council as the anchor customer without Coventry University.**
- (3) Endorse its commitment to support the expansion of Heatline under the contract with Coventry District Energy Company Limited to help the Council achieve the Government-set carbon reduction targets of 80% by 2050 and 34% by 2020.**

107. Short Term Services for Homelessness and Ex-Offender Accommodation and Floating Support

Further to Minute 99 above, the City Council considered a private report of the Director of Finance and Legal Services, which sought approval to merge the Homeless and Ex-Offender contracts, scope potential shared contractual opportunities and procure the service via open and competitive tendering.

RESOLVED that the City Council:

- (1) Combine contracted short term homeless and ex-offender services into one procurement process which enables better outcomes for the service users and improvements in operational allocation and value for money.**
- (2) Maintain funding at the current existing budget provision of £1,446,286 per annum for homelessness and to realise efficiencies from the existing budget of £518,612 for ex-offender contracts.**
- (3) Delegate to Cabinet Member in consultation with Director of Community Services approval to consider and discharge the duty under section 149 of the Equality Act 2010 following completion of the consultation and approve the specification for the procurement.**

(Meeting closed at 3.35 pm)



Council – 15th January 2012

**Recommendations from
Cabinet – 11th December
2012**

Public business

84. Medium Term Financial Strategy

The Cabinet considered a report of the Director of Finance and Legal Services presenting a Medium Term Financial Strategy (MTFS) for 2013-2016 for adoption by the City Council. The previous strategy was approved in October 2011. The Strategy underpinned the medium term policy and financial planning process that was fundamental to setting our revenue and capital budgets.

In parallel, the pre-budget report (Minute 83 above refers) set out the work undertaken to in preparation for the 2013/14 and future years' revenue budget and capital programme.

The context in which the City Council developed its MTFS continued to be one of unprecedented financial pressures. The recent recession and the sovereign debt crises that developed out of the 2008 banking crisis meant that economic growth was forecast to be subdued for the foreseeable future. Significant reductions in spending levels would be required up to 2020. In practice, the process of reducing spend has only just started. Although the 2010 government spending review covers the period to 2014/15, the spending totals for 2013/14 onwards would almost certainly be revised downwards.

In addition, the last year had seen a review of the entire Local Government Finance system, with the localisation of 50% of business rates being the headline change. This created significant uncertainty, both in forecasting the level of resources that will be available, but also at a policy level.

Whilst resources fall, the demand for services increases, in particular due to demographic changes, with a greater number of both the very young and older people.

The “perfect storm” of reducing resources, low economic growth, increased demand and government reform makes it crucial that local authorities consider their role and how they need to radically reshape their services, in order to protect the most vulnerable within an environment of scarce resources. Significant national developments impacting on local authorities were detailed in the report.

The City Council's starting financial position prior to the 2013/14 budget setting as detailed in the report showed a major funding gap increasing to nearly £60m in 2015/16.

The City Councils strategic approach to the demands that it faces included:

- The need to radically reshape services and make significant savings through the extension of the Council's abc Transformational Review Programme. The emphasis of abc (A Bolder Coventry) would move towards asking fundamental questions about what things the Council needs to consider stopping doing or doing in partnership with others, in particular in high spend areas. Central to this will be the need to actively manage the demand for services.
- The drive for economic growth, working with partner organisations to achieve this. The maximisation of capital investment either by the City Council, funded from borrowing or capital receipts, or via local partners will be fundamental to facilitating growth.
- The development of a City Deal bid for the sub region, as a way of unlocking major projects and initiatives that would stimulate growth;

RESOLVED that, after due consideration of the options and proposals contained in the report and matters referred to at the meeting, Cabinet recommend that Council approve the Strategy as the basis of its medium term financial planning process.

Cabinet
Scrutiny Co-ordination Committee
Council

11th December 2012
12th December 2012
15th January 2013

Name of Cabinet Member:

Cabinet Member (Strategic Finance & Resources) – Councillor Duggins

Director approving submission of the report:

Director of Finance and Legal Services

Ward(s) affected:

All

Title:

Medium Term Financial Strategy 2013-16

Is this a key decision?

Yes

Cabinet and subsequently Council are being recommended to approve the Medium Term Financial Strategy for 2013-2016

Executive summary:

This report presents a Medium Term Financial Strategy (MTFS) for 2013-2016 for adoption by the City Council. The previous strategy was approved in October 2011. The Strategy underpins the medium term policy and financial planning process that is fundamental to setting our revenue and capital budgets.

In parallel, the same meeting Cabinet is considering the pre-budget report that sets out the work undertaken to in preparation for the 2013/14 and future years' revenue budget and capital programme.

The context in which the City Council develops its MTFS continues to be one of unprecedented financial pressures. The recent recession and the sovereign debt crises that developed out of the 2008 banking crisis mean that economic growth is forecast to be subdued for the foreseeable future. Significant reductions in spending levels will be required up to 2020. In practice, the process of reducing spend has only just started. Although the 2010 government spending review covers the period to 2014/15, the spending totals for 2013/14 onwards will almost certainly be revised downwards.

In addition, the last year has seen a review of the entire Local Government Finance system, with the localisation of 50% of business rates being the headline change. This creates significant uncertainty, both in forecasting the level of resources that will be available, but also at a policy level.

Whilst resources fall, the demand for services increases, in particular due to demographic changes, with a greater number of both the very young and older people.

The “perfect storm” of reducing resources, low economic growth, increased demand and government reform makes it crucial that local authorities consider their role and how they need to radically reshape their services, in order to protect the most vulnerable within an environment of scarce resources.

Significant national developments impacting on local authorities include:

- The fundamental importance of economic growth, including the direct impact of growth on resources through local retention of part of business rate growth;
- The extension of the City Deal initiative beyond a limited number of the largest cities, to encompass areas including Coventry and Warwickshire potentially;
- The underlying demand and cost pressures in the Social Care area, with an increasing number of the very young and older people;
- The move towards Open Services, with the concept of a shift in responsibility between the individual and the state;
- The move towards increased numbers of Academy schools and the establishment of a school investment programme broadly outside of the local authority sphere;
- The transfer of Public Health functions to local authorities from 2013/14;
- The changes to the Council Tax Benefit systems, that transfer responsibility to local authorities for deciding on the level of benefit, but within a reduced resource envelope;
- The continued upward pressure on Pension Funds’ contributions, in particular to fund past service contributions.

The City Council’s starting financial position prior to the 2013/14 budget setting shows a major funding gap increasing to nearly £60m in 2015/16:

	2013/14	2014/15	2015/16
	£m	£m	£m
Revised Revenue Budget Gap	28.6	43.1	61.2
Revised Capital Budget Gap	11.0	2.2	0.1

The City Councils strategic approach to the demands that it faces includes:

- The need to radically reshape services and make significant savings through the extension of the Council’s Abc Transformational Review Programme. The emphasis of Abc (A Bolder Coventry) will move towards asking fundamental questions about what things the Council needs to consider stopping doing or doing in partnership with others, in

particular in high spend areas. Central to this will be the need to actively manage the demand for services;

- The drive for economic growth, working with partner organisations to achieve this. The maximisation of capital investment either by the City Council, funded from borrowing or capital receipts, or via local partners will be fundamental to facilitating growth;
- The development of a City Deal bid for the sub region, as a way of unlocking major projects and initiatives that will stimulate growth;

Recommendations:

(1) Cabinet is recommended to agree the report and to recommend that Council approve the Strategy.

(2) Scrutiny Co-ordination Committee is requested to consider whether there are any comments/recommendations that they wish to make prior to the report going to Council.

(3) Council is recommended to approve the Strategy as the basis of its medium term financial planning process.

List of Appendices included:

Appendix 1, Technical Assumptions within the Medium Term Financial Strategy

Appendix 2, Analysis of Financial Approach to Risks

Other useful background papers:

None

Has it or will it be considered by scrutiny?

Yes – Scrutiny Co-ordination Committee 12th December

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

No

Will this report go to Council?

Yes

Report title: Medium Term Financial Strategy 2013 – 2016

1. Introduction and Financial Context

- 1.1 This strategy supports the Council's medium term policy and financial planning process, and in doing so provides the basis from which to deliver the Council's priorities as set out in the Council Plan.
- 1.2 The international financial backdrop is hugely significant for local authorities and the country in general. The development of the post 2008 banking crisis into a sovereign debt crisis, latterly focused on the Eurozone, has stifled growth at a time when growth is precisely what is needed to reduce levels of sovereign debt. The recent recession is the longest since the 1870s.
- 1.3 At a national level, the 2010 Spending Review set out significant reductions in planned spending to 2014/15 as the government sought to put in place a debt reduction plan. For the City Council this meant a planned 27% cut in formula grant up to 2014/15, a large fall in specific grants and pressure on capital allocations. With low levels of economic growth government borrowing has not reduced as forecast and significant further reductions in spend will be required up to 2020. In practice, although the 2010 spending review covers the period to 2014/15, the spending totals for 2013/14 and subsequent years will almost certainly be revised downwards in the forthcoming Local Government Financial Settlement (due December 2012). The financial challenge facing all public services is huge, as the process of cutting spend is still in its early days.
- 1.4 The likelihood of the Council receiving a financial settlement that is worse than previously anticipated has been confirmed by two recent external reports. The Institute for Fiscal Studies report "More Fiscal Pain to Come" published on 26th November 2012 details how lower than expected tax revenues and higher than expected levels of borrowing are likely to lead to the Government missing targets that it has set in relation to national debt levels. The report goes on to conclude that one potential outcome of this is that the Government will need to implement further cuts above those already indicated. In addition, The Audit Commission's report "Tough Times 2012" (released 21st November 2012) explains that although most Councils have so far coped well with Government cuts, they will not be able to sustain their ability to protect 'priority services' into the future. These external reviews confirm the view therefore that there is significant pain to come both in terms of future spend reductions and fiscal tightening.
- 1.5 In addition, the last year has seen a review of the entire Local Government Finance system. The main headline change is the localisation of 50% of Business Rates and the linked development of local authority Business Rate pools from 2013/14. The principle of the change is that local authorities can keep a share of business rate growth, thereby providing an incentive to pursue growth. In effect, the changes represent a new resource allocation system and to some extent a move away from a system based on the allocation of resources according to an assessment of need. The inherent complexity of this, combined with the impact of external factors (e.g. growth levels across all local authority areas, and pooling agreements across authorities) and the fact that the system is still evolving, mean that the level of uncertainty is greater than in previous years.
- 1.6 Whilst resources fall, the demand for local authority services increases. The 2011 census reveals demographic changes with a greater number of both the very young and the old within the city. In addition, demand for services is increasing across a number of areas including: welfare reform; looked after children and housing. The perfect storm of reducing resources, low economic growth, increased demand and government reform makes it

crucial that local authorities consider their role and how they need to radically reshape their services, in order to protect the most vulnerable, within an environment of scarce resources.

2. National Developments

2.1 Aside from the increasing financial pressures that all public bodies face, there is a range of national policy reviews and other developments, which will impact on local authorities, and require their consideration as they develop their plans. Some are quite specific, whilst others are more cross cutting in their impact. These include:

- The need for **economic growth** is greater than it has been at any time in recent years. At a national level growth is required to help reduce sovereign debt and to ensure the UK remains competitive. Locally, the retention of a share of Business Rates from 2013/14, in part through the operation of multi local authority pooling agreements, has significantly increased the importance of driving growth locally. From 2013/14 authorities will benefit where there is growth in business rates, but suffer where there is contraction, with changes impacting at a local level more directly than they would have in the past. With this change the vibrancy of the local economy becomes ever more important. There is a real need for the Council to play a leading role in attracting inward investment, using its powers to achieve strategic regeneration and business rate growth more than ever before;
- The extension of the City Deal initiative presents a very significant opportunity for local authorities and Coventry, Warwickshire Districts and the LEP have been invited to submit an Expression of Interest by 15 January 2013. Every City Deal aims to:
 - Give cities the powers and tools they need to drive local economic growth;
 - Unlock projects or initiatives that will boost their economies; and
 - Strengthen the governance arrangements of each city.

At the heart of City Deal is the concept of a deal between a locality and the Government, under which greater freedoms, and potentially also funds, are made available to facilitate the delivery of growth. In return the city must present a deal that is unique, and uses existing funding streams and those currently not in Council control, to deliver better growth outcomes. The first round of City Deal focused on the largest cities in the UK. Firm decisions from government are expected in late 2013, with no guarantee that any individual bid will be successful;

- The underlying demand and cost pressures in the **Social Care** area remain. The sharing of costs between the individual, local and national government, as set out in the Dilnot Report, is still the likely direction of travel. Although there is no certainty about what any revised system will look like, a major issue for local authorities and public policy makers more generally is how the demand for services can be managed in a way that is fair and equitable, whilst at the same time actively managing cost pressures;
- The wider government policy of the move towards **Open Services**, through increased localisation, and greater community and business sector involvement continues. In parallel, there is a recognition that, in order to ensure that public services can continue to protect the most vulnerable, individuals will need to take responsibility where the state can no longer provide services to the same level as in the past;

- Changes in **schools** have continued apace, with the role of the local authorities being reduced with the setting up of more Academy Schools and establishment of the Priority Schools Building Programme (PSBP). As more schools become academies it is inevitable that the services provided within local education departments will be different in size and scope in the future. In addition, a significant element of schools capital investment, in the form of the PSBP, will be undertaken via the Education Funding Agency, with minimal local authority involvement. This investment programme will be in the form of either capital grants or Private Finance Initiative (PFI) schemes;
- The transfer of **Public Health** functions to local authorities from 1st April 2013 presents a major opportunity to more closely link services in order to improve health across the city and better manage the longer term burden of healthcare. The development of synergies between social care, health and public health services will be important in this respect. At this stage, it is still not clear whether new funding allocations will match existing levels of Public Health expenditure.
- A major issue for local authorities will be whether to accept the **Council Tax Freeze Grant**. If a local authority decides to freeze Council Tax for 2013/14 the Government has indicated that it will provide a Council Tax Freeze grant for 2 years only, equivalent to a 1% increase in Council Tax. In parallel, a 2% Council Tax cap will be imposed on authorities. The choice facing Councils is whether to raise the tax, increasing resources available, or to limit the tax, with only temporary and partial mitigation of the “cost” through government grant.
- Changes to the **Council Tax Benefit system** will see local authorities taking responsibility for setting levels of council tax benefit, but doing so with a 10% reduction in resources. This places long term risk on local authorities and in Coventry’s case will reduce the level of grant by somewhere in the region of £3m. More recently, and subsequent to most local authorities setting their approach to providing benefits, the government has indicated that £100m will be available to allow those authorities who have decided to cut the level of benefit, so that the level of the cut can be kept within reasonable levels. Coventry has decided to maintain benefit levels and on this basis will qualify for a share of this one-off grant in 2013/14.
- The last 12 months has seen greater clarity in how **Pensions** will affect pension fund members and employers, with employees paying extra contributions on a scaled basis, together with changes in entitlement. There will be upward pressure on local authority contributions, in particular due to the need to fund benefits arising from past service. The next triennial review of the West Midlands Pension fund will take place in 2013, feeding into revised contributions from 2014/15.

3. The Local Economic and Financial Context

- 3.1 The City faces some huge economic challenges, but is well positioned to meet these. Household incomes are lower than the national average and unemployment higher. In addition, an indicator of general economic health, the “gross value added” is 10% lower for Coventry than the national average. However, the city has demonstrated that it is already addressing the challenges, for example through the success of the Olympics, and in developing innovative initiatives such as the Heatline waste to energy scheme. Furthermore, the city has many key strengths, including: huge economic potential, with a private sector with the appetite to work jointly with public services; a quality environment where the urban meets the rural; two top universities; a super connected city where 90% of

premises will have superfast connections by 2015. The city is well placed to move forward from a solid base.

3.2 The financial starting point for the Council's MTFs is the forecast budgetary position as at February 2012, when the current budget was set.

3.3 The **revenue** budget gap assumed in February 2012 and subsequent changes in pressures are:-

	2013/14 £m	2014/15 £m	2015/16 £m
Revenue Gap per 2012/13 Budget Report (Feb 2012)	14.4	27.3	45.3
Emerging Risks & Pressures since 2012/13 Budget Report	14.2	15.8	15.9
Revised Revenue Budget Gap	28.6	43.1	61.2

3.4 The revenue position as at February 2012 was based on significant new Abc review programme savings of £4m in 2012/13 rising to £7m in 2014/15, plus £16m of other savings in 2012/13. The single most fundamental element of the Council's response to the financial and policy environment going forward is the ABC transformational review programme, which is now in its fourth year. Some very challenging savings are now built into the base programme, including £8m from the ABC Community, Learning & Young People (CLYP) review and £3m from the Abc Money Matters review. Reductions in staffing have played an important part in balancing the budget, with around 800 posts removed under the Early Retirement/Voluntary Redundancy (ER/VR) programme over the past two years.

3.5 The **capital** gap assumed in February 2012 and subsequent changes in pressures are:-

	2013/14 £m	2014/15 £m	2015/16 £m
Capital Gap per 2012/13 Budget Report (Feb 2012)	12.4	1.8	0.0
Changes since 2012/13 Budget Report	(1.4)	0.4	0.1
Revised Capital Budget Gap	11.0	2.2	0.1

3.6 Government no longer provides capital resources to local authorities through supported borrowing. Where government capital resources are provided they are mainly allocated through specific capital grants. Aside from the general pressure on public finances, capital reinvestment is constrained as local authorities struggle to general capital receipts in the current economic climate.

3.7 The level of reserves reported in the 2011/12 Outturn Report (£62.4m as at 31st March 2012) is adequate for the current known liabilities and approved policy commitments. Within this, a working balance of £6m, equivalent to c2% of the net revenue budget, is

maintained to cover unforeseen financial problems and a further £8.5m is held to fund early retirement and voluntary redundancy costs over the plan period. The forecast level of reserves is anticipated to fall below £60m by the end of 2013/14.

- 3.8 Elsewhere on your agenda the Pre-Budget report sets out in detail the risks and pressures, as well as the detailed proposals for balancing the budget in 2013/14.

4. Principles that Underpin the City Council's Medium Term Financial Strategy

4.1 At a strategic level, resource allocation is driven by the City Council's policy priorities. In particular, the current Council Plan 2011/12 – 2013/14 sits at the heart of the authority's approach, encompassing the vision for the city as *'Coventry, proud to be a city that works for jobs and growth, better streets and pavements; to support and celebrate our young people and to protect our most vulnerable residents.'*

4.2 Within this context, the key strategic principles that underpin the City Council's MTFS are:

- A corporate planning and monitoring process, that considers capital and revenue together. Within this framework clear accountability and delegation, with budgets managed by the designated budget holder, and reported through Directorate Management Teams, Corporate Management Board, Cabinet and Audit Committee;
- A drive to identify efficiencies and achievable savings implemented as the earliest opportunity, including making savings against existing budgets provided this does not detrimentally impact on the delivery of policy priorities. The Abc Programme has been central to this;
- Strong project management approaches, including a specific focus on cost control;
- The establishment of a balanced revenue budget and capital programme over the medium term planning period.

4.3 The technical assumptions on which the MTFS is based are included in Appendix 1 and major risks are set out in Appendix 2.

5. Strategic Approaches to Developing the City Council's Medium Term Financial Strategy

5.1 Within the context of those national developments which impact on local authorities, and the severe financial pressures that will be faced, a number of issues will figure prominently in the coming years and will significantly impact on the Council's MTFS. These include:

- In the light of the challenges that face the City Council, the development of **Abc** is of fundamental importance, both in terms of managing services and as a way to make savings and efficiencies. Abc continues to be focused on Fundamental Service Reviews as a mechanism for review. However, the nature of the Programme going forward will be different, with much greater emphasis on asking which things we need to stop doing, or need to do in partnership with others. The management of demand will be crucial, as we reshape services in a way that will inevitably entail downscaling, particularly in high spend areas. The level of savings required over the term of the MTFS cannot be met by merely doing things differently. Planned future Abc reviews will help the Council meet the challenges that we face across a number of areas, including public health, social care and Local Education Authority functions;

- The importance of driving **economic growth** is greater now than it has ever been. In order to maximise the financial benefit arising from economic growth, Coventry and Warwickshire authorities will operate a business rates pool from 2013/14. This will allow a greater share of any business rate growth to be retained locally than would otherwise be the case. The pursuit of economic growth in the city and region is central to Abc and the emerging City Deal, including how the Council can use its assets and powers to ensure an economically vibrant future for the City and its people. In addition, the Council will consider how best it can use its cash balances and reserves to help stimulate growth, through for example, taking advantage of current low short term interest rates. The Council will need to actively assess the business cases for providing pump priming investment through Prudential Borrowing;
- The emergence of the **City Deal** presents the council, and its regional partners, with a major opportunity, but also a challenge. Coventry and Warwickshire was named by the government as one of 20 areas being asked to submit bids by 15th January 2012. In order to be successful the bid will need to demonstrate close working with our local authority, third sector and business partners, in a way that is transformational. City Deal will require capital investment to be targeted to facilitate economic development, including through major local developments;
- One significant and immediate issue facing the Council in setting the **Council Tax for 2013/14** is the level at which the Tax is set and the consequent impact on grant. Accepting the government Council Tax Freeze grant and not increasing Council Tax will have a cost of £1m for each of the next two years and £2m pa thereafter, compared to raising the Council Tax by a maximum of 2%. Separately, it was previously forecast that Council Tax would increase by a maximum of 2.5%. However, the impact of a 2% cap would be a cost to the Council of £0.5m pa compared to previous forecasts of a 2.5% increase;
- In order to maximise and maintain City Council income it is proposed that the Council's default position is that **fees and charges** should increase annually in line with inflation. Beyond this, as part of an Abc income maximisation review the Council will need to rigorously review opportunities for charging where we currently do not charge, or increasing charges where these are below the commercial rate. This will also entail assessing which businesses we remain in;
- The **generation of capital receipts** remains an important way in which the Council can generate funds for reinvestment in services and drive growth. Despite the impact of the recession, during 2012 significant funds have been realised through the sale of financial interests in the University of Warwick Science Park and the Waste Disposal Company. The review of the city council's financial and other assets needs to continue. The policy approach that classifies all capital receipts as corporate resources is fundamental to the MTFs. Where assets are sold there is sometimes a loss of income with dividends, rents and other income no longer being received. This income loss is managed corporately, for example through the partial use of capital receipts to generate on-going savings through the repayment of debt;
- In addition to capital receipts and prudential borrowing, the City Council will continue to seek other ways of **maximising capital investment**. These will include both grant and the Private Finance Initiative, as is the case in the Priority Schools Building Programme, but also through close working with partner organisations, as will be the

case under City Deal The use of alternative ways to lever investment will also continue to feature prominently, including exploring ways in which the value locked up in City council assets can facilitate investment;

- The council's approach to **commissioning and procurement** is being updated through the Abc review to ensure that savings are delivered and that there is better co-ordination across the council, clear and more efficient governance and decision making arrangements, common processes and more commercial approach to the supplier relationships. Joint commissioning with partner local authorities will continue to be important;
- Sub regional **working with partner organisations** will continue across a number of areas, as a way to ensure that quality local services are provided efficiently. Examples of current and potential joint working include asset management work with Solihull and Warwickshire councils; the review of leisure services across the city; the review of Cultural Trusts within the City; business rate pooling with partner councils; the recent announcement that the Coventry and Warwickshire LEP has been awarded £24m as part of the government's Regional Growth Fund 3. Going forward, City Deal and Thinking Place will be crucial as ways in which the council, alongside its partners, can address the challenges that it faces;
- The council has consulted on a draft **Council Tax Benefit** scheme which replicates the current national scheme. This would ensure that low-income households do not experience any reduction in support and this would be at a cost to the Council of approximately £3 million;
- The increasing costs of the **pension scheme** have been reflected in the MTFS for some years. It is anticipated that this cost will rise with the triennial revaluation which will take effect from 2014/15, particularly given the need to meet the costs of past service.
- The **management of reserves** in a way that supports the MTFS and the Abc programme. In particular, the City Council's approach continues to be based on:
 - A local "golden rule" that reserves are not to be used to meet on-going expenditure;
 - The classification of reserves as a corporate resource, with Corporate Management Board considering the application of budgeted amounts unspent at year end;
 - Holding reserves for a clearly identifiable purpose. This will include protecting against known or potential liabilities, at a minimum level consistent with adequate coverage of those liabilities, taking into account the overall level of risk faced by an organisation of the City Council's size.

6. Timetable for implementing this decision

- 6.1 The MTFS supports the proposals and approaches set out in the pre-budget report and will be implemented in parallel to the proposals in that report from 2013/14.

7. Comments from the Director of Finance and Legal Services

7.1 Financial implications

The main body of this report is concerned wholly with financial matters. It is essential that the assumptions and principles detailed in the Strategy are adopted in order for the City Council to be able to deliver balanced budgets over the medium term.

7.2 Legal Implications

The proposals in this report provide the foundations to allow the Council to meet its statutory obligations in relation to setting a balanced budget by mid-March each year, in accordance with Section 32 of the Local Government Finance Act 1992 and section 25 of the Local Government Act 2003.

8. Other implications

8.1 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 Council will be faced with increasingly challenging resource constraints over the remainder of this decade. Whilst the approach taken thus far has been to identify savings options that are intended to have as little adverse impact as possible on services to the people of Coventry it is inevitable that budget reductions in the future will have a more marked effect on front-line services.

Within these very difficult circumstances, the MTFS supports the proposals within the pre-Budget Report. In this respect, the MTFS approach is very much aligned to existing policy priorities such as improving our roads and pavements and improving prospects for jobs and growth that are so critical to ensuring the city's success.

8.2 How is risk being managed?

Inability to deliver a balanced budget is one of the Council's key corporate risks. The proposals within this report are aimed at mitigating this risk by providing a robust platform from which to deliver balanced budgets.

8.3 What is the impact on the organisation?

The Council will need to make some decisions about which are its core priorities and which services it considers that it can no longer afford. It will also need to become more flexible about the mechanisms through which it delivers its services.

8.4 Equalities / EIA

Equality impacts that flow from the proposals that balance the Council's budget will be subject to assessment prior to the relevant decisions being taken. The pre-Budget Report specifically provides further details on the equality issues for proposals to balance the budget.

8.5 Implications for (or impact on) the environment

No specific impact.

8.6 Implications for partner organisations?

The Council's financial plans will have a significant impact upon the way in which it works with its partners over the coming years. The implications of these changes will become clear as individual changes are identified.

9. Conclusions

- 9.1 The seismic economic changes of the last few years, and the resultant continued pressure on public sector funding, mean that all local authorities face the prospect of a number of years of unprecedented financial constraint. Economic growth is central to recovery at both the local and national level.
- 9.2 Within this environment the City Council is committed to do all it can to make its services even better and raise the quality of life in the City. To achieve this, the council will look at the best way services can be delivered, whether through the council direct or in partnership with other organisations. However, the scale of the challenges facing authorities means that the council will need to actively consider what it does as well as how it does it, within the context of A Bolder Coventry.
- 9.3 The Medium Term Financial Strategy reflects these developments and sets out how the Council can respond to the financial challenges it faces, in a way that maintains the financial stability of the council.

Report author(s):

Name and job title:

Michael Rennie, Lead Accountant (Business Partnering, Corporate Finance)

Directorate: Finance & Legal Services

Tel and email contact: 024 764504, Michael.ennie@coventry.gov.uk

Enquiries should be directed to the above person.

Contributor/approver name	Title	Directorate or organisation	Date doc sent out	Date response received or approved
Contributors:				
Lisa Commane	Assistant Director, Special Projects Finance	Finance & Legal Services	1/11/2012	1/11/2012
Paul Jennings	Finance Manager	Finance & Legal Services	1/11/2012	22/11/2012
Barry Hastie	Assistant Director, Financial Management	Finance & Legal Services	1/11/2012	22/11/2012
Names of approvers for submission: (officers and members)				
Chris West	Director of Finance & Legal Services	Finance & Legal Services	1/11/2012	22/11/2012
John Scarborough	Corporate Governance and Litigation Manager	Finance & Legal Services	27/11/2012	29/11/2012
Matthew Rossi	Governance Services Officer	CWS	29/11/12	29/11/12

George Duggins	Cabinet Member (Strategic Finance and Resources)		23/11/12	28/11/12
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This report is published on the council's website:

www.coventry.gov.uk/meetings

Appendix 1

Technical Assumptions within the Medium Term Financial Strategy

The MTFS is based on a number of technical assumptions:-

- Central government settlement figures as per the 2010 Spending Review. As referred to above, there is significant uncertainty about both the level and distribution of government resources;
- A Council tax increases of 2% in 2013/14 and 2.5%pa over the MTFS period (subject to the Government's future capping/referendum practice);
- Pay awards provided at : 1%pa (2013/14 and 2014/15) and 2.5% (2015/16);
- A stable council tax base;
- No increase in expenditure budgets in 2013/14, but increases in expenditure budgets in line with inflation (Retail Prices Index – RPIY) thereafter but subject to annual review.
- The achievement of Abc savings built into the budget process;

Analysis of Financial Approach to Risks

	Named Risk and Key Element of Risk	Existing Financial Treatment and Any Implications For MTFS
1	Key projects (see below) - Failure of one or more key corporate projects.	Financial requirements for key projects are identified as part of project management arrangements and incorporated within medium term revenue/capital programmes as appropriate. Revised savings profiles are reflected in medium term plans as they arise.
	ABC Programme - Failure to achieve target savings and improvements in service.	
	Money Matters – Failure to produce a fit for purpose operating model and achieve target savings.	
	Adult Social Care Transformation - Failure to produce a fit for purpose operating model and achieve target savings.	
	CLYP Review - Failure to produce a fit for purpose operating model and achieve target savings.	
2	Health and safety - Failure to discharge health and safety responsibilities effectively.	The revenue programme contains on-going budgets to support our core health and safety duties and additional resources are identified to fund additional programmes of spend where necessary.
3	Finance - The Council is unable to produce a balanced budget in the medium term.	This strategy incorporates the measures that will enable us to balance our medium term programmes, in particular the delivery of the Abc Transformation Programme.
4	Equal Pay Claims - Successful litigation against the Council over equal pay claims causes significant unbudgeted costs.	A significant proportion of claims has been settled from within a £30m provision established for this purpose. Further claims are being defended through due legal process and the remainder of the £30m provision set aside for any potentially successful future claims.
5	Safeguarding Children – Risk that action is not taken in a timely and effective way to safeguard and protect vulnerable children and young people.	These services have significant levels of core funding within existing budgets. Such areas are kept under review and where it is demonstrated that further financial support is required to mitigate such risks then this will be factored into our financial plans.
6	Safeguarding Adults – Risk that vulnerable adults come to significant harm or die when this could have been prevented by Council or other related services.	These services have significant levels of core funding within existing budgets. Such areas are kept under review and where it is demonstrated that further financial support is required to mitigate such risks then this will be factored into our financial plans.
7	Safeguarding Awareness – Failure to raise awareness of approaches to safeguarding	This is principally an organisational/procedural matter. Financial provision has been and will be provided to support mitigating actions as appropriate.
8	Organisational Change – Risk of managerial non-cooperation with	This is principally an organisational/management matter.

	change requirements.	
9	Market Failure of the Independent Sector – Risk that the sector will not have the capacity to deliver services to required standards and that responsibility falling back onto the Council.	These services have significant levels of core funding within existing budgets and the issue is more about support to existing service structures and relationships with key provider partners. This area is one of significant change currently.
10	Major Incident – Failure to respond efficiently and effectively to a major incident.	This is principally an organisational/procedural issue. Financial provision has been and will be provided to support this area as appropriate.
11	School Entering an Ofsted Category –Risk that a school is placed in a category requiring special measures	The implementation of a targeted intervention programme of challenge and support in schools at risk of being graded inadequate.
12	Welfare Reform – Risk the Council fails to consider and manage the impact that Welfare Reform will have both on its key stakeholders, (i.e. employees, vulnerable residents) as well as the Council as a whole (i.e. funding, demand for services).	To determine which Services in the Council may be affected by changes resulting from Welfare Reform. To assess the impact (e.g. financial, operational) that the changes will have on specific services identified. To investigate options for responding to pressures identified.
13	ACL / Coventry City Football Club - The value of the Council's shareholding in Arena Coventry Limited (ACL) is impacted upon by the position of Coventry City Football Club (CCFC) and could lead to reputational issues.	The Council is managing its shareholding interest through regular review of the current status of events at CMB and Member level. The ACL Board includes representation from senior Council officers in capacity as Directors. The Council has been receiving external legal, restructuring and insolvency advice. The Council is in regular discussions with the other Directors on the ACL Board, the other shareholder the Higgs Charity and SISU. In terms of reputation, the Council is developing an agreed strategy jointly with ACL, Higgs and professional advisors.



Public report Cabinet

Streets and Neighbourhoods Scrutiny Board (4)
Cabinet
Council

7th December 2012
8th January 2013
15th January 2013

Name of Cabinet Member:

Cabinet Member (Community Safety & Equalities) - Councillor Townshend

Director Approving Submission of the report:

Director of Community Services

Ward(s) affected:

All

Title: Sexual Entertainment Venues Policy – Consultation Results

Is this a key decision?

No

Although this matter could potentially affect the whole city, due to the recommendations within this report, it is unlikely to have a significant impact on residents in two or more electoral wards.

Executive Summary:

On 16th November 2011, Cabinet Member (Community Safety and Equalities), considered the outcome of consultation on the Council's draft Sexual Entertainment Venue Policy and approved an 'Interim Policy' for a maximum period of 12 months from 16 November 2011. The interim policy is attached at Appendix 1 of this report.

The interim policy contains a guidance upper limit on the number of Sexual Entertainment Venues which it considers appropriate within the following localities within the Council's administrative area:

- a. City Centre (defined as that area within the ring-road) – up to a maximum of two Sexual Entertainment Venues.
- b. Outer City (defined as the remainder of the City outside the City Centre) – nil Sexual Entertainment Venues.

On 14th August 2012, Cabinet considered a Report of the Director of Community Services which proposed to extend the Interim Policy to 31st March 2013 and proposed a public consultation on a nil policy as a preferred option.

A twelve week consultation took place from 20th August to 11th November 2012, seeking respondents' views on a nil policy.

On 27th September 2012, Cabinet Member (Community Safety & Equalities), considered a petition signed by 97 individuals and sponsored by Councillor Noonan requesting a nil policy

for SEVs and endorsed that the petitioners be requested to respond to the then current consultation seeking views on future sexual entertainment venues in Coventry.

The purpose of this Report is to inform Members of the results of the city-wide consultation in respect of a nil policy and to determine the final policy for adoption by the Licensing Authority.

Recommendations:

Streets and Neighbourhoods Scrutiny Board is requested to:

- 1) Consider the consultation responses in the Report and forward any recommendations to Cabinet.

Cabinet is requested to:

- 1) Consider the outcome of the public consultation and any recommendations from the Streets and Neighbourhoods Scrutiny Board; and approve the following:
 - a) Having regard to the responses to the consultation and other relevant factors, the Interim Policy be amended so as to remove paragraphs 10.2 and 10.3 from the final statement of Licensing Policy and replace with;
 - i) “The Council has conducted a widespread public consultation on a proposed nil policy for the city. The majority of respondents agreed that there is no locality in Coventry of which it can be said that SEVs are appropriate. These considerations, among others set out in the policy, have led the Council to the clear opinion that there are no localities in Coventry in which it is appropriate to license a Sexual Entertainment Venue. This does not prevent individuals from applying for a Sexual Entertainment Venue Licence and each application being considered on its merits by the Licensing & Regulatory Committee.
 - ii) However the Council recognises that there is an established Sexual Entertainment Venue which has traded in the city for a long period of time without significant concern. Accordingly, the nil policy will not apply to the said Sexual Entertainment Venue. Rather, any application in respect of the said Sexual Entertainment Venue will be judged on its own merits and without reference to the nil policy.”
- 2) Recommend that Council endorse the decision of Cabinet.

Council is requested to:

- 1) Endorse the decision taken by Cabinet

List of Appendices included:

- Appendix 1 – Interim Sexual Entertainment Venue Policy and standard conditions
- Appendix 2 – A Map of the city indicating sensitive areas as detailed in paragraph 1.7 of the report
- Appendix 3 – Consultation Report
- Appendix 4 – Revised Equality Impact Assessment
- Appendix 5 – Current SEV operator consultation response

Other useful background papers:

Local Government (Miscellaneous Provisions) Act 1982
<http://www.legislation.gov.uk/ukpga/1982/30/contents>

Policing and Crime Act 2009
<http://www.legislation.gov.uk/ukpga/2009/26/contents>

Sexual Entertainment Venues Guidance for England & Wales
<http://www.lacors.gov.uk/lacors/upload/24193.pdf>

Has it been or will it be considered by Scrutiny?

Yes - Streets and Neighbourhoods Scrutiny Board (4) - 7th December 2012

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 - Council - 15th January 2013

Report title: Sexual Entertainment Venues Policy

1. Context (or background)

- 1.1 The Local Government (Miscellaneous Provisions) Act 1982 provides the legislative framework in relation to the licensing of sex establishments. Section 27 of the Policing and Crime Act 2009 introduced a new category of sex establishment called a 'sexual entertainment venue', which allows local authorities to regulate lap dancing clubs and similar venues. The new powers were adopted by the Council with effect from 22nd March 2011.
- 1.2 On 22nd March 2011, Full Council agreed that a Sexual Entertainment Venue Policy should be formulated and subjected to public consultation. Delegated responsibility for approving the policy was given to the Cabinet Member (Corporate and Neighbourhood Services).
- 1.3 On 24th March 2011, Cabinet Member (Corporate and Neighbourhood Services) approved the establishment of an Advisory Panel to oversee the development and adoption of the policy. A draft Sexual Entertainment Venue Policy was developed and presented to the Advisory Panel on 12th July 2011. At that meeting the Advisory Panel approved the draft Policy and instructed officers to carry out public consultation. The outcome of the consultation on the draft Sexual Entertainment Venue Policy was reported back to the Advisory Panel on 29th September 2011.
- 1.4 There were 28 responses to the public consultation which consisted of a range of views varying from requests for a nil policy and support for the policy proposed at that time.
- 1.5 On 16th November 2011, Cabinet Member (Community Safety and Equalities), considered the "Outcome of Consultation on the draft Sexual Entertainment Venue Policy" report and agreed the following recommendations:-
 - The draft Sexual Entertainment Venue Policy was approved as an 'Interim Policy' for a maximum period of 12 months from 16th November 2011 subject to changes including:-
 - The Council has chosen to set, on an interim basis until consideration and decision by Cabinet and/or full Council, a guidance upper limit on the number of Sexual Entertainment Venues which it considers appropriate within the following localities within the Council's administrative area:
 - a. City Centre (defined as that area within the ring-road) – up to a maximum of two Sexual Entertainment Venues.
 - b. Outer City (defined as the remainder of the City outside the City Centre) – nil Sexual Entertainment Venues.
- 1.6 On 14th August 2012, Cabinet considered a report of the Director of Community Services which proposed to extend the Interim Policy to 31st March 2013 and proposed a public consultation on a nil policy as a preferred option.
- 1.7 The Report provided detailed analysis of which parts of the City may be appropriate for sexual entertainment venues. Members considered a map of the city identifying sensitive areas (residential areas, areas frequented by families and children, religious institutions and those parts of the city associated with commerce, family leisure and

retail) with a 500m radii around each of the sensitive uses. Members noted that the analysis of the city, if that approach be taken, indicated that there would be extremely limited opportunities to grant a sexual entertainment venue licence. The map showing the outcome of the detailed mapping exercise is attached at Appendix 2 of this Report.

1.8 In response to this, Cabinet commissioned a comprehensive consultation process on the provision of a proposed nil policy for Sexual Entertainment Venues.

1.9 A copy of the current interim Sexual Entertainment Venue Policy is attached as Appendix1 of this report.

2. Consultation

2.1 A twelve week consultation took place from 20th August to 11th November 2012. The purpose of the consultation was to seek a wide range of views on the provision of a proposed nil Sexual Entertainment Venues Policy.

2.2 Consultation took place with:

- The existing Sexual Entertainment Venue Operator
- Existing On-Licensed Premises under the Licensing Act 2003
- Community Associations and Centres
- Ethnic Group Associations
- Faith Groups
- Parish Councils
- Ward Councillors
- MPs
- Responsible Authorities under the Licensing Act 2003
- Area Forum attendees
- Educational Establishments
- Places of worship
- Coventry Partnership Members
- Women's Groups
- Members of the public

2.3 At the beginning of the consultation a newspaper article was published in the Coventry Telegraph advising of the consultation and how to respond.

2.4 An online version of the consultation was made available on the Council's website during the consultation.

2.5 A total of 504 survey responses were received and a further 13 responses in the form of emails and letters were received by the Licensing Team. If Members would like to view the full consultation responses then please contact the Licensing Manager.

2.6 Findings from the consultation have been reviewed and categorised into themes for the purposes of analysis. As a result of this, three broad perspectives have been identified. 53.3% of people strongly agreed Coventry should have a nil policy. 29.8% felt strongly that a nil policy was not appropriate and would like to see some provision in the city. The third perspective related to those individuals who participated in the survey but did not have a strong opinion either way. A number of responses to the consultation raised morality based points. However following guidance given by the

High Court in R (Christian Institute) v Newcastle upon Tyne City Council the Cabinet is unable to take account of such points

- 2.7 Of the respondents who felt Coventry should have a nil policy, a number of them did not appear to appreciate that a venue already existed within the city. An acknowledgement of the existing premises was made by some participants who suggested they felt uncomfortable walking in the vicinity of the building when it was open. Some respondents also suggested that they support a nil policy because of unease at walking past with young children during the day.
- 2.8 Respondents against a nil policy identified a number of reasons why such a policy was not supported. These views fell into broadly three areas. Firstly many felt that individuals should have the choice to attend such a venue and that a nil policy would inhibit this choice. This linked to the second area that suggested the city centre's night life was not vibrant and that the availability of a Sexual Entertainment Venue provided one of a limited number of options for city centre night time entertainment. The third area suggested that closure of the existing venue would mean the loss of a number of jobs, an impact on other night time businesses in the area and the increased risk of unregulated, illegal venues opening to meet demand.
- 2.9 Of those participants who answered the relevant questions, 56.9% were female and 43.1% male. A broad range of age groups were covered by the responses, the highest among 25-34 year olds. 83.5% of responses were from members of the public and 16.5% from representatives of organisations or associations.
- 2.10 The full summary of the consultation is attached as Appendix 3. The report at Appendix 3 details the consultation undertaken and provides a comprehensive analysis of the feedback received via the questionnaire where consent to publish comments has been provided.

3. Options considered and recommended proposal

- 3.1 As a working hypothesis it was considered that a SEV should not be located within 500 metres of certain specified "sensitive premises" (residential areas, areas frequented by families and children, religious institutions and those parts of the city associated with commerce, family leisure and retail). This was tested through the consultation and although 67.8% of respondents did not agree that 500 metres was appropriate there was no clear consensus expressed for any alternative distance and in particular for any lesser distance that would alter the outcome of the mapping exercise shown at Appendix 2 of the report.
- 3.2 A consultation response was received from the existing licensed operator in the city (Appendix 5) This raised various points:
- A nil policy would contradict policies aimed at promoting the growth and diversity of town centres
 - The existing licensed venue has operated for several years without problems
 - Other cities similar to Coventry have a least one SEV
 - Other licensing authorities have included an exemption for established SEVs within their policies
 - Established SEV premises enjoy a degree of protection under the Human Rights Act
 - Moral considerations should be discounted

In response to the above points it is considered that an exception should be given to the existing venue within the wording of the revised policy (see recommendation 2 (b) above).

- 3.3 In addition to the above the consultation raised a number of key themes. These are detailed in Appendix 3 of the report. These themes are considered further below.

3.3.1 **Exploitation/objectification of women**

Respondents suggested SEVs are part of a spectrum of commercial sexual exploitation and that they contribute to a culture in which women are viewed as objects available for the sexual gratification of men.

To the extent that this is a moral stand point it is not something that the Council can take into account. Parliament has not made sexual entertainment illegal. However the SEV legislation gives local authorities the power to regulate such venues and local people greater say over where and how many venues should be permitted.

3.3.2 **Safety from sexual harassment**

Respondents suggested they had concerns regarding the potential sexual harassment they, or people they know, could experience as a result of people attending sexual entertainment venues

In response to the consultation the Police have stated that the existing SEV venue appears to have no negative effect on crime and disorder in the area.

3.3.3 **Equal opportunities**

A number of respondents felt Coventry City Council had a responsibility to promote equal opportunities for women. Their views suggested they perceive SEVs are detrimental to achieving this.

The Equality Act 2010 obliges the Council to have due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity between the sexes and to foster good relations between the sexes. An Equality Impact Assessment has been completed (see Appendix 4) this has identified mixed implications for gender as a protected group. Negative implications from a nil-policy included perceived potential sexual harassment of women, potential exploitation of women working in the premises and potential risk of sexual violence towards women. Positive implications included women being safer in a regulated environment and venues providing employment.

3.3.4 **Risks to societal decline/impact on families**

Responses were received suggesting SEVs contribute towards a decline in family relations and societal cohesion. This view was expressed in the context of venues being detrimental to the promotion of stable relationships. In addition a number of views were expressed suggesting the venues were not places they believed their young families should be exposed to.

To the extent that this is a moral stand point it is not something that the Council can take into account. The proposed policy is based on ensuring that types of sensitive uses are not duly impacted upon by potential proximity to SEVs including; residential areas, areas that are frequented by children and families or vulnerable adults; religious institutions and those parts of the city associated with commerce, family leisure and retail activity.

3.3.5 Promotes a safer environment for people to live

Views were expressed suggesting the presence of SEVs create an unsafe environment for residents. These views perceived the removal of these venues would lead to a safer environment in which people can live.

The proposed policy is based on ensuring that types of sensitive uses are not duly impacted upon by potential proximity to SEVs including; residential areas, areas that are frequented by children and families or vulnerable adults; religious institutions and those parts of the city associated with commerce, family leisure and retail activity.

3.3.6 The image of the city

By allowing SEVs in the city some people believe it presents a negative image of the city. Their views suggested that by having the venues it portrays a sense of cheapness not representative of the city.

The current position reflects the Government's advice and intention that city centres need to cater for a mix of commercial and leisure activity.

3.3.7 Religious reasons

A small number of people expressed religious reasons as their motivation for supporting a nil policy.

To the extent that this is a moral stand point it is not something that the Council can take into account. In addition the proposed policy says that SEVs should not be located in the vicinity of certain sensitive premises including places of worship.

3.3.8 Moral reasons

A number of responses to the consultation raised morality based points. However following guidance given by the High Court in R (Christian Institute) v Newcastle upon Tyne City Council the Cabinet is unable to take account of such points

3.3.9 Risk of Sexual violence

Opinions of respondents suggested that SEVs lead to an increased risk of sexual violence. Their views propose that the venues increase the risk of sexual attacks by people who have attended them.

In response to the consultation West Midlands Police have stated that the existing SEV venue appears to have no negative effect on crime and disorder in the area.

3.3.10 No issues with SEVs

A number of responses were received stated they have no concerns about SEVs. Their opinion suggested that although they do not use the services provided by such venues they had no issues with them operating for the use of others.

Comments Noted.

3.3.11 Influence male behaviour

Respondents suggested that SEVs act as a way of influencing male behaviour. These views indicated that in the premises people are better behaved and drinking is controlled.

In response to the consultation West Midlands Police have stated that the existing SEV venue appears to have no negative effect on crime and disorder in the area.

3.3.12 Council playing the 'nanny state'

A number of respondents felt that the actions of the Council appeared to be trying to control and influence user's decisions. They suggested that the Council was acting like a 'nanny state'.

The SEV legislation gives local authorities the power to regulate such venues and local people greater say over where and how many venues should be permitted.

3.3.13 Choice

Attending such a venue as a paying customer was considered to be a lifestyle choice by some respondents. The use of the words choice was used regularly throughout the responses of those respondents against a nil policy

Comments noted

3.3.14 Deregulation will create the risk of venues going underground

Concerns were raised by some respondents that the implementation of a nil policy in the city would result in venues opening illegally. This would result in unregulated venues creating a greater risk to public safety.

Any commercial demand for SEVs that isn't catered for by the existing licensed venue or by premises taking advantage of the frequency exemption will by definition be unauthorised and subject to enforcement.

3.3.15 Perceived risk to an increase in prostitution due to the closure of venues

Respondents suggested that the enforcement of a nil policy would heighten the risk of increased prostitution within the city. This view claims that by removing the offer of SEVs visitors would seek alternative sexual entertainment through.

Recommendation 2 (b) seeks to preserve the existing venue therefore the concern expressed under this theme will not arise.

3.3.16 Loss of jobs for employees

A significant number of responses were received from people concerned about the loss of jobs as a consequence of a nil policy. Comments suggested that by having a nil policy existing premises would have to close and personnel would be unemployed, resulting in increased reliance on the welfare system.

Recommendation 2 (b) seeks to preserve the existing venue therefore the concern expressed under this theme will not arise.

3.3.17 Good venue/entertaining/safe venue

A number of responses were received suggesting that the availability of a SEV in the city added to the diversity of evening entertainment. It was perceived by these respondents that Coventry would lose out on income due to people choosing to go to other cities or towns to access this type of venue.

Recommendation 2 (b) seeks to preserve the existing venue therefore the concern expressed under this theme will not arise

3.3.18 Negative impact on businesses locally/within city centre

Responses were received from some individuals suggesting that the closure of the existing premises and the enforcement of a nil policy would impact upon the night time economy. Views were expressed indicating that the existing venue helps to promote night time business and tourism within the city centre.

Recommendation 2 (b) seeks to preserve the existing venue therefore the concern expressed under this theme will not arise

- 3.4 The adoption of a policy is not mandatory. However, it is considered to be invaluable for the administration and promotion of an open and transparent licensing process.
- 3.5 A policy fulfils two principal purposes: it provides advice to businesses, operators and to the public on the Council's overall position with regard to the licensing of sex establishments and it also provides a decision making framework for the Council through its Licensing and Regulatory Committee.
- 3.6 The Act gives licensing authorities overlapping but separate powers with which to regulate the location and number of sex establishments within its area.
- 3.7 Taken as a whole the consultation broadly supports the Council's proposal to move to a nil policy but not to apply the nil policy to the existing operator. A nil policy would not preclude the making of an application for a sexual entertainment venue licence by any other operator. An individual will be entitled to make such an application which will be considered by the Licensing & Regulatory Committee which is an administrative body who will be guided by the policy and not bound by it and will be determining each application on its merits, having regard to the policy and all other criteria relevant to the application.

3.8 Equality Impact Assessment

- 3.8.1 Equality analysis has been undertaken as part of the development of a Sexual Entertainment Venue Policy attached as Appendix 4 for Member consideration.
- 3.8.2 The analysis has identified equality issues for age, gender, faith and belief and vulnerable adults and the proposed policy responds to this by proposing that such venues should not be located in proximity to sensitive uses (as defined above) and areas that would impact on these protected groups.
- 3.8.3 The proposed nil policy addresses the issues identified by the equality analysis. However, due regard should also be given to the fact that limiting the number of Sexual Entertainment Venues may have an impact (albeit in small numbers) on the employment of women in the city and the choice that individuals will have to visit a venue in the city.

3.9 Recommendations

Streets and Neighbourhoods Scrutiny Board is requested to:

- 1) Consider the consultation responses in the Report and forward any recommendations to Cabinet.

Cabinet is requested to:

- 1) Consider the outcome of the public consultation and any recommendations from the Streets and Neighbourhoods Scrutiny Board; and approve the following:
 - a) Having regard to the responses to the consultation and other relevant factors, the Interim Policy be amended so as to remove paragraphs 10.2 and 10.3 from the final statement of Licensing Policy and replace with;
 - i) "The Council has conducted a widespread public consultation on a proposed nil policy for the city. The majority of respondents agreed that there is no locality in Coventry of which it can be said that SEVs are appropriate. These considerations, among others set out in the policy, have led the Council to the clear opinion that there are no localities in Coventry in which it is appropriate to license a Sexual Entertainment Venue. This does not prevent individuals from applying for a Sexual Entertainment Venue Licence and each application being considered on its merits by the Licensing & Regulatory Committee.
 - ii) However the Council recognises that there is an established Sexual Entertainment Venue which has traded in the city for a long period of time without significant concern. Accordingly, the nil policy will not apply to the said Sexual Entertainment Venue. Rather, any application in respect of the said Sexual Entertainment Venue will be judged on its own merits and without reference to the nil policy."
- 2) Recommend that Council endorse the decision of Cabinet.

Council is requested to:

- 1) Endorse the decision taken by Cabinet

4. Results of consultation undertaken

For details of the consultation undertaken please refer to paragraph 2 of the report.

5. Timetable for implementing this decision

- 5.1 On 14th August 2012 Cabinet agreed to extend the current interim policy until 31st March 2013, therefore any changes to the interim Sexual Entertainment policy resulting from the consultation process would apply from 1st April 2013 unless Cabinet determined otherwise.

6. Comments from Director of Finance and Legal Services

6.1 Financial implications

- 6.1.1 Fees for Sexual Entertainment Venue Licences, under the 1982 Act, are set at a level designed to recover the costs of carrying out the licensing function for such premises. The income received for 2011/12 amounted to £10,000.

6.2 Legal implications

- 6.2.1 There is no statutory requirement to have a licensing Policy for SEVs however, it is considered best practice to ensure that the trade and public alike will have a document that fully explains the elements of the regulatory process which includes:-

- the principles to be applied when considering applications for licences;
- the application process itself;
- the grounds for objection/refusal;
- the hearings procedure;
- the grounds for appeal;

A licensing policy must be reasonable and proportionate

- 6.2.2 Public law is the set of legal principles governing the exercise of power by public bodies. If a public body makes a decision in breach of any public law principle then that decision may be challenged through a Judicial Review.

- 6.2.3 Anyone liable to be affected by a licensing policy should be consulted and any feedback duly considered before it is finalised.

- 6.2.4 The Act permits licensing authorities to impose a "reasonable fee" in relation to sex establishment licensing. This is now subject to the Provision of Services Regulations 2009 which requires any fee to be "reasonable and proportionate to the cost of administering the licensing scheme".

- 6.2.5 The European Convention on Human Rights creates rights protecting 'Freedom of Expression' (Art.10) and protecting against the arbitrary 'deprivation of property' (Art1 Prot.1). In the 2007 case of Belfast City Council v Miss Behavin' Ltd, the House of Lords decided that these rights are engaged at a "low level" where trading from a sex

establishment is concerned. Therefore, provided a licensing authority exercises its powers rationally, proportionately and within the discretion permitted to it under the legislation there is unlikely to be a breach of the ECHR.

6.2.6 Furthermore, the making of a policy does not preclude the making of an application for a sexual entertainment venue licence. An individual will be entitled to make such an application and have it determined on its merits having regard to the policy.

7. Other implications

7.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint

The proposal for a nil policy is considered to be consistent with the vision and plans of the Council, as laid out in Coventry's Sustainable Communities Strategy and the Corporate Plan.

7.2 How is risk being managed?

By following legal process and setting a clear policy, the authority is working positively with business and local residents. The policy will assist the Council and prospective applicants on how the Council will deal with applications and how those applications are considered.

7.3 What is the impact on the organisation?

In Coventry there is currently one licensed sexual entertainment venue. Resource implications for licensing are therefore low.

7.4 Equalities / EIA

Following the consultation a review of the current Equalities Impact Assessment (EIA) (attached to this report as Appendix 4) has been undertaken. At this stage the proposed policy is consistent with addressing issues identified in the EIA.

The issues identified in the EIA are referred to in more detail at paragraph 3.8 of the report.

7.5 Implications for (or impact on) the environment

None

7.6 Implications for partner organisations?

The Police have responded to the consultation and have said that the existing SEV does not cause them any concern, complies with all of the terms of conditions detailed in their licence and overall appears to have had no negative effect on crime and disorder in the area.

The Police have an opportunity to consider all applications for sex establishment licences. They are currently a Responsible Authority for the purposes of the Licensing Act 2003 and are consulted on the majority of licensing applications. It is therefore not anticipated that the adoption of the new provisions will have a significant impact on police resources.

Report authors:**Name and job title:**

Davina Blackburn, Licensing Manager

Directorate:

Community Services

Tel and email contact:Mail to: davina.blackburn@coventry.gov.uk

Tel: 024 7683 1851

Enquiries should be directed to the above.

Contributor/ approver name	Title	Directorate or organisation	Date doc sent out	Date response received or approved
Contributors:				
Mark Smith	Senior Solicitor	Finance & Legal	22/11/12	22/11/12
Lara Knight	Governance Services Officer	Customer & Workforce Services	22/11/12	23/11/12
Names of approvers for submission: (officers and members)				
Sara Roach	Assistant Director	Community Services	22/11/12	27/11/12
Christine Forde	Assistant Director Legal Services	Finance & Legal	22/11/12	27/11/12
Finance: Diane Jones	Lead Accountant Community Services	Finance & Legal	22/11/12	27/11/12
Director: Brian Walsh	Director	Community Services	27/11/12	28/11/12
Members: Councillor Townshend	Cabinet Member	Community Safety and Equalities	27/11/12	27/11/12
Jenni Venn	Assistant Director	Policy, Partnership & Performance	22/11/12	23/11/12

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Sexual Entertainment Venue Policy

with effect from 2011



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1 Introduction

- 1.1** Coventry City Council (“the Council”) is able to regulate sex establishments through Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (“the 1982 Act”). Historically, controls have applied to sex shops and sex cinemas.
- 1.2** On 6 April 2010 the Policing and Crime Act 2009 (“the 2009 Act”) came into force and amended Schedule 3 of the 1982 Act. Sexual Entertainment Venues (“SEVs”) were added as a category of sex establishment to enable local authorities to regulate those premises which provide lap dancing, pole dancing, table dancing, strip shows, peep shows and live sex shows and other similar entertainment.
- 1.3** The Council resolved on 22nd March 2011 to adopt the new amendments to gain regulatory control of SEVs with effect from 1st June 2011. Consequently, a new SEV licensing regime applies to the whole of Coventry.
- 1.4** However, the Policing and Crime Act 2009 (Commencement No. 1 and Transitional and Savings Provisions) (England) Order 2010 makes special transitional provisions in relation to SEVs. These are detailed at page 4 of this policy.
- 1.5** The adoption of the new Schedule 3 powers allows the Council to set conditions and fees for the grant, variation, renewal and transfer of SEV licences and the number of premises to be licensed in an area, which may be nil.
- 1.6** This policy was approved by the Cabinet Member (Community Safety & Equalities) on 16th November 2011. The aim of this policy is to provide guidance for prospective applicants, existing licence holders, those who may wish to object to an application and members of the Licensing and Regulatory Committee when making a determination on an application. This policy will be reviewed after 12 months and thereafter at least once every three years.
- 1.7** While each application will be dealt with on its own merits this policy gives prospective applicants an early indication as to whether their application is likely to be granted or not. The policy also provides prospective applicants with details of what is expected of them should an application be successful. Not all premises will automatically require a licence, where there is an exemption within the legislation this has been set out in this policy document.
- 1.8** Notwithstanding matters contained within this policy consideration will be given to the provisions of the Human Rights Act 1998 and the Home Office guidance issued in March 2010 entitled “Sexual Entertainment Venues – Guidance for England and Wales” when considering applications for SEVs.
- 1.9** The Council does not take a moral stance in adopting this policy. The Council recognises that Parliament has made it lawful to operate sex establishments and that such businesses are a legitimate part of the retail and leisure industries. It is the Council’s role as a Licensing Authority to regulate such premises in accordance with the law.
- 1.10** The Council will work in partnership with the Coventry Partnership, neighbouring authorities, the West Midlands Police (‘the police’), the Coventry Community Safety Partnership, Health Protection Service, local businesses, local people and those involved in child protection (Coventry Safeguarding Children Board) and those involved with protecting adults from the risk of harm (Coventry Safeguarding Adults Board) to promote the common objectives of safeguarding vulnerable people. In addition, the Council recognises its duty under S.17 of the Crime and Disorder Act, 1998, with regard to the prevention of crime and disorder.

- 1.11 In formulating this policy, the Council has paid due regard to the Public Sector Equality Duty under Section 149 of the Equality Act 2010. In particular as regard to the need to eliminate discrimination, harassment, victimisation etc in relation to females engaged in performing at SEV premises and/or females living or working or travelling within the vicinity of such premises.
- 1.12 Crime prevention, drug & alcohol misuse strategies and the input of the Coventry Community Safety Partnership (CCSP) will be reflected in licence conditions, so far as possible. The CCSP, with membership including the Council, police and the West Midlands Fire Service, is committed to making Coventry a safe place in which to live, work and visit. It is the role of the CCSP to strategically plan, commission and oversee services that tackle crime & disorder and address drug & alcohol misuse.
- 1.13 The Licensing Authority expects licence holders, to make proper provision for child safety and welfare. Notwithstanding public safety issues, assurance that persons under 18 are not permitted on the premises must be reflected within an application .

Transitional Period

2.1 The 'transitional period' lasts for 12 months starting from the 1st appointed day (1st June 2011). Six months following the 1st appointed day is known as the '2nd appointed day' (1st December 2011) and the day on which the transitional period ends is known as the '3rd appointed day' (1st June 2012).

2.2 Existing Operators

To allow time to comply with the new regime an existing operator who immediately before the 1st appointed day had a Licensing Act 2003 ("the 2003 Act") premises licence or club premises certificate, and lawfully uses premises as a SEV under that licence or is undertaking preparatory work to use the venue in that way, will be allowed to continue to provide relevant entertainment until the 3rd appointed day or the determination of any application they have submitted before that time (including any appeal against the refusal to grant a licence) whichever is later.

2.3 New Applicants

New applicants are people who wish to use premises as a SEV after the 1st appointed day but do not already have a premises licence or club premises certificate to operate as such under the 2003 Act or do have such a licence but have not taken any steps towards operating as such. After the 1st appointed day new applicants will not be able to operate as a SEV until they have been granted a SEV licence.

2.4 Determining applications received on or before the 2nd Appointed Day

Applicants will be able to submit their application for a SEV licence from the 1st appointed day onwards. As the Licensing Authority is able to refuse applications by having regard to the number of SEVs they consider appropriate for a particular locality all applications made on or after the 1st appointed day but on or before the 2nd appointed day will be considered together all at the same time.

2.5 This will ensure that applicants are given sufficient time to submit their application and all applications received on or before the 2nd appointed day are considered on their individual merit and not on a 'first come first served' basis.

2.6 No applications shall be determined before the 2nd appointed day. After the 2nd appointed day the Licensing Authority shall decide what, if any, licences should be granted. If a new applicant is granted a licence it will take effect immediately. If an existing operator

is granted a licence it will not take effect until the 3rd appointed day, up to which point they will be allowed to continue to operate under their existing premises licence or club premises certificate.

2.7 Determining Applications Received After the 2nd Appointed Day

Applications made after the 2nd appointed day will be considered at the time they are received but only after all of the applications made on or before that day have been determined. However, reference to determination here does not include references to the determination of any appeal against the refusal of a licence. As with applications received on or before the 2nd appointed day licences granted to new applicants shall take effect immediately and licences granted to existing operators shall take effect from the 3rd appointed day or, if later, the date the application is determined.

3 Sexual Entertainment Venues

3.1 A SEV is defined in the 2009 Act as “any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer”.

3.2 The meaning of ‘relevant entertainment’ is “any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means)”.

3.3 Display of nudity is defined as the exposure of the pubic area, genitals or anus and, in the case of women, their nipples.

3.4 These definitions would apply to the following forms of entertainment [as they are commonly known]: lap dancing; pole dancing; table dancing; strip shows; peep shows and live sex shows.

3.5 It must be noted that the above list is not exhaustive and does not include private dwellings to which the public are not admitted. Decisions to license premises as SEVs shall depend on the content of the entertainment provided and not the name it is given. As such each case will be considered on its own merits by the Council as the Licensing Authority.

3.6 The 2009 Act provides exemptions from the definition of SEVs as follows:

Sex shops and sex cinemas (which are separately defined in Schedule 3 to the 1982 Act).

Premises which provide relevant entertainment on an infrequent basis. These are detailed as premises where:

- (a) no relevant entertainment has been provided on more than 11 occasions within a 12 month period;
- (b) no such occasion has begun within a period of one month beginning with the end of the previous occasion; and
- (c) no such occasion has lasted longer than 24 hours.

Other premises or types of performances or displays exempted by an order of the Secretary of State.

3.7 Premises which provide relevant entertainment on an infrequent basis will continue to be regulated under the 2003 Act insofar as they are providing regulated

entertainment under that Act either by virtue of a premises licence or club premises certificate or a temporary events notice issued under that Act.

- 3.8** In practice this means that the vast majority of lap dancing clubs and similar venues will require both a SEV licence for the provision of relevant sexual entertainment and a premises licence or club premises certificate for the sale of alcohol and/or provisions of other types of entertainment regulated by the Licensing Act 2003
- 3.9** Live music or the playing of recorded music which is integral to the provision of relevant entertainment such as lap dancing for which a SEV licence is required is specifically excluded from the definition of regulated entertainment in the 2003 Act. Therefore, a SEV will not require a premises licence or club premises certificate just because it plays live or recorded music for a performer to dance to.

4 Waivers

- 4.1** Schedule 3 of the 1982 Act makes provision for the Council to grant a waiver from the requirement to hold a sex establishment licence in any case where it considers that to require a licence would be unreasonable or inappropriate. A waiver may be for such a period as the Council thinks fit.
- 4.2** The Council does not consider it would be appropriate to permit waivers from the requirements to hold a sex establishment licence in respect of SEVs, particularly as the legislation allows relevant entertainment on an infrequent basis of no more than 11 occasions within a 12 month period, providing there is at least one month between each period of entertainment which itself does not last for more than 24 hours.
- 4.3** Whilst each application will be considered on its own merits by the Licensing and Regulatory Committee in light of the exemption in relation to the provision of relevant entertainment on an infrequent basis the Council takes the view that waivers are unlikely to be appropriate in relation to relevant entertainment and would only be considered in exceptional circumstances.

5 Making An Application

- 5.1** The 1982 Act provides a maximum licence period of one year. The authority may grant a shorter licence if it thinks fit. A shorter period may be granted for example where a licensee wants a licence for a limited period for a trade exhibition or a show.
- 5.2** An application for the **grant, variation, renewal or transfer** of a licence must be made in writing to the Licensing Authority together with the application fee in accordance with the requirements set out below and in Appendix C.
- 5.3** In respect of grant, renewal and transfers there are three separate notice requirements :
- i).** The applicant must, within seven days after the date of the application, publish an advertisement in a local newspaper circulating in the local authority's area. A suggested form of advertisement is available on request from the Licensing Team.
 - ii).** Where the application is in respect of premises the applicant must display a notice of the application on or near the premises where it can be conveniently read by the public. The notice must be displayed for 21 days starting with the date of application. Again a suggested form of notice is available on request.
 - iii).** The applicant must send a copy of the application to the Chief Officer of Police no later than seven days after the date of the application. Where the application is

made electronically it is for the Local Authority itself to send the copy within seven days of receipt of the application.

- 5.4 The application form can be used for grant, variation, transfer and renewal applications. Applicants must provide their name, address, age (where the applicant is an individual), the premises address and the proposed licensed name of the premises.
- 5.5 Applicants must, at the time of submission of a new grant application, provide a scheme showing the exterior design for consideration by the Licensing Authority before the premises are opened for business in order to ensure that exterior design of the premises shall be such that the interior of the premises is not visible to passers-by. Where a variation application seeks to alter the external experience of the premises then a scheme showing the exterior design must be provided.
- 5.6 In addition applicants must, at the time of submission of a new grant or variation application (unless only the exterior is being altered), provide a plan showing the interior layout of the premises and where relevant entertainment will take place for consideration by the Licensing Authority.
- 5.7 Applicants for new grants must also submit a copy of their "club rules". Such club rules must contain the required conduct of performers which shall include for example, no sex acts, no giving or taking phone numbers (including exchange of business cards).
- 5.8 Such club rules will form part of the licence (if granted) and may be subject to amendment by the Licensing Authority prior to approval.
- 5.9 Officers of the Licensing Team may, will as part of the application process visit the locality of the premises to establish whether there are any characteristics of the locality which may require consideration by the Licensing and Regulatory Committee.
- 5.10 With regards to online applications' tacit authorisation does not apply to new grant applications for SEV licences. This means the applicant must wait for the Licensing Authority to determine the application before they can operate a SEV.

6 Fees

- 6.1 The application process involves paying a non-returnable application fee, which covers the costs of administering the SEV licensing regime. The fees are reviewed annually against any rise in council costs of administering the licence regime.
- 6.2 The appropriate fees for applications can be found at Appendix F of the Policy and on the Council's Website.

7 Making Objections to Applications for Grant, Renewal or Transfer

- 7.1 The 1982 Act permits a wide range of persons to raise objections about the **grant**, **renewal** or **transfer** of a SEV licence. Objectors can include residents, resident associations, trade associations, businesses, Councillors (providing they do not sit on the Licensing Committee considering the application) or MPs. The Police are a statutory consultee for all applications.
- 7.2 Objections must be made in writing (email is acceptable) no later than 28 days after the date of the application to the Licensing Team and should include the following:
 - the name and address of the person or organisation making the objection;

- the premises to which the objection relates;

7.3 Objectors should limit their objection to matters which are relevant to the statutory grounds for refusal as set out in the 1982 Act. These are set out at paragraphs 8.3/8.4 below:-

Any objections received by the Licensing Authority which do not relate to the grounds set out in the 1982 Act will be rejected by the Licensing Team. Where objections are rejected the objector will be given written reasons.

7.4 The Licensing Authority will not consider objections that are frivolous or vexatious or which relate to moral grounds (as these are outside the scope of the 1982 Act). Decisions on whether objections are relevant, frivolous or vexatious will be made objectively by the Licensing Team and where objections are rejected the objector will be given written reasons.

7.5 A vexatious objection is generally taken to be one which is repetitive, without foundation or made for some other reason such as malice. A frivolous objection is generally taken to be one that is lacking in seriousness.

7.6 All valid objections will be considered by the Licensing Committee when determining the application. The applicant will be informed of any objections received in respect of their application and the objection(s) will become public documents. (However, an objector's personal details such as name, address and telephone number will be removed.) A copy of the hearing procedure will be sent to the applicant and any objectors prior to the hearing.

8 Determination of an Application for Grant, Renewal or Transfer

8.1 All applications for the initial grant of a SEV licence will be determined by the Licensing and Regulatory Committee. Applications for the renewal and transfer of a SEV licence will also be determined by the Licensing and Regulatory Committee if valid objections have been received. If no valid objections to these types of application are received then they will be determined by the Licensing Team exercising delegated powers. Valid objections to any application will be considered by the Licensing Committee at the hearing to consider the application. Applicants and objectors will be given an equal opportunity to state their case in accordance with the Licensing Committee's procedure for hearings, which is available from the Licensing Team.

8.2 The 1982 Act provides five mandatory grounds for refusing a SEV licence and four discretionary grounds for refusal/refusal to renew a SEV licence. It also provides two discretionary grounds for refusing to transfer a SEV licence. Each application will be decided upon its own merits and the Licensing Authority will give clear reasons for its decisions. Any decision to refuse an application **MUST** be relevant to one or more of the following grounds:

8.3 Specific mandatory grounds for refusal of a licence are set out in paragraph 12(1)(a) to e) of Schedule 3 in the 1982 Act. A licence cannot be granted:

(a) to any person under the age of 18 years;

(b) to any person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months;

(c) to any person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made; or

(d) to a body corporate which is not incorporated in an EEA State; or
(e) to any person who has, within a period of 12 months immediately preceding that date when the application was made, been refused that grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

8.4 Discretionary grounds for refusal

The only discretionary grounds upon which the Council may refuse an application for the grant or renewal of a licence are specified in Schedule 3 paragraph 12(3) :

- (a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- (b) if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he/she made the application himself/herself;
- (c) the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality;
- (d) that the grant or renewal of the licence would be inappropriate, having regard:
- (i) to the character of the relevant locality; or
 - (ii) to the use to which any premises in the vicinity are put; or
 - (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

The only discretionary grounds upon which the Council may refuse an application to transfer a SEV licence are those stated at 8.4 (a) and (b).

- 8.5** If none of the above applies to the applicant and no objections have been received and there are no other statutory grounds for refusal, including that the application does not exceed any permitted numbers, the application will be granted by way of delegated authority.

9 Unsuitability of an Applicant

- 9.1** In respect of 8.4(a) and (b) above with regard to the unsuitability of an applicant to hold a licence, the criteria for Members to consider are:

- that the operator is honest.
- that the operator is qualified by experience to run the type of sex establishment in question.
- that the operator understands the general conditions.
- that the operator is proposing a management structure which delivers compliance with the operating conditions e.g. through managerial competence, presence, a credible management structure, enforcement of rules internally, a viable business plan and policies for welfare of performers. that the operator can be relied upon to act in the best interests of performers e.g. in how they are remunerated, the facilities they enjoy, how they are protected and how and by whom their physical and psychological welfare is monitored.
- that the operator can be relied upon to protect the public e.g. transparent charging, freedom from solicitation.
- that the operator can show a track record of management of compliant premises, or that he/she will employ individuals who have such a track record.

10 Number of Sexual Entertainment Venues

- 10.1** As set out within paragraph 8.4(c) above, paragraph 12 of Schedule 3 provides that a Local Authority may refuse an application if it is satisfied that the number of sex establishments or sex establishments of a particular kind in a relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality. The Council is able to determine that the appropriate number for a locality is nil.
- 10.2** The Council recognises that historically a small number of sex establishments have traded in the city without significant concern. However the Council does not wish to see a proliferation of these types of premises within the city as a whole. Therefore it is prepared to license a limited number of Sexual Entertainment Venues on the following basis.
- 10.3** The Council has chosen to set on an interim basis until consideration and decision by Cabinet and/or full Council a guidance upper limit on the number of SEVs which it considers appropriate within the following localities within the Council's administrative area:
- a. City Centre (defined as that area within the ring-road) – up to a maximum of 2 SEV's;
 - b. Outer City (defined as the remainder of the City outside the City Centre) – nil SEV's.

This is subject to review by the Cabinet and/or full Council and such further decision or decisions as may be taken by Cabinet or Council within 12 months of the 16th November 2011 (Cabinet having the option to refer the policy in full or any part of thereof to full Council). A guidance upper limit does not preclude an application from being considered on its merits. However the guidance upper limit is unlikely to be overridden unless there are exceptional reasons for doing so.

11 Unsuitability of Premises

- 11.1** As set out within paragraph 8.4 (d) above, paragraph 12 of Schedule 3 provides that a local authority may refuse an application if it is satisfied that granting or renewing a licence would be inappropriate having regard to the character of the relevant locality, or the use to which any other premises in the vicinity are put, or due to the layout, character or condition of the application premises (vehicle/vessel/stall). This power is in addition to and without prejudice to, the power to refuse an application based on the appropriate number of SEV's within the City as referred to at paragraph 10 above.
- 11.2** With reference to paragraph 8.4 'relevant locality' for the purposes of paragraph 12 (3)(d) of Schedule 3 of the Act means
- (i) in relation to the premises, the locality where they are situated, and
 - (ii) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.
- 11.3** With reference to paragraph 8.4 (d) in considering if the grant, or renewal of the licence would be inappropriate, having regard to the character of the relevant locality or to the use of which any premises in the vicinity are put, the Licensing Authority shall consider, among other considerations, whether the grant of the application would be inappropriate, having regard to:
- (a) the fact that the premises are sited in a residential area;

- (b) the premises are sited near shops used by or directed to families or children, or to frontages frequently passed by the same;
- (c) the premises are sited near properties which are sensitive for religious purposes e.g. synagogues, churches, mosques, temples;
- (d) the premises are sited near premises or areas which are sensitive because they are frequented by children, young persons, families or vulnerable adults, including but not limited to educational establishments, leisure facilities such as parks, libraries or swimming pools, markets, covered markets, women's refuges and other community facilities..
- (e) places and or buildings of historical/cultural interest, tourist attractions.
- (f) the proximity of the application premises to other SEV premises or proposed SEV premises
- (g) the premises are sited near premises or areas that are sensitive because of crime and disorder issues and in particular because of prostitution and associated activities.
- (h) the premises are in areas of the city which are not well lit so as to affect the safety of the performers leaving the premises late at night.
- (i) the premises are not sited near good transport links – for the benefit of performers.
- (j) proximity to places where vulnerable people may congregate e.g. bus stops and taxi ranks.

11.4 With reference to paragraph 8.4(d), the Council will consider the extent of the locality on a case by case basis taking into account the particular circumstances of each case. However, the Council will not seek to define locality as the whole of the Council's administrative area or an entire ward.

11.5 When hearing an application for the grant of a SEV licence, the Committee shall have regard to the guidelines set out above but subject to the overriding principle that each application will be determined on its merits.

11.6 The Council would (normally) expect that applications for SEV licences for permanent commercial premises should be from businesses with planning consent for the property concerned and may adjourn an SEV application until such time as planning consent has been obtained.

12 Conditions

12.1 When issuing a SEV licence the Licensing Authority is permitted to issue it on such terms and conditions and subject to restrictions as are specified at the time the licence is issued either in the form of conditions specific to the individual premises or standard conditions applicable to all SEVs.

12.2 The Council has decided to produce regulations prescribing standard conditions and these shall apply to every licence granted, varied, renewed or transferred by the authority unless they have been expressly excluded or varied. These regulations are attached to this policy at annex A.

12.3 A person who runs a SEV without a licence or contravenes a condition of the licence is guilty of an offence and is liable to a fine of up to £20,000.

13 Renewal Applications

13.1 Where before the date of expiry of a licence an application has been made for its renewal it shall be deemed to remain in force until the withdrawal of the application or its determination by the Council.

13.2 The statutory requirements for advertising, giving notice, consideration by the Council, hearings and the giving of the reasons are the same as those applying to initial grants, which are dealt with at paragraphs 5-12.

14 Revocation of a Sexual entertainment Venue Licence

14.1 A licence can be revoked by the Council at any time on any one of the grounds set out in 8.3(a - e) or any one of the grounds set out in 8.4(a and b) of the policy.

14.2 The Council will not revoke a licence without the licence holder being given an opportunity to appear and be heard before the Licensing and Regulatory Committee.

14.3 Where a licence is revoked, the Council shall give the licensee a statement in writing of reasons for its decision within seven days of the request being made. Where a licence is revoked its holder will be disqualified from holding or obtaining a licence in the area of the Local Authority for a period of 12 months from the date of revocation.

14.4 When the authority revokes a licence, the decision does not take effect until the time for bringing an appeal has expired and if an appeal is brought until the determination or abandonment of that appeal.

15 Cancellation of a Sexual Entertainment Venue Licence

15.1 The Council may at the written request of the licence holder cancel the licence.

15.2 If a licence holder dies then the licence will be deemed to have been granted to the licence holder's personal representatives and will remain in force for three months from the date of the licence holder's death and will then expire.

15.3 The Council can, however, on the application of the licence holder's personal representatives extend the three month period if the Council is satisfied that an extension is necessary for the purpose of winding up the late licence holder's estate. The Council will only do so where there are no circumstances that make such an extension undesirable.

16 Transfer of a Sexual Entertainment Venue Licence

16.1 A licence holder may at any time apply to transfer a licence to any other person or Company. The statutory requirements for advertising, giving notice, consideration by the licensing authority, hearings and the giving of reasons are the same as those applying to initial grants.

16.2 Variation of a Sexual Entertainment Venue Licence

16.3 A licence holder may at any time apply to vary a term, condition or restriction of a licence or apply to change the location of a licensed vessel or stall. On receiving such an application, the Council can either:

- (a) make the variation as requested;
- (b) make such variations as it thinks fit;
- (c) refuse the application.

The council will forward a copy of the application to the police and environmental health for comment.

16.4 Where relevant objections are received, the applicant will be given an opportunity to attend and be heard at a Licensing and Regulatory Committee hearing before a decision is made to make a variation other than that being applied for or to refuse the application.

16.5 Where the Council imposes some other term, condition or restriction other than one sought in the variation application, the decision does not take effect until the time for bringing an appeal has expired and if an appeal is brought until the determination or abandonment of that appeal.

17. Right to Appeal a Decision

17.1 The decisions against which a right of appeal lies are refusals of initial grants, renewals, variations or transfers, the imposition of conditions and also revocation.

17.2 Appeals must be made to the Magistrates Court within 21 days, starting from the date the applicant is notified of the Licensing Authority's decision.

17.3 It is important to note that appeals only lie against the mandatory refusals on the basis that the mandatory ground does not apply to the applicant/licence holder. Further, no appeal lies against the Licensing Authority's decision made on the discretionary grounds set out at paragraphs 8.4(c and d), namely: that it is inappropriate to grant or renew a licence on the grounds of the character of the locality or the number of premises in it; or the use of premises in the vicinity or the layout, character or condition of the premises.

17.4 The only discretionary grounds against which an appeal lies are those in paragraph 8.4(a and b) relating to the suitability of the applicant, the manager and/or the beneficiary of the operation.

18. Public Health

18.1 We would encourage holders of SEV licences to display and make available, without charge, literature on matters relating to sexual health as may be published by the FPA (formerly the Family Planning Association) and other similar organisations, the prevention of sexually transmitted diseases and HIV, and information about local health services.

19 COMMENTS ON THIS POLICY

19.1 This Statement of Licensing Policy will be reviewed on a regular basis. Individuals and organisations that wish to comment on the policy are invited to send their comments in writing to:

Community Services Directorate, Public Safety and Housing
Licensing Team, Broadgate House,
Broadgate, Coventry, CV1 1NH

Telephone Number: 024 7683 1888

Fax Number: 024 7683 2154

e-mail: licensing@coventry.gov.uk

website: www.coventry.gov.uk

APPENDIX A

COVENTRY CITY COUNCIL STANDARD CONDITIONS FOR SEXUAL ENTERTAINMENT VENUES (SEV) EFFECTIVE FROM 1 JUNE 2011

These regulations are made under paragraph 13(1) of schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (the "1982 Act") as amended by the Policing and Crime Act 2009 (the "2009 Act") . In these Regulations, except when the context otherwise requires, the following expressions shall have the following meanings:

(i) "The Council" shall mean the Coventry City Council and all enquiries concerning these Regulations and its conditions shall be directed to the Licensing Team, Broadgate House, Broadgate, Coventry, CV1 1NH. Tel 024 7683 1888. E-mail licensing@coventry.gov.uk

(ii) These conditions apply to all premises licensed as a "sexual entertainment venue" as defined by the said 1982 Act that is to say terms, conditions and restrictions on or subject to which licences under Schedule 3 of the 1982 Act are in general to be granted, renewed, varied or transferred.

(iii) "Sexual Entertainment Venue" ("SEV") means any premises at which relevant entertainment is provided before a live audience, directly or indirectly for the financial gain of the organiser or the entertainer.

(iv) "Premises" includes any vessel, vehicle or stall but does not include any private dwelling to which the public is not admitted.

(v) 'Relevant Entertainment' means any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

(vi) The Council may at any time waive, modify or vary these conditions or impose additional special conditions in any particular case.

(vii) If the Licensee wishes any of the terms of the licence to be varied an application must be made to the Council.

(viii) In the event of a conflict between the prescribed conditions and special conditions contained in a SEV licence the special conditions shall prevail.

OPENING HOURS

1. The licensed premises shall not be open nor used for the purposes for which the licence is granted except between the hours prescribed within the licence or those hours of operation determined by the Licensing and Regulatory Committee.

WINDOW, FASCIA BOARD ADVERTISEMENT AND DISPLAYS

2. The interior of the premises shall not be visible to passers-by and to that intent the licensee shall ensure the area of the premises in which relevant entertainment is offered shall not be capable of being seen from outside the premises.

3. The windows, doors fascia board, walls and all external parts of the premises including the roof shall not contain any form of writing, sign or display save for:

- (a) The address of the premises.
- (b) The licensed name of the premises.
- (c) A notice stating the opening hours of the establishment.
- (d) In the case of a licence granted to a body corporate:
 - (i) If the premises name is not the same as the full name of the body corporate then such corporate name and;
 - (ii) If the premises are also the body's registered office for the purposes of the Companies Acts then an indication in a form acceptable to the company that such is the case.

The lettering used in respect of such permitted items shall be of such colour, size and style as may be approved by the Council.

4. No display, advertisement, word, letter, model, sign, light, placard, board, notice, device, representation, drawing, writing or any matter or thing (where illuminated or not) shall be exhibited so as to be visible from outside the premises without approval by the Council.

5. The licensee shall not permit the display outside of the premises of photographs or other images which indicate or suggest that relevant entertainment takes place in the premises.

LICENSED NAME

6. At the time of granting the licence in respect of the premises the Council will appoint a name referred to as "The Licensed Name" by which it is intended that the premises shall be known and the licensee shall ensure that the premises are known solely by that name and by no other.

EXHIBITION OF LICENCE

7. A copy of the Licence as issued by the Council shall be retained in a clean and legible condition, suitably framed and exhibited in a position that can easily be seen by all persons using the premises.

8. A copy of the conditions of the Licence and these Regulations (so far as they relate to the performances) shall be given to all performers at the premises and a copy shall be exhibited in the performers changing rooms at all times the premises are open.

RESPONSIBILITY OF THE LICENSEE

9. The licensee shall take all reasonable precautions for the safety of the public and employees on its premises and, except with the consent of the Council, shall retain control over all parts of the premises. Any request to sublet the premises following the grant of a licence will be determined through an application to vary the licence granted.

10. The premises shall not be used for regulated entertainment as defined by the Licensing Act 2003, or exhibition or display of any kind unless the Council's consent has first been obtained and any necessary licence granted.

11. The licensee, or any person purporting to act upon their behalf, shall be responsible for ensuring compliance with these and any special conditions of the licence and will be held responsible for any breach thereof.

12. The licensee or a responsible person over 18 years of age nominated by them in writing for the purpose of managing the SEV in their absence shall be in charge of and upon the premises during the whole time they are open to the public.

13. The written nomination referred to in condition 13 above shall be maintained in a daily register, kept on the premises and made continuously available for inspection by an officer authorised by the Council or police officer.

14. The person in charge shall not be engaged in any duties which will prevent them from exercising general supervision and they shall be assisted as necessary by suitable adult persons to ensure adequate supervision.

15. A notice showing the name of the person responsible for the management of the SEV shall be prominently displayed within the SEV throughout the period during which they are responsible for its conduct.

16. The licensee must ensure that there is a current insurance policy in force to cover the performers whilst the premises are open and that a copy is displayed in areas where all staff have access.

EMPLOYEES AND MANAGEMENT STAFF

17. The licensee shall at all times keep and maintain at the licensed premises a written record of the names, addresses, and copies of photographic proof of age documents of all persons employed or performers contracted to operate within the licensed premises whether upon a full or part time basis and shall, upon request by an authorised officer of the Council or police officer, make such records available for inspection to them.

18. The term contracted does not relate to persons engaged to carry out repairs or provide services from external companies to the premises, however, these such persons must be aged 18 years and over if the premises are open for business.

19. The licensee shall ensure that all persons employed or contracted to work within the licensed premises hold the appropriate rights to work and shall keep copies of any documentation used to verify the details of these rights where necessary.

20. The licensee or a responsible person purporting to act upon their behalf shall at all times provide the Council with written notification as to the names, addresses and dates of birth of such person or persons (whether employees or otherwise connected with the business) who have authority to manage the premises in the licensee's absence.

21. Where the licensee is a body corporate or an unincorporated body any change of director, company secretary or other person responsible for the management of the body is to be notified to the Council within 14 days of such change.

CHANGE OF LOCATION AND ALTERATIONS TO PREMISES

22. Where licensed premises are a vessel or stall, the licensee shall not move the licensed vessel or stall from the location specified in the licence unless a variation application is submitted for the Council's determination giving not less than 28 days notice. N.b. this requirement shall not apply to a vessel or stall which habitually operates from a fixed location but which is regularly moved (whether under its own propulsion or otherwise) from another place such location as is specified in the licence.

23. Alterations or additions, either internal or external and whether permanent or temporary, to the structures, lighting or layout of the premises, including any change in the permitted signs on display shall not be made unless a variation has been granted.

CLUB RULES

24. Any club rules imposed on the performers shall be displayed in a prominent position within the premises for all performers and employees to have easy access whilst at work.

25. A copy of the club rules shall be provided to performers engaged by the premises by means of a written contract signed by the recipient. Copies of the same must be retained on the premises and produced to an authorised officer of the Council or police officer on request.

FEES

26. Receipts or records of payments received should be provided to performers where "house fees" are charged or when any fines are issued.

PERFORMANCES

27. No person under the age of 18 shall be on the licensed premises. A notice shall be clearly displayed at the entrance to the premises in a prominent position stating that "No person under 18 will be admitted" so that it can be easily read by persons entering the premises.

28. All members of the staff at the premises shall seek credible photographic proof of age evidence from any person who appears to be under the age of 25 years and who is seeking access to the premises. Such credible evidence, which shall include a photograph of the customer, will either be a passport, photographic driving licence, or proof of age card carrying a "PASS" logo.

29. Each area where relevant entertainment is conducted shall be supervised and contain a panic alarm for the safety of performers.

30. All areas within the premises shall display signs advising clients of the club rules and conditions of the licence regarding improper performances.

31. Performers shall be aged not less than 18 years and there should be routine checking of the age of any performer before they are allowed to perform, to ensure that they are over 18.

32. Full nudity is only permitted in the approved designated areas, as stipulated or shown on the approved plan attached to the licence. With the exception of the designated areas, in all other areas within the premises the performers and employees must at all times wear at least a G string (female) and or pouch (male) covering the genitalia as well as one other over layer of clothing.

33. During any performance (including performances usually termed 'private dances') performers should be confined to the stage area and there must not be any deliberate contact, by the performer, with any patron or person within the viewing audience except:

- a). Leading a patron hand in hand to and from a chair or private room or designated dance area.
- b). Simple handshake greeting at the beginning and/or end of the performance.
- c). A customary ("peck on the face") kiss at the end of the performance.
- d). The placing of monetary notes or dance vouchers into the hand or garter worn by the performer.

34. No performances shall include any sex act with any other performers, patrons, employees, contractors, or with the use of any objects.

35. A price list shall be displayed in a prominent position giving the price and the time allowed for any of the performances.

36. Any person connected with or employed by the business who can be observed from outside the premises must be dressed. Scantily clad individuals must not exhibit in the entrance way or in the area surrounding the premises. (Scantily clad shall mean that nudity or underwear is visible).

37. No fastening or lock of any description shall be fitted upon any booth or cubicle or other area within the premises except within the toilets or within the performers dressing rooms and staff areas.

38. At all times during a performance, performers shall have unrestricted access to secure and private changing facilities.

39. Patrons or members of the audience shall not take photographs or record digital images of performers within the premises via a camera or mobile phones.

40. Customers who act inappropriately will be removed from the premises and a register will be kept so no person will be readmitted if they have been offensive, violent or aggressive towards a performer,

THE PROTECTION OF PERFORMERS AND THE PREVENTION OF CRIME ON THE PREMISES

41. Police to be kept informed of any assaults that take place on staff, whether or not the victim wishes to press charges.

42. There shall be separate and private sanitary facilities for performers.

43. Free drinking water or other non-alcoholic refreshments should be available to performers

44. There should be routine monitoring to ensure that drugs are not being used by performers

45. The monitoring referred to in condition 33, 42 and 44 above shall be recorded in a weekly register, kept on the premises and made continuously available for inspection by an officer authorised by the Council or police officer.

46. All entrances to private areas to which members of the public are not permitted shall have clear signage stating that access is restricted.

47. Any exterior smoking area for use by performers shall be kept secure and separate to any public smoking area.

48. No smoking areas are to be allowed at the front of clubs to minimise the potential for harassment of women living, working and passing through the area.

49. The licence holder shall include in the club rules a written policy to ensure the safety of performers when leaving the premises following any period of work.

50. Booths must not be fully enclosed. There must be a clear sight-line from outside the booth so that any performance of sexual entertainment can be directly monitored.

51. All escape routes and emergency exits shall be clearly signed and shall be kept clear. Emergency exits must remain unlocked at all times any person is on the premises. Emergency lighting must be provided to the satisfaction of West Midlands Fire Service.

DOOR SUPERVISORS

52. The licensee shall ensure all door supervisors employed or contracted to work on the premises are suitably licensed by The Security Industry Authority or appropriate agency.

53. An adequate number of licensed door supervisors, based on a risk assessment undertaken by the licensee and agreed by the Police shall be on duty on the premises whilst relevant entertainment takes place.

54. At least one door supervisor shall be on duty at the premises at all times when the relevant entertainment takes place.

CCTV

55. CCTV shall be installed in each room within the premises where the public has access, including private booths. All cameras shall continuously record whilst the premises are open to the public and video or digital recordings shall be kept available for a minimum of thirty one days.

56. A member of staff who is fully trained in the use of the CCTV system shall be on duty at all times when the premises are open until the premises are clear of customers, cleared of staff and closed.

57. The premises will provide any footage of any recordings upon request by a police officer or an authorised officer of the Council within 24 hours of the request.

TOUTING FOR BUSINESS AWAY FROM THE PREMISES.

58. The licensee shall not allow the use of vehicles including limousines for the promotion of the relevant entertainment.

59. The collection of patrons and or potential clients is not permitted unless the vehicle is licensed in accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1976.

60. The licensee or its agents, servants, employees, contractors or performers shall not tout for business and or customers outside of or within the vicinity of the licensed premises.

61. The licensee shall ensure that any marketing communications associated with the SEV or relevant entertainment shall comply with the code of practice as issued by the Advertising Standards Authority.

ADMISSION OF AUTHORISED OFFICERS

62. Officers of the Council, Police, and other authorised agencies who are furnished with authorities which they will produce on request shall be admitted immediately at all reasonable times and at any time the premises are open for business to all parts of the premises.

SCHEME OF DELEGATION OF DECISION-MAKING AND FUNCTIONS

The Licensing and Regulatory Committee is responsible for making licensing decisions with officers having delegated powers to make some decisions. The table below describes how it is proposed licensing decisions will be made. This scheme of delegations will be subject to review as part of this policy document.

Matter to be dealt with	Decisions to be made by	
	Full Committee	Officers (Senior Licensing Officer or above)
Application for Initial Grant	All cases	
Application for renewal, transfer, or variation	If relevant objection made	If no relevant objection made
Revocation of licence	All cases	
Cancellation of licence		All cases
Make/amend regulations prescribing standard conditions, terms and restrictions	All cases	
To administer and enforce the provisions of Part II and Schedule 3 of the Local Government Miscellaneous Provisions Act 1982	Authorising prosecutions	All cases other than authorising prosecution
Waivers	All cases	

Requirements for applying for grant, variation, transfer or renewal of a sexual entertainment venue licence

Grant of a licence

- 1) To apply for the grant of a sexual entertainment venue licence an applicant must: -
 - a) send the Council: -
 - i) a completed application form (a sample is shown at Appendix D);
 - ii) a plan to the scale of 1:100 of the premises to which the application relates;
 - iii) a location plan with the premises identified;
 - iv) a colour drawing showing the proposed exterior appearance of the premises;
 - v) a copy of the proposed "Club Rules"
 - vi) the fee;
 - b) display a public notice advertising the application on or near the premises;
 - c) advertise the application in a local newspaper;
 - d) send a copy of the application and plan to the West Midlands Police (Little Park Street, CV1 2JX), within 7 clear days of submitting the application to the Council (where applications are made electronically then the Council will forward a copy of your application to the Police on your behalf).

Plan requirements

- 2) The plan must show: -
 - a) the layout of the premises including e.g. stage, bars, cloakroom, WC's, performance area, dressing rooms
 - b) the extent of the boundary of the building (in red), if relevant, and any external and internal walls of the building and, if different, the perimeter of the premises;
 - c) the extent of the public areas outlined in blue
 - d) any parts used in common with other premises
 - e) the location of points of access to and egress from the premises;
 - f) the location of escape routes from the premises;
 - g) fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exits or escape routes without impediment;
 - h) in a case where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor;
 - i) in a case where the premises includes any steps, stairs, elevators or lifts, the location of the steps, stairs, elevators or lifts;
 - j) in the case where the premises includes any room or rooms containing public conveniences, the location of the room or rooms;
 - k) the location and type of any fire safety and any other safety equipment including, if applicable, marine safety equipment; and
 - l) the location of a kitchen, if any, on the premises.

- m) Any private rooms for adult entertainment
 - n) Any area where relevant entertainment is intended to take place
 - o) Position of CCTV cameras
- 3) The plan may include a legend through which the matters mentioned or referred to above are sufficiently illustrated by the use of symbols on the plan.

Public notices

- 4) A notice must be displayed at or on the premises to which the application relates for a continuous period of not less than 21 consecutive days from the day following the day the application was given to the Council, where it can be conveniently read from the exterior of the premises.
- 5) Where the premises cover an area of more than 50 square meters, a further identical notice must be displayed every 50 metres along the external perimeter of the premises abutting any highway.
- 6) The notice must be on pale pink paper sized A4 or larger and printed legibly in black ink or typed in black in a font size equal to or larger than 16.
- 7) The notice must state: -
- a) details of the application and activities that it is proposed will be carried on or from the premises,
 - b) the full name of the applicant,
 - c) the postal address of the premises, or in the case where there is no postal address, a description of the premises sufficient to enable the location and extent of the premises to be identified,
 - d) the date upon which the application was submitted to the Council and a statement that representations can be submitted to the Council within 28 clear days from the date the application was submitted and the address to which any representations should be sent.
 - e) That it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine (£5000) for which a person is liable on summary conviction for the offence.
- 8) A similar notice must be published in a local newspaper within 7 days of giving the application to the council.
- 9) A sample public notice is shown as Appendix E.

Variation of a licence

- 10) The holder of a licence may apply at any time for any variation of the terms, conditions or restrictions on or subject to which the licence is held.
- 11) Where relevant a revised plan of the premises is required.
- 12) The process for applying for a variation is detailed in paragraph 17 of the policy

Renewal of a licence

- 13) The holder of a licence may apply for renewal of the licence. In order for the licence to continue to have effect during the renewal process, a valid application together with the appropriate fee must be submitted *before the current licence expires*.
- 14) The process of applying for renewal of a licence is the same as that for applying for an initial grant except that a plan of the premises is not required.

Transfer of a licence

15) A person may apply for transfer of a licence at any time.

16) The process of applying for transfer of a licence is the same as that for applying for an initial grant except that a plan of the premises is not required.

APPLICATION FOR GRANT/RENEWAL/VARIATION/TRANSFER OF A SEXUAL ENTERTAINMENT VENUE LICENCE

Important Notes

1. All questions must be answered, save where otherwise stated. If relevant questions are not answered, the application will be deemed incomplete and returned to the Applicant.
2. Any person who, in connection with an application for a grant, renewal or transfer of a sex establishment licence makes a false statement which he knows to be false in any material respect of which he does not believe to be true is guilty of an offence and liable on summary conviction to a fine not exceeding £20,000.

Part 1 – The Applicant

1.

I/We

.....
(Insert name(s) of applicant)

apply for a Sexual Entertainment Venue Licence as described below.

2. Please state whether you are applying for a licence as:

- | | | |
|---|--------------------------|-----------------------------|
| a) an individual | <input type="checkbox"/> | please complete section (A) |
| b) a company or other corporate body,
incorporated within an EEA State | <input type="checkbox"/> | please complete section (B) |
| c) a partnership or other unincorporated body | <input type="checkbox"/> | please complete section (C) |

(A) INDIVIDUAL APPLICANT (fill in as applicable)

You must complete and submit the form at Annex A for the individual named in this section

		Annex A completed?
Full Name of Applicant		<input type="checkbox"/>
Former Name (if applicable)		

(B) A COMPANY OR OTHER CORPORATE BODY

You must complete and submit the form at Annex A for all individuals named in this section

Applicant Name ⁽¹⁾	
Address	
Registered number ⁽²⁾	
Telephone number	
E-mail address	
Previous Name (if applicable) ⁽³⁾	

1 If your business is registered, use its registered name

2 If business is not registered, put "none"

3 If the Applicant has been formerly known by a different name, please provide details

Please state the names of:

- (i) the Applicant's Directors;**
- (ii) Company Secretary;**
- (iii) any other persons responsible for the management of the Applicant; and**
- (iv) any persons with a shareholding of greater than 10% in the Applicant**

<u>Position</u>	<u>Name of Individual</u>	Annex A completed?
		<input type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/>

Is the applicant a wholly owned subsidiary of another company or corporate body? If so state the name, place of registration and identity of its Directors and Company Secretary

Name		
Place of registration		
Names of Directors and Company Secretary		
<u>Position</u>	<u>Name of Individual</u>	Annex A completed?
		<input type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/>

(C) A PARTNERSHIP OR OTHER UNINCORPORATED BODY

You must complete and submit the form at Annex A for all individuals named in this section

Applicant Name	
-----------------------	--

Names of Partners	Annex A completed?
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>

Please state the names of than other persons responsible for the management of the Applicant other than the partners.		
Position	Name of Individual	Annex A completed?
		<input type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/>

Questions 3-6 to be completed in all cases

3	Does the applicant have a different trading name from that given above in (A), (B) or (C)? If yes, please provide details.

4	What is the Applicant’s trading address?

5	Will the business be carried on for the benefit of a person other than the applicant? If yes, please provide full details.

6	Does the applicant operate any other sex establishment? If yes, please provide full details.

End of Part 1

Part 2 – The Premises, Vehicle, Vessel or Stall

7	Is the application in respect of a:	Mark as appropriate
	Premises	<input type="checkbox"/>
	Vehicle	<input type="checkbox"/>
	Vessel	<input type="checkbox"/>
	Stall	<input type="checkbox"/>

Answer Q8 only where the application is for a premises

8a	Postal address of premises		
	Post town		Post code
	Telephone number		
8b	Is the whole of the premises to be used as a sex establishment?		Mark as appropriate
	Yes	<i>(If 'Yes' move on to Q10)</i>	<input type="checkbox"/>
	No		<input type="checkbox"/>
8c	If "No", state:		
	(i) the use of the remainder of the premises; (ii) the names of those who are responsible for managing the remainder of the premises.		

Answer Q9 only where the application is for a vehicle, vessel or stall

9	Where is it proposed to use the vehicle vessel or store?
----------	---

10a	State the nature of the Applicant's interest in the premises, vehicle, vessel or stall, e.g. owner, lessee, sub-lessee.
10b	<p>If the applicant is a lessee or a sub-lessee, state:</p> <p>(i) the name and address of the landlord;</p> <p>(ii) the name/address of the superior landlord (if any);</p> <p>(iii) the amount of annual rental;</p> <p>(iv) the length of the unexpired term;</p> <p>(v) the length of notice required to terminate the tenancy.</p>

11a	State the current use of the premises	
11b	Is there planning permission for the use of the premises, vehicle, vessel or stall as a sex establishment?	Mark as appropriate
	Yes	<input type="checkbox"/>
	No	<input type="checkbox"/>
11c	If "Yes", state the date of the planning permission	
11d	If "No", state whether and why the use as a sex establishment is lawful, e.g. because there is a certificate of lawful use, giving full details	

12a	Are the premises, vehicle, vessel or stall licensed under any other Act, e.g. the Licensing Act 2003?	Mark as appropriate
	Yes	<input type="checkbox"/>
	No	<input type="checkbox"/>
12b	If "Yes", please provide full details including the name of any Designated Premises Supervisor	

13a	Does the Applicant intend to obtain a licence under any other Act or to apply to vary any existing licence under any other Act?	Mark as appropriate
	Yes	<input type="checkbox"/>
	No	<input type="checkbox"/>
13b	Does the applicant intend to operate the sex establishment in conjunction with any other licence?	Mark as appropriate
	Yes	<input type="checkbox"/>
	No	<input type="checkbox"/>
If "Yes" to (a) or (b), please provide full details		

14a	Is customer access to the premises, vehicle, vessel or stall:	Mark as appropriate
	Directly from the street or a public thoroughfare?	<input type="checkbox"/>
	From other premises?	<input type="checkbox"/>
	If from other premises, provide full details	
14b	Is customer access from the street to be supervised at all times the premises are open to the public?	Mark as appropriate
	Yes	<input type="checkbox"/>
	No	<input type="checkbox"/>
	If "No" give details of proposed door control and supervision	
14c	Are all door supervisors to be licensed with the Security Industry Authority?	Mark as appropriate
	Yes	<input type="checkbox"/>
	No	<input type="checkbox"/>

15	Are the premises, vehicle or stall so constructed or adapted and laid out as to permit access to, from and within the premises (including WC facilities) for members of the public who are disabled?	Mark as appropriate
	Yes	<input type="checkbox"/>
	No	<input type="checkbox"/>
	If "No" state the Applicant's proposals for affording such access	

16a	Are the premises, vehicle, vessel or stall being operated as a sex establishment at the date of this application?	Mark as appropriate
	Yes (answer 16b)	<input type="checkbox"/>
	No (answer 16c)	<input type="checkbox"/>
16b	If "Yes" to 16a, please state the name and address of the person or body now operating the business.	
16c	If "No" to 16a, are you preparing to operate the premises, vehicle, vessel or stall as a sex establishment?	Mark as appropriate
	Yes (answer 16d)	<input type="checkbox"/>
	No	<input type="checkbox"/>

Part 3 – Operation of the Business

17	Under what name will the Business be known?
-----------	---

18	Has the Applicant entered into any agreement (whether written or oral) in connection with the business, other than a tenancy agreement or lease, for example, a management agreement, partnership agreement or profit share agreement? If so, provide full details together with a copy of any such agreement.
-----------	--

19	Is the business required to purchase merchandise from a particular person or body? If so, provide full details.
-----------	---

20	Set out the Applicant's system for checking the age and right to work in the UK for all employees.
-----------	--

21	State the identity of the person who will be responsible for the day to day management of the business at the premises, vehicle, vessel or stall ('the Manager')	Annex A completed?
		<input type="checkbox"/>

22	Confirm that the Manager will be based at the premises, vehicle, vessel or stall and that management of the business there will be his/her sole occupation	Mark as appropriate
	Yes	<input type="checkbox"/>
	No	<input type="checkbox"/>
	If "No", provide details	

23	Which person(s) will be responsible for the day to day management of the business in the absence of the Manager ('the Relief Manager(s)')	Annex A completed?
		<input type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/>

24	Please detail the times during which it is proposed to open the business		
		Start	Finish
	Monday		
	Tuesday		
	Wednesday		
	Thursday		
	Friday		
	Saturday		
	Sunday		
	Non-standard timings or specified days:		

25	What means are to be taken to prevent the interior of the premises being visible to passers-by?
-----------	---

26a	<p>State proposals in respect of exterior signage and advertising, including the nature, content and size of such signage and any images to be used.</p> <p><i>Please note: a plan of the exterior showing such signage and advertising is required to be submitted with this application</i></p>
26b	<p>What if any window displays are to be exhibited? Please indicate the size and nature of any display</p>

27	<p>State any proposals for solicitation of business in public areas, e.g. through fliers, business cards, billboard advertising, personal solicitation or advertising on motor vehicles.</p>
----	--

28	<p>State what age restrictions are to be applied in respect of admissions, and how are these to be enforced.</p> <p><i>In answering, state what forms of identity will be accepted and whether it is proposed to use electronic identification systems.</i></p>
----	---

29	<p>State the arrangements for CCTV and for retention of recordings.</p> <p><i>In answering, state whether all public areas are to be covered by CCTV at all times the business is open and whether the feed from all cameras will be recorded.</i></p>
----	--

Only answer Q30 where application is for a Sexual Entertainment Venue

30a	Is the proposal for full nudity?	Mark as appropriate
	Yes	<input type="checkbox"/>
	No	<input type="checkbox"/>
30b	Give details of the nature of the entertainment, e.g. lap-dancing, pole dancing, stage striptease	
30c	State what if any separation between performers and audience is proposed.	
30d	State whether arrangements are proposed for private booths or areas. If so, provide full details, including supervision for such areas	
30e	Set out the system for training all staff and for monitoring and enforcing compliance.	
30f	Set out the system for notifying customers of the Rules for Customers, and for monitoring and enforcing compliance. <i>Please note: the Rules for Customers must be attached to this form.</i>	
30g	Set out the system for monitoring compliance with the venue's Policy for Welfare of Performers. <i>Please note, the Policy for Welfare of Performers must be attached to this form</i>	

31	Set out any further information that you wish the authority to take into account. <i>Include here any proposed conditions (you may attach a schedule of such conditions) or any reason relied upon to provide an exception to the authority's Sexual Entertainment Venue Policy.</i>
-----------	---

32	Is there any information on this form that you do not wish to be seen by members of the public? <i>If so, state which information and the reasons why you do not wish it to be seen.</i>
-----------	---

Checklist	Mark as appropriate
I have completed all relevant section of Parts 1, 2, and 3 of the application	<input type="checkbox"/>
I have completed Annex A for each person whose details have been included in this application.	<input type="checkbox"/>
I have completed Annex B	<input type="checkbox"/>
I have enclosed the relevant fee	<input type="checkbox"/>

Declaration & Signature

The following declaration must be signed in all cases

Should the information provided in relation to this application form cease to be correct, or if there are any changes in the information provided in the application form between the date the application is submitted and the date it is determined, the Applicant must advise the licensing authority immediately. Failure to do so may result in any licence issued being revoked.

I/We certify to the best of our/my knowledge and belief that the information given in this application is complete and correct in every respect. I/We agree to notify the Licensing Authority should any of the information given in this application change.

Name	
Position in organisation	
Date	
Signature	

Contact Details

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 13)			
Post town		Post code	
Telephone number (if any)			
If you would prefer us to correspond with you by e-mail your e-mail address (optional)			

ANNEX A: INFORMATION ON INDIVIDUALS

Name	
Former name (if applicable)	
<i>If you have ever been known by a different name, please provide details above</i>	

Position in relation to Applicant (e.g. Director, Partner, Manager)			
Date of birth			
Age			
Gender	Male <input type="checkbox"/>		Female <input type="checkbox"/>
Permanent residential address			
If resident at the above address for less than three years, state previous address(es)			
Previous residential addresses and dates at which you were resident at them			

Have you been resident in the United Kingdom for more than six months prior to the date of the application?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Have you ever been disqualified from holding a sex establishment licence under Schedule 3 paragraph 17 of the Local Government (Miscellaneous Provisions) Act 1982?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Have you ever been involved in the management of a business which has had any of the following types of licence refused, refused on renewal, reviewed or revoked?		
Sex establishment licence	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Licence for the supply of alcohol	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Licence for the provision of entertainment, whether sexual or otherwise	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Personal licence under the Licensing Act 2003	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Have you ever been convicted of a criminal offence, whether in the United Kingdom or elsewhere?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
To your knowledge are you currently the subject of any criminal investigation?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Have you had any civil legal action taken against you?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Have you ever been served with a winding up order?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Have you ever been declared bankrupt or entered into an arrangement with creditors or an Individual Voluntary Arrangement?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Have you ever been disqualified from acting as a company director?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Is there any other information which you believe the licensing authority would reasonably expect notice of or you would like the licensing authority to take into account when considering the information you have supplied?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Is there any information in this Annex which you do not wish to be seen by members of the public?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
---	------------------------------	-----------------------------

If you have answered 'yes' to any of the above questions please provide full details below.

Declaration			
I declare that the information on this form and true and complete to the best of my knowledge and belief			
Signature		Date	

ANNEX B

DOCUMENTS SUPPLIED WITH THIS APPLICATION:

A site scale plan (1:100)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Drawings showing the front elevation as existing	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Drawings showing the front elevation as proposed including signage, advertising and window display.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Scale layout plan of premises	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Note, the requirements of the layout plan are set out below		
Planning Permission	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Certificate of lawful use or development	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If the Applicant is a company, copies of Memorandum and Articles of Association of the Company	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If the Applicant is a partnership, a certified copy of the Partnership Deed	Yes <input type="checkbox"/>	No <input type="checkbox"/>
A copy of any other licences for the premises, vehicle, vessel or stall	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Club rules for Performers	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Rules for Customers	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Policy for Welfare of Performers.	Yes <input type="checkbox"/>	No <input type="checkbox"/>

REQUIREMENTS FOR LAYOUT PLAN:

The layout plan must show;

1. The layout of the premises including, e.g. stage, bars, cloakroom, WCs, performance area, dressing rooms.
2. The extent of the boundary of the premises outlined in red
3. The extent of the public areas outlined in blue.
4. Uses of different area in the premises, e.g. performance areas, reception.
5. Structures or objects (including furniture) which may impact on the ability of individuals to use exits or escape routes without impediment.
6. Location of points of access to and egress from the premises.
7. Any parts used in common with other premises.
8. Position of CCTV cameras.
9. Where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor.
10. Where the premises includes any steps, stairs, elevators or lifts, the location of the same.
11. The location of any public conveniences, including disabled WCs.
12. The position of any ramps, lifts or other facilities for the benefit of disabled people.
13. Any level changes at the entrance to or within public parts of the premises which may be inaccessible to disabled people.
14. The location and type of any fire safety and any other safety equipment.
15. The location of any kitchen on the premises.
16. The location of emergency exits.

**Local Government (Miscellaneous Provisions) Act 1982
Sexual Entertainment Venue Licence
Public Notice**

[Name of person applying for licence] is applying to Coventry City Council for a *sexual entertainment venue licence* at *[name and address of premises]*

Any person wishing to make representations in relation to this application may do so by writing to:

**Licensing Team
Environmental Health,
Broadgate House
Broadgate
Coventry,
CV1 1NH.**

Email: licensing@coventry.gov.uk

Any representations should include the following:

- **the name and address of the person/organisation making the representation (it should be noted that personal details e.g. name, address, tel number, email address etc will not be disclosed to the applicant or outside the Council);**
- **the proposed sex establishment to which the representation relates;**
- **the grounds upon which the representation is being made.**

Representations must be received by the Council within 28 consecutive days from the date of this Notice.

A copy of the application for the grant of the above licence is kept by the Licensing Authority at the above address. The application can be viewed Monday to Thursday 9.00 am to 5.00 pm, and 9.00 am to 4.30 pm on Fridays, except Bank Holidays.

It is an offence knowingly or recklessly to make a false statement in connection with an application. The maximum fine for which a person is liable on summary conviction for making a false statement is £20,000

[Date] – This must show the date that the application was received by the Licensing Authority.

Proposed Fee Structure

New and Renewal £10,000

This fee includes;

- Application processing
- Inspection of notices
- Dealing with objections
- Compilation of committee report
- Chairs brief
- Notices of hearing
- Site visits
- Associated hearing costs
- Notice of decision
- Production of licence
- Appeals and other legal costs

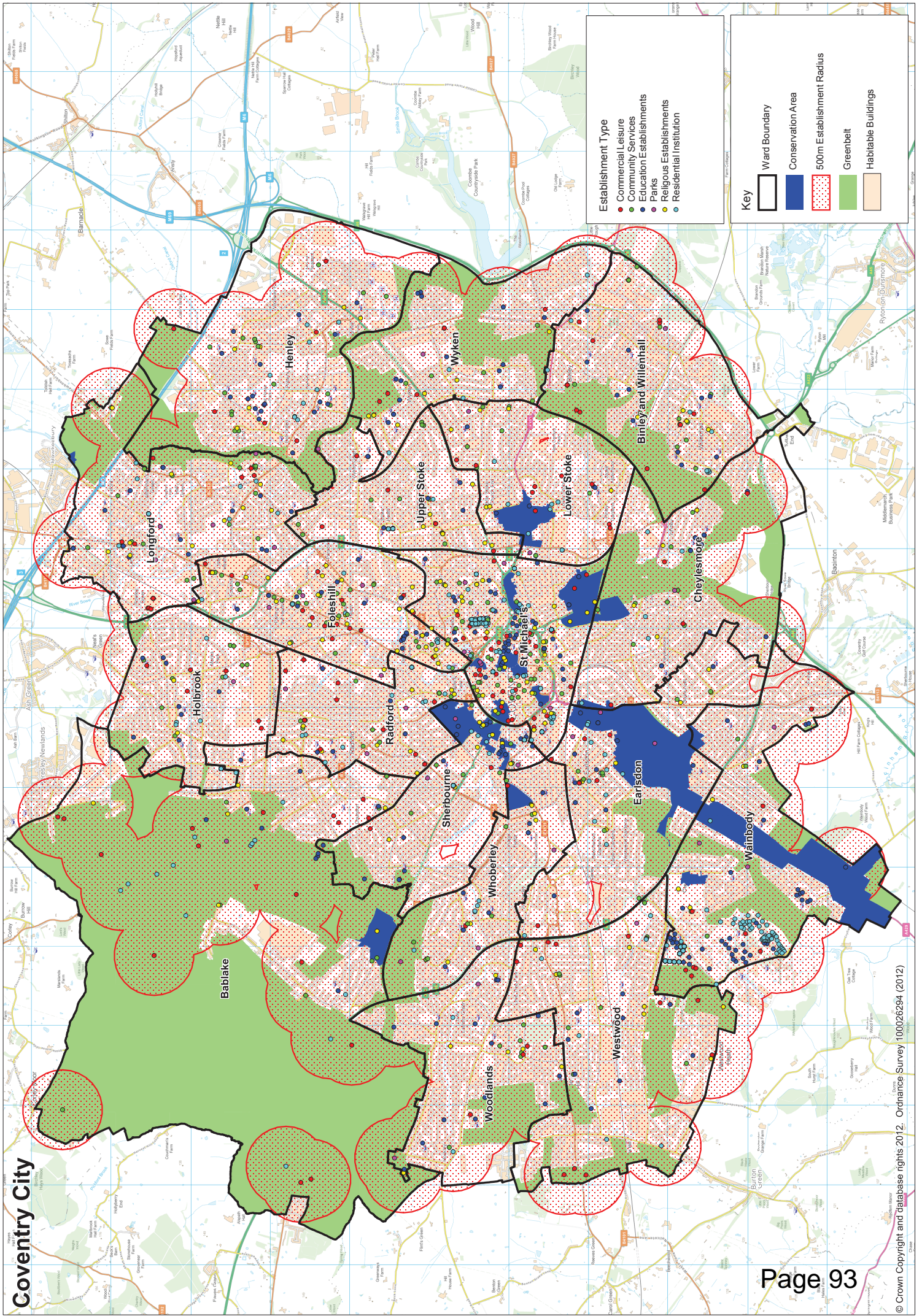
Based on the procedures involved for the below application type, it is considered that the following fees be applied;-

Variation: £4,000

A variation may include a change of the details on the licence, i.e. operating hours, conditions etc, change of external appearance, new advertising material and structural changes.

Transfers: £4,000

The authority may transfer a licence to any other person on the application of that other person. The statutory requirements for advertising, giving notice, consideration by the licensing authority, hearings and the giving of reasons are the same as those applying to initial grants.



- Establishment Type**
- Commercial Leisure
 - Community Services
 - Education Establishments
 - Parks
 - Religious Establishments
 - Residential Institution

Key

- Ward Boundary
- Conservation Area
- 500m Establishment Radius
- Greenbelt
- Habitable Buildings

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Sexual Entertainment Venue Policy

**Analysis and Findings of Public Consultation –
August/November 2012**



1. Background to Consultation on Proposed Nil Policy

- 1.1 The Local Government (Miscellaneous Provisions) Act 1982 provides the legislative framework in relation to the licensing of sex establishments. Section 27 of the Policing and Crime Act 2009 introduced a new category of sex establishment called a 'sexual entertainment venue', which allows local authorities to regulate lap dancing clubs and similar venues. The new powers were adopted by the Council with effect from 22nd March 2011.
- 1.2 On 22nd March 2011, Full Council agreed that a Sexual Entertainment Venue Policy should be formulated and subjected to public consultation. Delegated responsibility for approving the policy was given to Cabinet Member (Community Safety & Equalities).
- 1.3 On 24th March 2011, Cabinet Member (Corporate and Neighbourhood Services) approved the establishment of an Advisory Panel to oversee the development and adoption of the policy. A draft Sexual Entertainment Venue Policy was developed and presented to the Advisory Panel on 12th July 2011. At that meeting the Advisory Panel approved the draft Policy and instructed officers to carry out public consultation. The outcome of the consultation on the draft Sexual Entertainment Venue Policy was reported back to the Advisory Panel on 29th September 2011.
- 1.4 There were 28 responses to the public consultation which consisted of a range of views varying from requests for a nil policy and support for the policy proposed at that time.
- 1.5 On 16th November 2011, Cabinet Member (Community Safety and Equalities), considered the "Outcome of Consultation on the draft Sexual Entertainment Venue Policy" report and agreed the following recommendations:-
 - The draft Sexual Entertainment Venue Policy was approved as an 'Interim Policy' for a maximum period of 12 months from 16 November 2011 subject to changes including:-
 - The Council has chosen to set, on an interim basis until consideration and decision by Cabinet and/or full Council, a guidance upper limit on the number of Sexual Entertainment Venues which it considers appropriate within the following localities within the Council's administrative area:
 - a. City Centre (defined as that area within the ring-road) – up to a maximum of two Sexual Entertainment Venues.
 - b. Outer City (defined as the remainder of the City outside the City Centre) – nil Sexual Entertainment Venues.
- 1.6 On 14th August 2012, Cabinet considered a report of the Director of Community Services which provided a detailed analysis of which parts of the City may be appropriate for sexual entertainment venues. Members considered a map of the city indicating sensitive areas (residential areas, areas frequented by families and children, religious institutions and those parts of the city associated with commerce, family leisure and retail) with a 500m radii around each of the sensitive uses. Members noted that the analysis of the city, if that approach be taken, indicated that there would be extremely limited opportunities to grant a sexual entertainment venue

licence. The analysis demonstrated that there is no locality in which it can be said to be appropriate to locate a Sexual Entertainment Venue.

- 1.7 Following consideration of the report on 14th August 2012, Cabinet agreed that a further consultation process would take place on the provision of a policy for Sexual Entertainment Venues which states that there is no locality in Coventry of which it can be said that SEVs are appropriate.
- 1.8 In preparing the draft policy, Coventry City Council were keen to seek the views of a range of representatives from across the city.
- 1.9 Consultation on the draft policy took place with:
 - The existing Sexual Entertainment Venue Operator
 - Existing on Licensed Premises under the Licensing Act 2003
 - Community Associations and Centres
 - Ethnic Group Associations
 - Faith Groups
 - Parish Councils
 - Ward Councillors
 - MPs
 - Responsible Authorities under the Licensing Act 2003
 - Area Forum attendees
 - Educational Establishments
 - Places of worship
 - Coventry Partnership Members
 - Women's Groups
 - Members of the public
- 1.10 In determining its final policy, Cabinet will have due regard to the views of those consulted on the proposed nil policy.
- 1.11 Consultation took place from 20th August to 11th November 2012, the responses of which will be considered by Cabinet prior to final publication. Any final policy will be subject to regular review and amendments may be made from time to time based upon any relevant government guidance, changes to legislation or local circumstances.
- 1.12 The purpose of this consultation was to seek respondents' views on the provision of a proposed nil policy for Sexual Entertainment Venues within the city.

2.0 Aim of the Policy

- 2.1 The aim of a Sexual Entertainment Venue policy is to provide guidance for the prospective applicants, persons who may wish to object to or support an application and members of the Council's Licensing and Regulatory Committee when making a decision in respect of an application.
- 2.2 Whilst each application will be considered on its individual merits, this policy is intended to give prospective applicants an early indication of whether their specific application is likely to be successful and the material facts that will be taken into consideration when determining the application. This document also sets out the

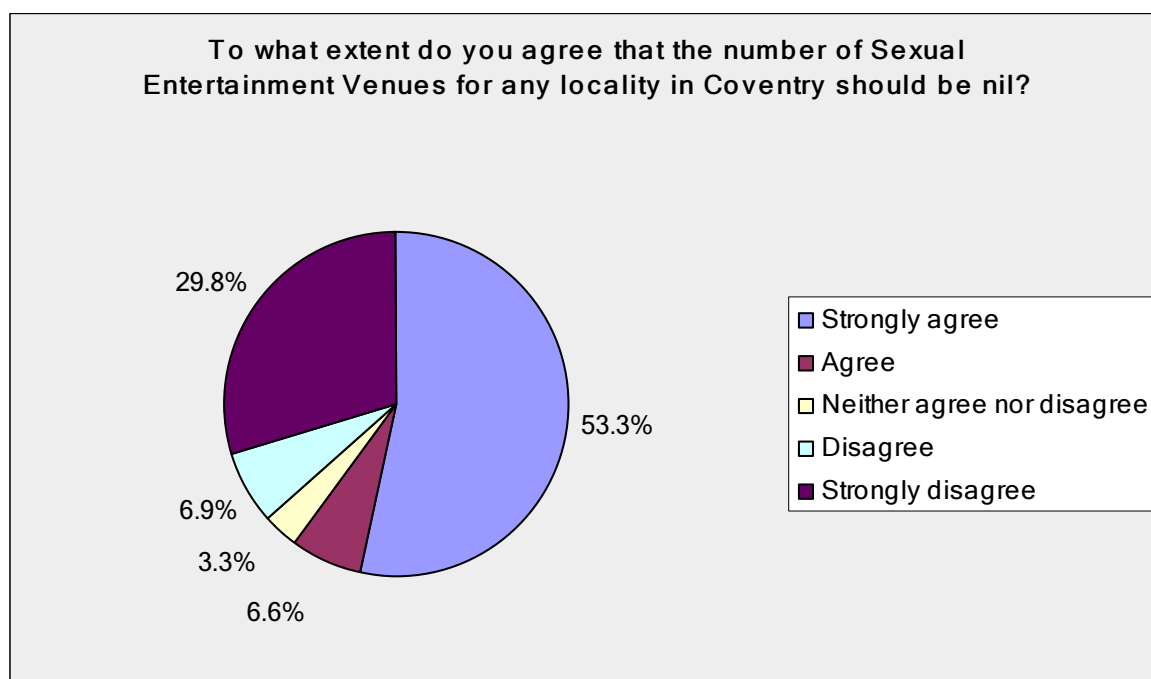
expectations of the Licensing Authority on the applicant when receiving an application.

2.3 No policy will ever be considered absolute and there may be occasions where the Licensing and Regulatory Committee may depart from the policy having regard to the unique characteristics of any one particular application.

3.0 Consultation questions and responses

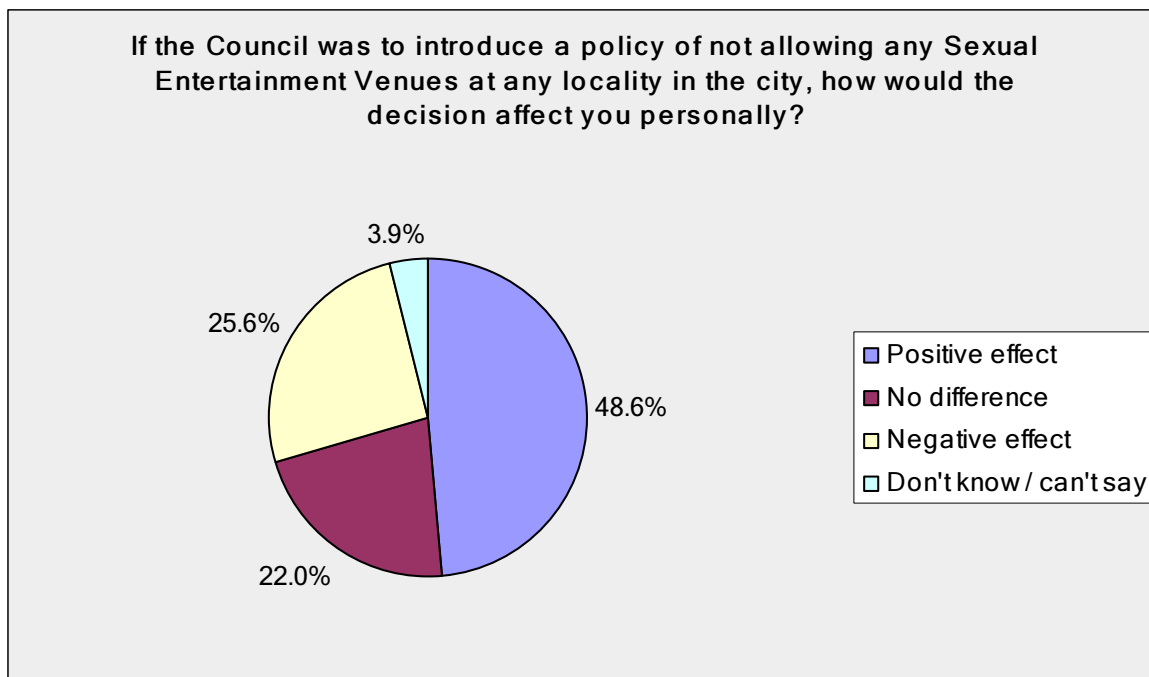
3.1 The consultation was undertaken between 20th August and 11th November 2012. In total 504 survey responses were received. Respondents were asked questions in relation to SEV's. The questions and respective responses are outlined below.

3.2 **Question 1:** To what extent do you agree that the number of Sexual Entertainment Venues for any locality in Coventry should be nil?



To what extent do you agree that the number of Sexual Entertainment Venues for any locality in Coventry should be nil?		
Answer Options	Response Percent	Response Count
Strongly agree	53.3%	209
Agree	6.6%	26
Neither agree nor disagree	3.3%	13
Disagree	6.9%	27
Strongly disagree	29.8%	117
<i>answered question</i>		392
<i>skipped question</i>		112

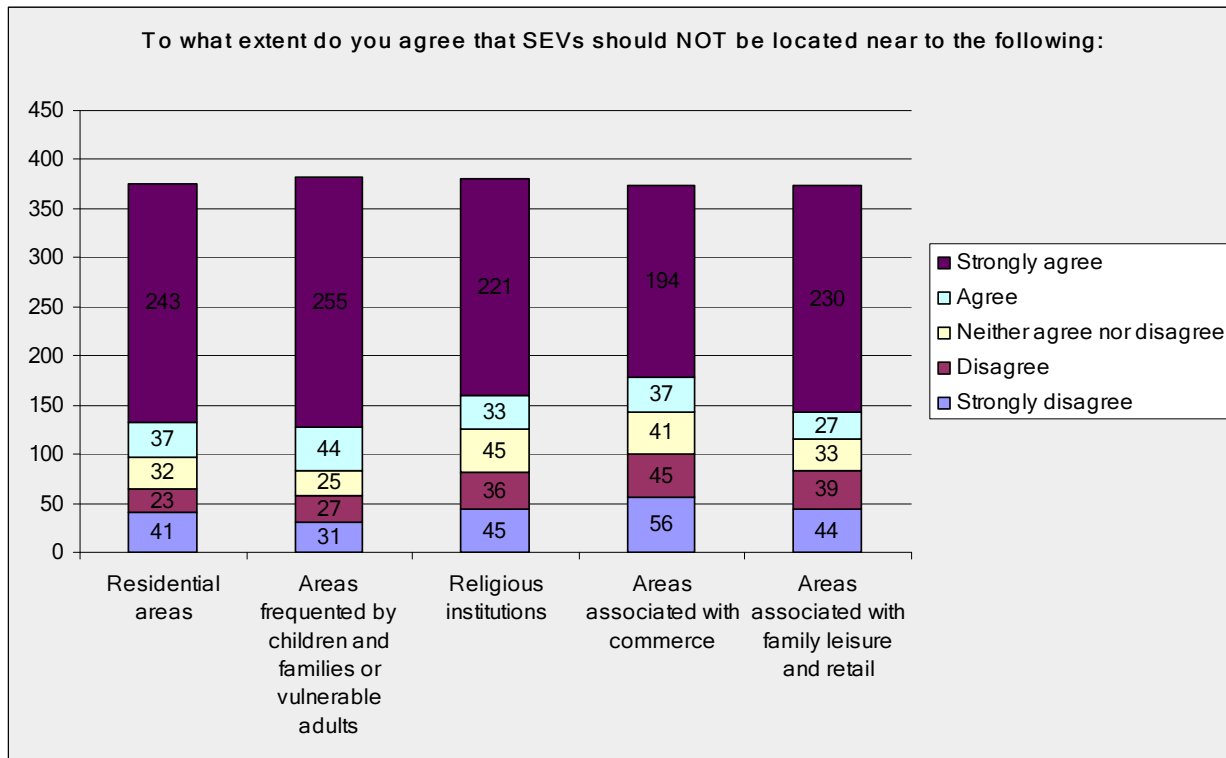
3.3 **Question 2:** If the Council was to introduce a policy of not allowing any Sexual Entertainment Venues at any locality in the city, how would the decision affect you personally?



If the Council was to introduce a policy of not allowing any Sexual Entertainment Venues at any locality in the city, how would the decision affect you personally?		
Answer Options	Response Percent	Response Count
Positive effect	48.6%	188
No difference	22.0%	85
Negative effect	25.6%	99
Don't know / can't say	3.9%	15
Please give reasons for your answer:		277
	<i>answered question</i>	387
	<i>skipped question</i>	117

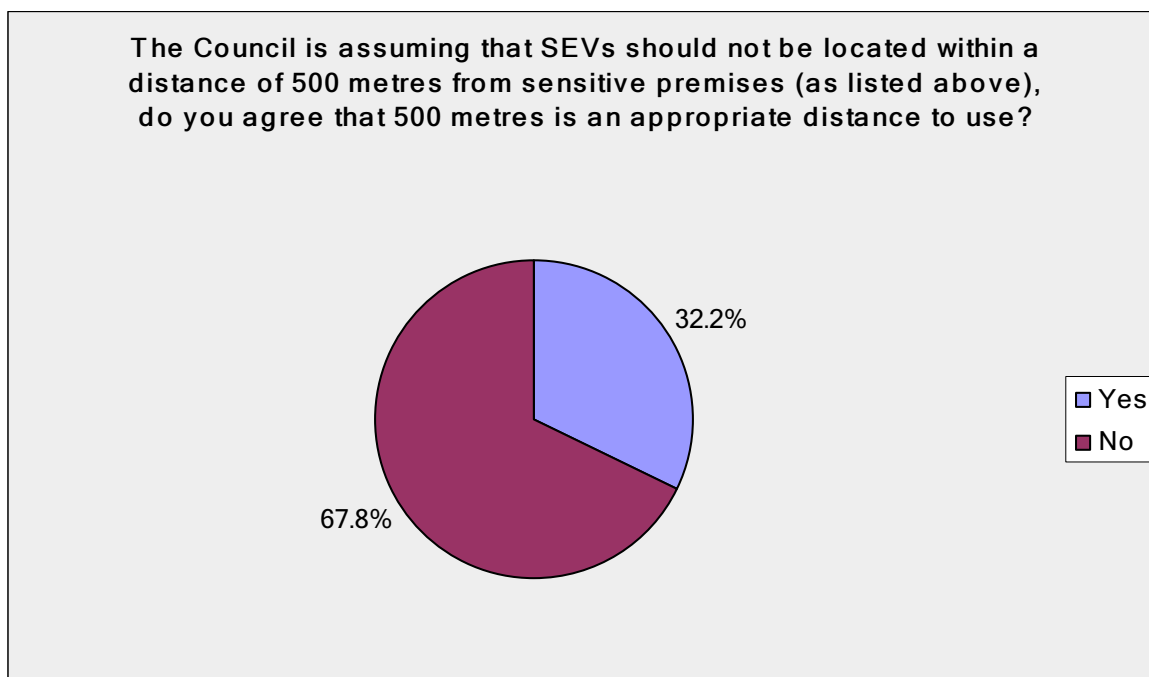
3.4 **Question 3:** To what extent do you agree that SEVs should not be located near to the following:

- Residential Areas
- Areas frequented by Children and families or vulnerable adults
- Religious Institutions
- Areas associated with commerce
- Areas associated with Family leisure and retail



Answer Options	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Response Count
Residential areas	243	37	32	23	41	376
Areas frequented by children and families or	255	44	25	27	31	382
Religious institutions	221	33	45	36	45	380
Areas associated with commerce	194	37	41	45	56	373
Areas associated with family leisure and retail	230	27	33	39	44	373
<i>answered question</i>						385
<i>skipped question</i>						119

3.5 **Question 4:** The Council is assuming that SEVs should not be located within a distance of 500 metres from sensitive premises, do you agree that 500 metres is an appropriate distance to use? (Please note that where people answered no to this question they were given the option of suggesting a more appropriate distance).



The Council is assuming that SEVs should not be located within a distance of 500 metres from sensitive premises (as listed above), do you agree that 500 metres is an appropriate

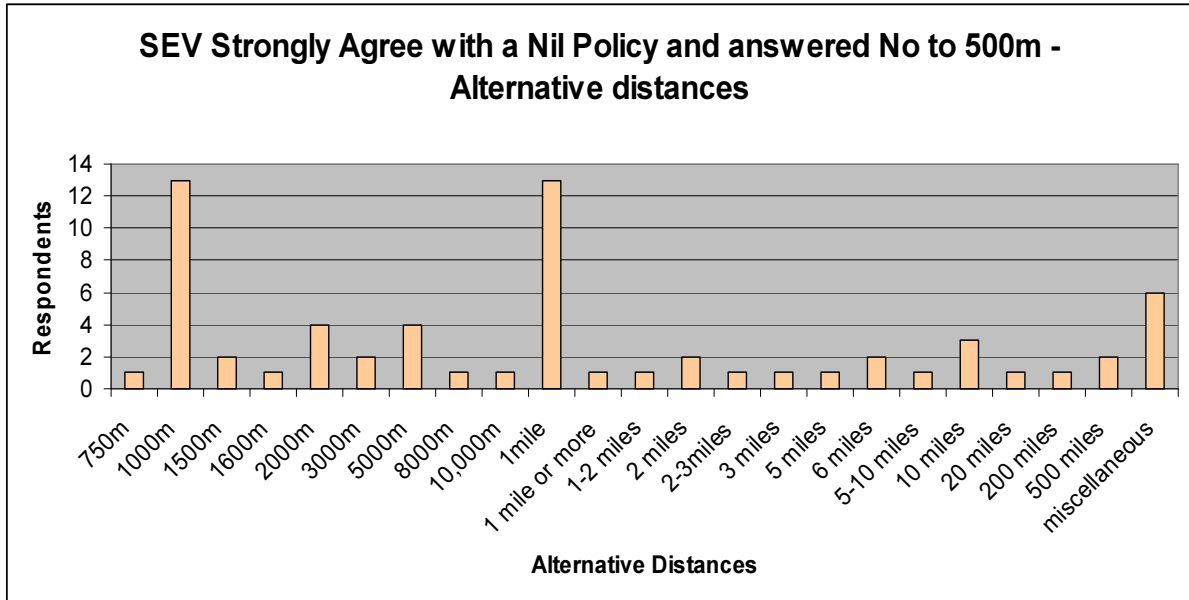
Answer Options	Response Percent	Response Count
Yes	32.2%	118
No	67.8%	249
If no, what do you think a more appropriate distance would be? (write in)		245
	<i>answered question</i>	367
	<i>skipped question</i>	137

3.6 249 respondents answered 'No' to 500 metres being an appropriate distance for an SEV to be located from sensitive premises. Proposals for alternative distances were varied. Views were mixed across those that agreed with a nil policy and those that disagreed with a nil policy. In order to represent the findings the 'No' responses have been categorised into the following groups:

1. Respondents who Strongly Agree with a Nil Policy;
2. Respondents who Agree with a Nil Policy;
3. Respondents who neither agree not disagree with a Nil Policy;
4. Respondents who Disagree with a Nil Policy;
5. Respondents who Strongly Disagree with a Nil Policy.

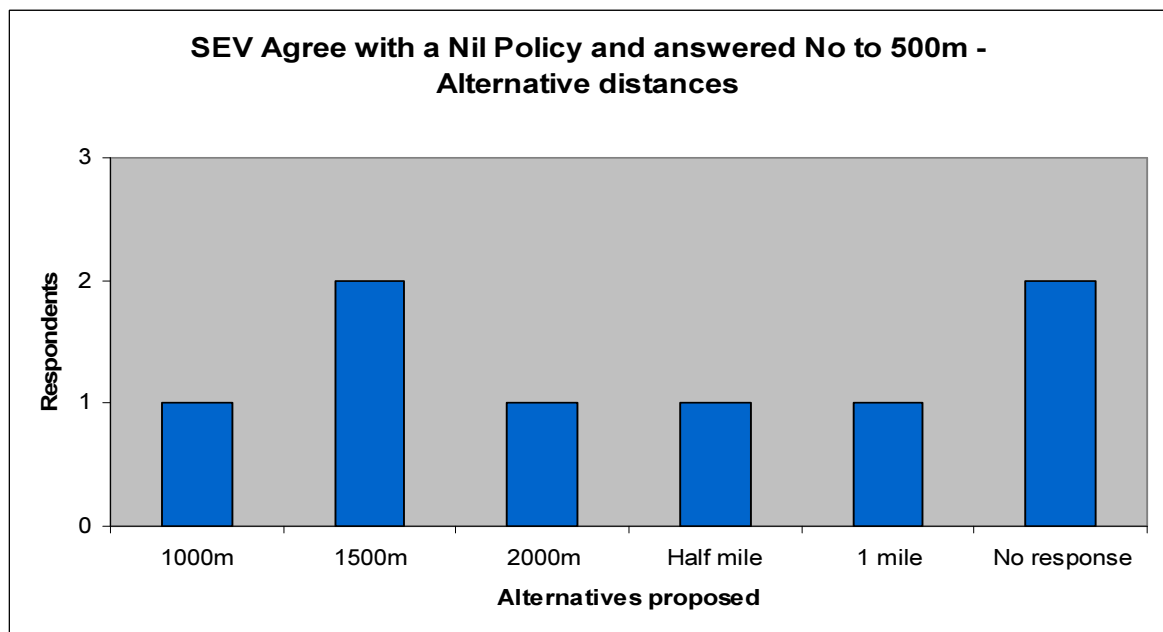
3.7 **Category 1:** Respondents who Strongly Agree with a Nil Policy and answered No to 500 metres being an appropriate distance.

In total a 146 people strongly agreed with a Nil Policy and responded 'No' to 500 metres being an appropriate distance. Of the 146 a total of 84 suggested no distance was appropriate or provided no specific response that offers a realistic alternative. Of the 62 who did provide an alternative distance 1000m and 1 mile were the most popular with 13 people each suggesting these distances.



3.8 **Category 2:** Respondents who Agree with a Nil Policy and answered No to 500 metres being an appropriate distance.

In total 8 people agreed with a Nil Policy and responded 'No' to 500 metres being an appropriate distance. Of these 2 people left the alternative distance filed blank.

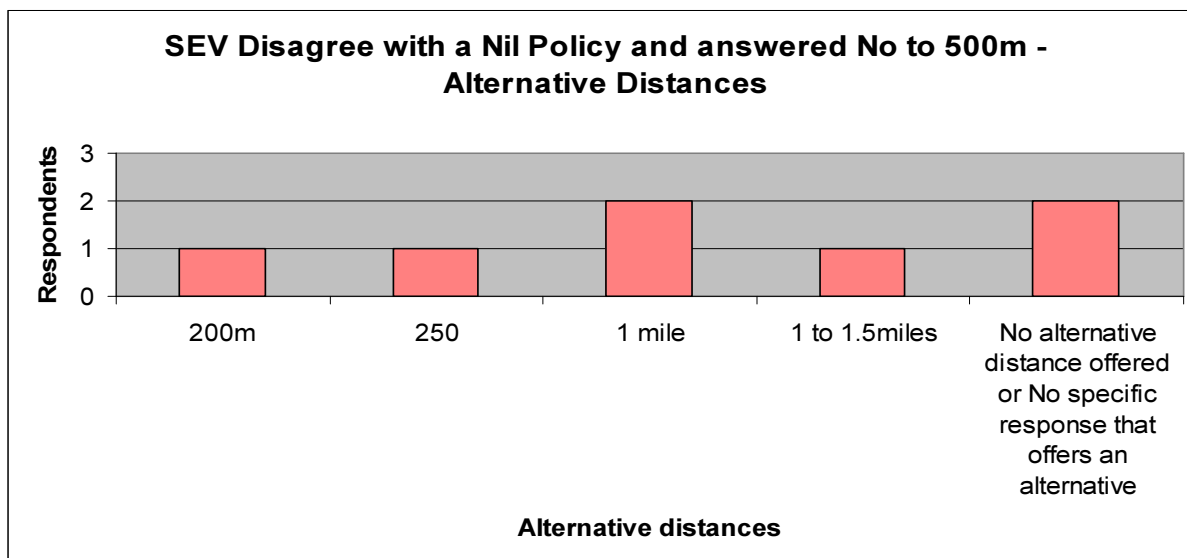


3.9 **Category 3:** Respondents who neither agree nor disagree with a Nil Policy and answered No to 500 metres being an appropriate distance.

2 responses were received in this category. Neither provided a distance as an appropriate alternative.

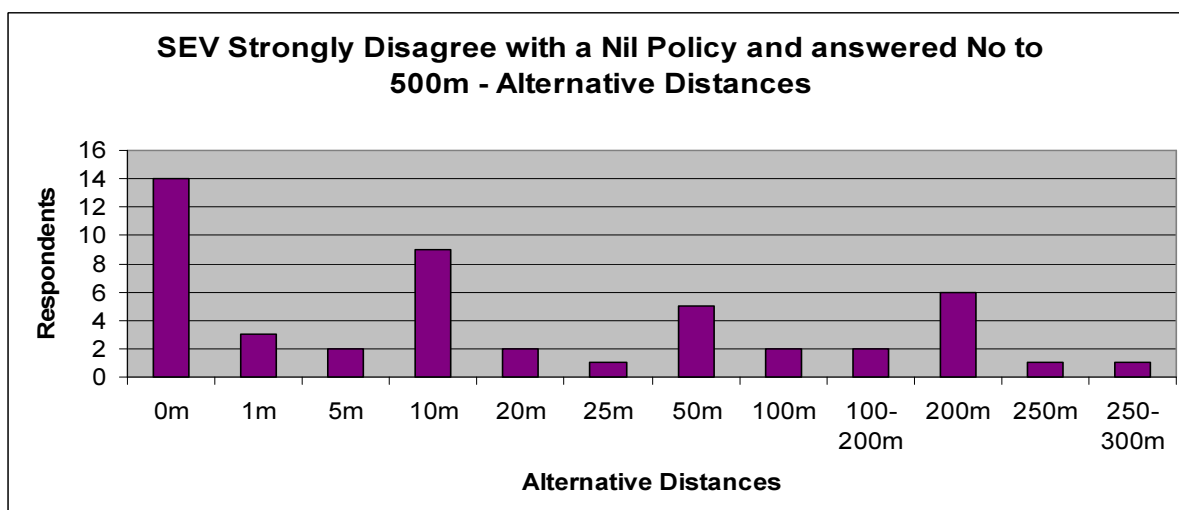
3.10 **Category 4:** Respondents who Disagree with a Nil Policy and answered No to 500 metres being an appropriate distance.

In total 7 responses were received in this category. Of these 2 provided no distance as an appropriate alternative.



3.11 **Category 5:** Respondents who Strongly Disagree with a Nil Policy and answered No to 500 metres being an appropriate distance.

In total 86 responses were received in this category. 38 of these either appeared to misunderstand the question or provided no specific response that offers an alternative. The highest alternative distance registered was zero metres with 14 responses.



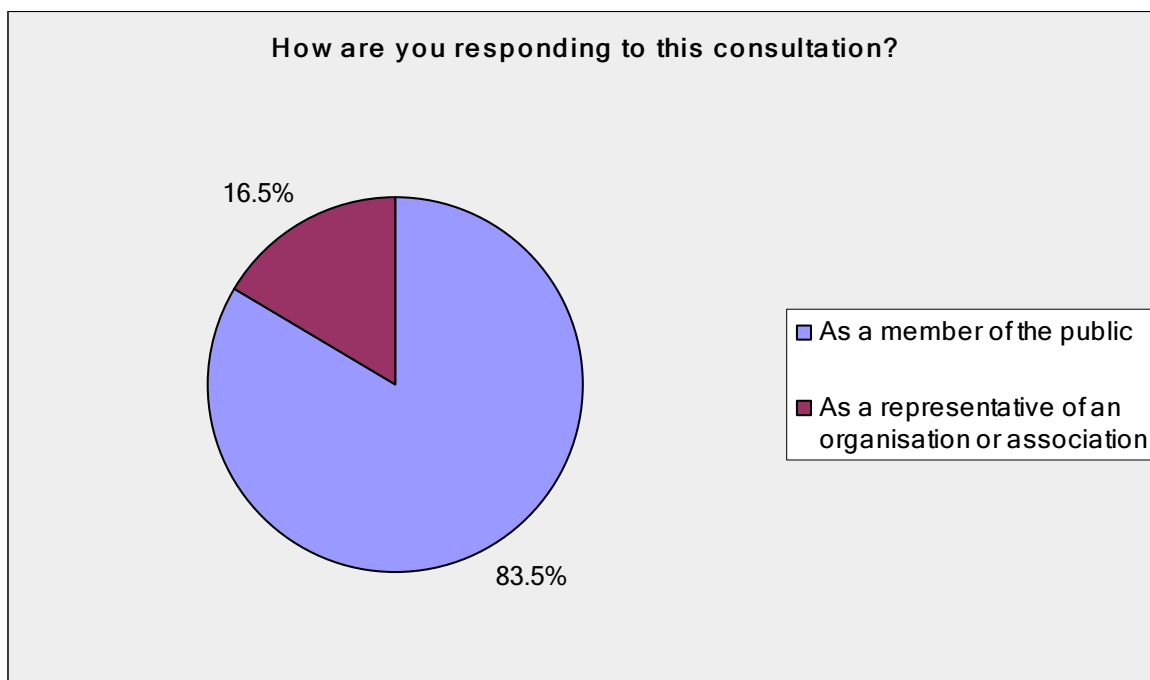
3.12 Respondents were finally requested to provide any further comments they had regarding the consultation. These views were taken into consideration when analysis of the consultation was carried out. A summary of these and other detailed comments received during the consultation can be found in section 5.

4.0 Supporting Questions

A number of support questions were asked of respondents. These questions aimed to develop a profile of respondents. An overview of these questions and their associated responses are provided below.

4.1 Responses from an individual or organisation/association

Respondents were requested to confirm if they were responding as a member of the public or as a representative of an organisation or association. Of the 504 responses 2 respondents chose to skip the question.



4.2 Respondent consent

Respondents were also asked to confirm they gave consent to have their detailed responses used in a public report. In total across organisations and individuals 286 gave consent.

4.3 Demographic data was also gathered. An overview of these results is outlined below.

4.4 Age of respondents

Respondents were asked to confirm their age. The following results were provided.

Answer Options	Response Percent	Response Count
Under 16	0.0%	0
16 - 24	12.1%	46
25 - 34	28.9%	110
35 - 44	18.9%	72
45 - 54	18.9%	72
55 - 64	12.9%	49
65 - 74	6.6%	25
75 - 84	1.3%	5
85+	0.3%	1
<i>answered question</i>		380
<i>skipped question</i>		124

4.5 Gender of respondents

Respondents were asked to confirm their gender. The following results were provided.

Answer Options	Response Percent	Response Count
Male	43.1%	162
Female	56.9%	214
<i>answered question</i>		376
<i>skipped question</i>		128

4.6 Ethnicity of respondents

Respondents were asked to confirm their ethnicity. The following results were provided.

Answer Options	Response Percent	Response Count
White - English/ Welsh/ Scottish/ Northern Irish/ British	85.5%	319
White - Irish	2.7%	10
White - Gypsy or Irish Traveller	0.3%	1
White - Other (write in below)	3.8%	14
Mixed - White & Black Caribbean	0.0%	0
Mixed - White & Black African	0.0%	0
Mixed - White & Asian	0.5%	2
Mixed - Other (write in below)	0.5%	2
Asian/ Asian British - Indian	5.1%	19
Asian/ Asian British - Pakistani	0.5%	2
Asian/ Asian British - Bangladeshi	0.0%	0
Asian/ Asian British - Chinese	0.3%	1
Asian/ Asian British - Other (write in below)	0.0%	0
Black/ Black British - African	0.0%	0
Black/ Black British - Caribbean	0.3%	1
Black/ Black British - Other (write in below)	0.0%	0
Arab	0.3%	1
Any other ethnic group (write in below)	0.3%	1
If Other, please state		17
<i>answered question</i>		373
<i>skipped question</i>		131

4.7 Religion of respondents

Respondents were asked to confirm their religion. The following results were provided.

Answer Options	Response Percent	Response Count
No religion	45.4%	167
Christian (including Church of England, Catholic, Buddhist	47.0%	173
Hindu	0.5%	2
Jewish	2.2%	8
Muslim	0.3%	1
Sikh	1.9%	7
Any other religion	1.6%	6
If you selected any other religion, please provide details below:	1.1%	4
		7
	<i>answered question</i>	368
	<i>skipped question</i>	136

4.8 Respondents with a disability

Respondents were asked to confirm if they consider themselves to have a disability. The following results were provided.

Answer Options	Response Percent	Response Count
Yes	8.3%	30
No	91.7%	333
	<i>answered question</i>	363
	<i>skipped question</i>	141

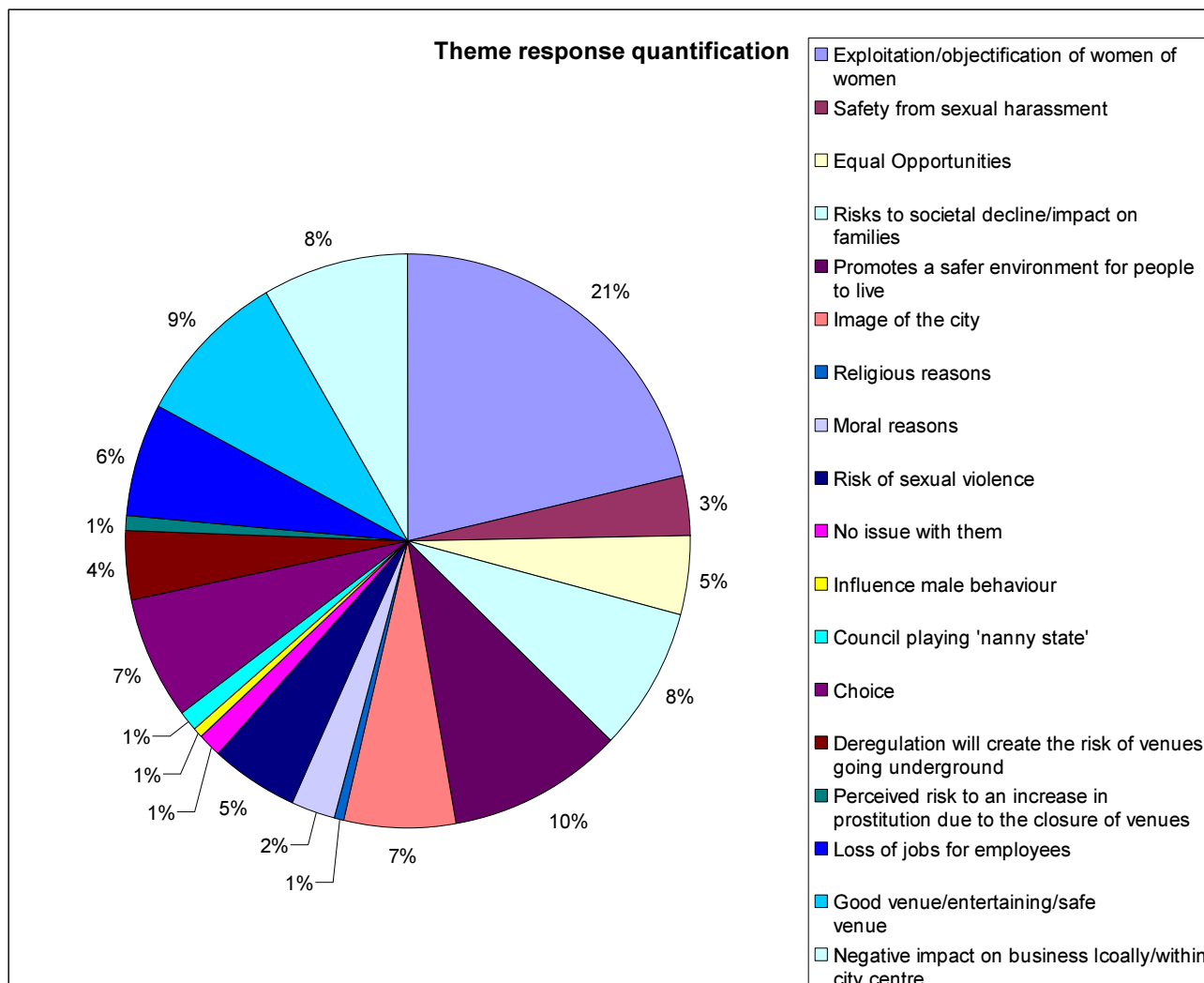
4.9 Sexual orientation of respondents

Respondents were asked to confirm their sexual orientation. The following results were provided.

Answer Options	Response Percent	Response Count
Heterosexual	83.6%	312
Gay man	1.9%	7
Gay women/lesbian	2.4%	9
Bisexual	7.0%	26
Prefer not to say	4.0%	15
Other	1.1%	4
If you selected other, please provide details below:		6
	<i>answered question</i>	373
	<i>skipped question</i>	131

5.0 Consultation Responses

5.1 Upon review of the consultation responses, a number of themes emerged for both those in support of a nil policy and those against. The graph below provides a breakdown of all the identified themes and the associated number of responses per theme in percentages.



Outlined below is a summary of each identified theme and example comments received during the consultation.

Consultation views in support of a Nil Policy

Theme: **Exploitation/objectification of women** – 21% of views identified this as a theme.

Respondents suggested Sexual Entertainment Venues are part of a spectrum of commercial sexual exploitation and that they contribute to a culture in which women are viewed as objects available for the sexual gratification of men.

2181137635 - I am absolutely against SEV's in Coventry. They perpetuate the idea that women are available for the sexual entertainment of men which is abhorrent on every level. I hope that as a progressive council - i.e. one that views women as having equal status to men that you will not countenance approval to a venue that enhance women's chances of being viewed as sexual objects.

Theme: **Safety from sexual harassment** – 3% of views identified this as a

<p>theme.</p>
<p>Respondents suggested they had concerns regarding the potential sexual harassment they, or people they know, could experience as a result of people attending sexual entertainment venues.</p> <p><i>2305608346 - I would feel both myself and my 2 daughters were safer from sexual harassment and the verbal abuse I have personally experienced from these 'venues'.</i></p>
<p>Theme: Equal opportunities – 5% of views identified this as a theme.</p>
<p>A number of respondents felt Coventry City Council had a responsibility to promote equal opportunities. Their views suggested they perceive Sexual Entertainment Venues are detrimental to achieving this.</p> <p><i>2209824793 - As a woman I felt very uncomfortable when joining friends for a drink in the city centre, to find that there was a SEV nearby. There were male customers going in and out, and standing outside drinking. Everybody wants the city centre to be a place where all people feel safe and comfortable to go out in the evening, regardless of gender, age, disability, faith or ethnicity, and the presence of SEVs is a deterrent to many people and therefore goes against the principle of equality, whereby the city is a safe place for all people. It is not simply a case of locating SEVs away from specific types of establishments that target certain sections of the community such as women or faith groups - everybody should have a right to visit and spend time in the city centre without being made to feel uncomfortable or unsafe. Also, to allow SEVs anywhere is to suggest that it is acceptable for women to be employed, often in poor and unsafe conditions, to provide sexual gratification for men - this would fly totally in the face of the city's vision of equality and justice.</i></p> <p><i>2006916237 - Sexual Entertainment Venues (SEVs) such as Lap Dancing Clubs have huge negative implications for women and the promotion of gender equality. In normalising the representation of women as sexual objects, SEVs would pose a huge risk to women's safety in the local vicinity and wider society.</i></p> <p><i>1971244221 - I believe that sexual entertainment venues do not promote equality between men and women and have a negative impact on the rates of sexual violence in the area as found in the Lilith Report (2003). Whilst some people may say that women have a choice as to whether or not they go into the sexual entertainment business, if women are forced into this industry in order to finance their studies or look after their children then this cannot be considered a choice and is more about necessity than any sense of empowerment.</i></p>
<p>Theme: Risks to societal decline/impact on families – 8% of views identified this as a theme.</p>
<p>Responses were received suggesting Sexual Entertainment Venues contribute towards a decline in family relations and societal cohesion. This view was expressed in the context of venues being detrimental to the promotion of stable relationships. In addition a number of views were expressed suggesting the venues were not places they believed their young families should be exposed to.</p> <p><i>2323176919 - Having venues for sexual entertainment within the sight of popular family areas is a disgrace. How should parents tell their children about the moral degradation of these places when they ask. 'Oh yes down the road that's where men go to see the naked ladies who work there.' We should not allow this kind of entertainment to be exposed to young children as they learn about the reality of the world around them.</i></p>
<p>Theme: Promotes a safer environment for people to live – 10% of views</p>

<p>identified this as a theme.</p>
<p>Views were expressed suggesting the presence of Sexual Entertainment Venues create an unsafe environment for residents. These views perceived the removal of these venues would lead to a safer environment in which people can live.</p> <p><i>2266760557 - It would make the city a safer environment which would hopefully contribute to attracting a range of entertainment that is not of a sexual nature and reduce the exposure of this type of environment to young people.</i></p>
<p>Theme: The image of the city – 7% of views identified this as a theme.</p>
<p>By allowing Sexual Entertainment Venues in the city some people believe it presents a negative image of the city. Their views suggest that by having the venues it portrays a sense of cheapness not representative of the city.</p> <p><i>2300477054 - I would be pleased if we didn't have any at all. Do not agree with these kind of venues this is Coventry not Soho. I would not want one of these venues in my area. Do not cheapen our city. it is in need of improvement.</i></p> <p><i>2283173176 - I believe there are a number of important issues to consider with SEV's in Coventry. Coventry has to 'compete' with Leamington and Kenilworth as the place to live especially for young families and more often than not professionals choose these towns over Coventry. If Coventry is serious about promoting itself as a safe, culturally diverse city with a good mix of leisure, shopping and entertainment facilities to attract all across the economic spectrum then having SEV's is not the right way. It will endorse the image and reputation that Coventry is a seedy place to live.</i></p> <p><i>2197013274 - Allowing Sexual Entertainment venues in the City Centre would cheapen the city and therefore have a negative effect to the overall feel of the city.</i></p>
<p>Theme: Religious reasons – 1% of views identified this as a theme.</p>
<p>A small number of people expressed religious reasons as their motivation for supporting a nil policy.</p> <p><i>2327190470 - As a strong Christian I feel these matters contradict my personal faith and have a negative effect on society.</i></p>
<p>Theme: Moral reasons – 2% of views identified this as a theme.</p>
<p>People expressed moral reasons for supporting a nil policy. It was suggested that Sexual Entertainment Venues lead to immoral behaviour and a decline in social conscious.</p> <p><i>2114335796 - I believe any sexual entertainment venue would be negative for the city. It can lead to the exploitation of vulnerable people and promotes immoral behaviour.</i></p> <p><i>1994937798 - I would be proud to live in a City where Sexual Entertainment Venues are not allowed because I feel that the current decline in moral values is affecting family life.</i></p> <p><i>1958456158 - 1) Whilst sexual entertainment venues may provide employment for females, and cater to the (albeit base) entertainment values of men (and some women), they debase women by exploiting them and are entirely unwholesome in terms of what is good for local society. 2) Such venues promote moral decline in society by making acceptable what has long been unacceptable in our society. 3) Such venues are seedy... and will give Coventry a lewd characteristic. 4) Such venues undermine the principles necessary for men and women to find happy, loving, durable, lasting, relationships with members of the opposite sex...based on respect and honour.</i></p>
<p>Theme: Risk of sexual violence – 5% of views identified this as a theme.</p>
<p>Opinions of respondents suggested that Sexual Entertainment Venues lead to an increased risk of sexual violence. Their views propose that the venues increase</p>

the risk of sexual attacks by people who have attended them.

2168251249 - I believe that licensing Sexual Entertainment Venues puts women at risk from sexual violence. I believe it objectifies women and increases the risks to women and girls.

2022573425 - Generally speaking I think that Sexual Entertainment Venues lower the tone of an area. I think that Coventry struggles with it's image enough already without degrading it further by allowing SEVs to open up. I don't particularly want to have to explain to my young children what a particular venue is there for if they were to ask. Whilst lap-dancing clubs might be seen as harmless fun by some, with sex on show at such venues but not on offer, I think they only serve to increase sexual frustration in individuals, a minority of whom may seek an outlet for that frustration in an illicit or illegal way.

1957546307 - I believe that lap dancing clubs encourage people to think of women's bodies and sexuality as commodities. I believe this attitude is damaging to society in general - it chips away at women's right to control our own bodies and can lead to an increase in sexual and physical violence against women. My concerns are not without evidence: I have visited a sexual offender's prison and talked to the (female) psychologist who works with offenders. She told our group that there was a clear correlation between the amount of (photographic) pornography an offender was exposed to and an increase both in the frequency of their offending and the seriousness of the offenses. It's not too much of a jump to see that the effect of Sexual Entertainment Venues would be worse.

The following outlines the views of those respondents not in favour of a nil policy.

Consultation views against a Nil Policy

Theme: **No issues with Sexual Entertainment Venues** – 1% of views identified this as a theme.

A number of responses were received stated they have no concerns about Sexual entertainment Venues. Their opinions suggested that although they do not use the services provided by such venues they had no issues with them operating for the use of others.

1980838608 - I don't attend such venues, so the personal impact would be limited – other than a desire to allow others to fulfil their lifestyle choices freely, providing they do so within the bounds of the law.

2305549737 - It would make no difference to me as I don't attend SEV's but I think there's no reason to get rid of them.

Theme: **Influence male behaviour** – 1% of views identified this as a theme.

Respondents suggested that Sexual Entertainment Venues act as a way of influencing male behaviour. These views indicated that in the premises people are better behaved and drinking is controlled.

Please Note: Respondents who provided these views did not consent to having their comments published.

Theme: **Council playing the 'nanny state'** – 1% of views identified this as a theme.

A number of respondents felt that the actions of the Council appeared to be trying to control and influence user's decisions. They suggested that the Council was acting like a 'nanny state'.

1972889007 - I think closing places like Club Heat will be a bad decision as for a City of

Coventry's size there's not many places to go out at night. Many women go there too and it is one of the only places you can go late at night. If these places are closed it shows that Coventry is a part of a nanny state.

2301286962 - Wish the council would stop playing at the nanny state.

Theme: Choice – 7% of views identified this as a theme.

Attending such a venue as a paying customer was considered to be a lifestyle choice by some respondents. The use of the word choice was used regularly throughout the responses of those respondents against a nil policy.

2175894831 - Whilst I do not currently frequent the sole club in Coventry which provides this entertainment, I believe we should provide people with the flexibility to use such venues.

1972889007 - I don't think having one of these venues does no harm. The people who work there do so by choice.

2167440912 - It should be my choice not the council's where I spend my money!

Theme: Deregulation will create the risk of venues going underground – 4% of views identified this as a theme.

Concerns were raised by some respondents that the implementation of a nil policy in the city would result in venues opening illegally. This would result in unregulated venues creating a greater risk to public safety.

2167489279 - It is a valid, legal trade which is professionally managed and well maintained. This brings income into the city and is no impact on policing. If this didn't happen then it may go underground increasing police resource requirements, thus increased costs thus increased taxes.

2017458874 - Although I live outside the City I work in the city and often socialise in the city at night. (Not in the clubs mentioned in this survey) I believe having no venues like this in the city could result in the activities going underground where no regulation or licensing will occur. It will also displace the behaviour into other venues in the city. Ultimately making the city a much less safer place to visit in the evenings.

Theme: Perceived risk to an increase in prostitution due to the closure of venues – 1% of views identified this as a theme.

Respondents suggested that the enforcement of a nil policy would heighten the risk of increased prostitution within the city. This view claims that by removing the offer of Sexual Entertainment Venues visitors would seek alternative sexual entertainment through prostitution.

2017458874 - I strongly believe that is this narrow minded "popular" position is successful then the city centre will become a more unsavoury place to visit. I would prefer to see well run and licensed/ policed premises in the city where the activities are well monitored. As a ban would force it underground and this in effect will give Hill fields prostitution and kerb crawling problems much worse.

Theme: Loss of jobs for employees – 6% of views identified this as a theme.

A significant number of responses were received from people concerned about the loss of jobs as a consequence of a nil policy. Comments suggested that by having a nil policy existing premises would have to close and personnel would be unemployed, resulting in increased reliance on the welfare system.

2320299906 - I enjoy regular nights out at our local lap dancing venue - I find it very sad the council are trying to close it. My friend is a dancer there and she is now worried she is going to be jobless!!

Theme: **Good venue/entertaining/safe venue** – 9% of views identified this as a theme.

A number of responses were received suggesting that the availability of a Sexual Entertainment Venue in the city added to the diversity of evening entertainment. It was perceived by these respondents that Coventry would lose out on income due to people choosing to go to other cities or towns to access this type of venue.

2168106552 - Lack of choice on a night out its nice to have to option (although in Coventry at the moment there is not many options) to attend a gentleman's club... Would have to go to Birmingham otherwise and not spend money in our city.

2167489279 - This is a valid, legal business and has been well managed with zero issues reported and has actually been commended by the police for how well maintained it is. It is not a seedy venue and is professionally ran - in the same vain as Stringfellows. Licences have been required and obtained legally. There is no impact on the surrounding areas and there are no vulnerable persons/institutions nearby. The people who work there do so willingly and it is their chosen profession. No illegal activity occurs.

Theme: **Negative impact on businesses locally/within city centre** – 8% of views identified this as a theme.

Responses were received from some individuals suggesting that the closure of the existing premises and the enforcement of a nil policy would impact upon the night time economy. Views were expressed indicating that the existing venue helps to promote night time business and tourism within the city centre.

2319393877 - ... The night time economy in Coventry has suffered greatly already this proposal would only serve to harm it further.

2319375961 - (the current club) has been around for many years with great benefit to the local economy. Many clubs and bars in Coventry have closed down already we cant afford to lose anymore.

2319892910 - ... as for an area associated with commerce I don't believe this should matter. I find it hard to see how trade is affected by a club opening whilst they are closed. I think an empty unit is for more unappealing.

2319776487 - The councils original policy of 2 SEV's was correct. This allows for a more diverse entertainment within the city, which is badly needed. Why force out tourism to go to Birmingham to meet their requirements. The council needs to wake the city up rather than close premises through bad policy. The city tourism and entertainment.

Equality and Consultation Analysis Template

Context

Name of analysis	Sexual Entertainment Venue Policy
Officer completing analysis	Davina Blackburn
Date	Revised November 2012

1. Briefly describe the area of work this analysis relates to:

Coventry City Council's Sexual Entertainment Venue Policy

Scoping the analysis

2. Who are the key stakeholders, both existing and potential, that could be impacted by this work?

Local residents and visitors to the city
 Businesses
 Employees of Businesses
 Elected Members
 Partners

The Council will work in partnership with

Coventry Partnership,
 Neighbouring local authorities,
 West Midlands Police
 Coventry Community Safety Partnership,
 Coventry Safeguarding Children Board (to promote the common objective of safeguarding children)
 Coventry Safeguarding Adults Board (to promote the common objectives of safeguarding vulnerable people).
 Coventry and Warwickshire Chamber of Commerce
 Local businesses
 Local Communities and Community organisations

In addition, the Council recognises its duty under S.17 of the Crime and Disorder Act, 1998, with regard to the prevention of crime and disorder

3. From the list above, which of these constitute protected groups?

The following protected groups are considered to be potentially affected by the adoption of a sexual entertainment venue policy.

Age - legislation prohibits persons under the age of 18 being admitted to or employed on licensed premises. In addition, care needs to be taken to ensure that children and young people, including those who are most vulnerable, are protected when considering the location of sexual entertainment venues.

Gender – the Council has received many representations about the potential negative impact that the provision of sexual entertainment venues could have upon local women along with alternative views that women are safer working in licensed premises; and that the venues provide employment for women that choose to do so. The proposed policy is not based on a moral view but it does take into account the proximity of various types of sensitive uses/premises which are liable to be frequented by families and issues of perceived safety. As the impact of these proposals is that Coventry will effectively retain the status quo it is anticipated that this will have no additional impact on gender equality in the city.

Religion and belief- local people may have a religion or belief that is offended by sex establishments/entertainment venues. The proposed policy is sensitive to this issue and takes account of the proximity of various types of religious buildings.

In summary, the proposed policy is based on ensuring that types of sensitive uses - including issues relating to groups protected under the Equality Act - are not unduly impacted on by potential proximity to a sexual entertainment venue including: residential areas; areas that are frequented by children and families or vulnerable adults; religious institutions and those parts of the city associated with commerce, family leisure and retail activity.

4. Which of the key stakeholders (including representatives of protected groups) will need to be kept informed, consulted or actively involved in this area of work?

Key Stakeholder	Type of Involvement*	Method(s) used
General Public	<p>A 12 week consultation between August and November 2012.</p> <p>It is important a city-wide debate was held on this issue to ensure that all views are reflected before a final decision is made.</p>	<p>Press Release</p> <p>Questionnaire and consultation document placed on Coventry City Council Website</p> <p>Ward Forums</p>

The existing Sexual Entertainment Venue Operator	Through 12 week consultation between August and November 2012.	Questionnaire and consultation document placed on Coventry City Council Website
Local Businesses, including Coventry and Warwickshire Chamber of Commerce	Through 12 week consultation between August and November 2012.	Press Release Questionnaire and consultation document placed on Coventry City Council Website Provide information on Pub Watch website
Partners	Through 12 week consultation between August and November 2012.	Press Release Questionnaire and consultation document placed on Coventry City Council Website Provide information at Partnership meetings include the Responsible Authority Working Group
Educational Establishments	Through 12 week consultation between August and November 2012.	Press Release Questionnaire and consultation document placed on Coventry City Council Website Provide information in Virtual Friday Envelope
Places of Worship	Through 12 week consultation between August and November 2012.	Email to faith groups Questionnaire and consultation document placed on Coventry City Council Website
Women's organisations	Through 12 week consultation between August and November 2012.	Press Release Questionnaire and consultation document placed on Coventry City Council Website

		Email to women's groups
Elected Members	Through 12 week consultation between August and November 2012.	Questionnaire and consultation document placed on Coventry City Council Website Article for Members Bulletin Scrutiny Board 4
Employees of existing premises	Through 12 week consultation between August and November 2012.	Press Release Questionnaire and consultation document placed on Coventry City Council Website

** Information, Consultation or Involvement*

**5. Which, if any, parts of the general equality duty is the service relevant to?
Please mark with an 'X'.**

Eliminate discrimination, harassment and victimisation.

Advance equality of opportunity between people who share relevant protected characteristics and those who do not.

Foster good relations between people who share relevant protected characteristics and those who do not.

6. What information is available to be used as part of this analysis?

In attempting to analyse the capacity of Coventry to accommodate SEVs having regard to the pattern and dispersal of sensitive uses and issues related to groups protected under the Equality Act, the proposed policy is based on a working hypothesis that residential areas, areas frequented by families and children, religious institutions and those parts of the city associated with commerce, family leisure and retail should all be considered sensitive.

It is proposed that there should be a proper separation between such sensitive uses and SEVs. The policy is based on a radius of 500 metres.

In addition there are outlying areas of the City, which present particular sensitivities. In particular, such areas have a less urban and more semi-rural character which is considered to be inconsistent with adult entertainment. The areas in question are generally not well lit which may affect the safety of the performers leaving the premises late at night and they are not sited near good transport links for the benefit of performers in any event. Further, venues in less busy and populated areas of the City are more

likely to cause legitimate fears to other users of those areas, particularly females, late at night.

A detailed GIS mapping exercise, which plots 500m radii around sensitive uses, and which also shows outlying semi-rural areas in which SEVs are regarded as inappropriate has now been produced. This analysis has informed the development of the proposed policy.

7. What are the information gaps?

A consultation process in respect of the Interim Sexual Entertainment Venue Policy ran from 25th July to 4th September 2011.

It was considered that the response to the consultation in 2011 was not comprehensive and some stakeholders were underrepresented. Question 4 above details how this was addressed through the consultation held on the current draft policy.

Data analysis

8. Please summarise below the key issues that your data is telling you.

Given the parameters of Home Office Guidance and ensuring that issues of sensitivity including the needs of protected groups are met there would be extremely limited opportunities to grant any further sexual entertainment venue licences.

The analysis of the city as detailed in question 6 above suggests that there is no locality in Coventry which it can be said to be appropriate to license a Sexual Entertainment Venue under these parameters.

However in light of the consultation response from the existing operator the Council recognises that there is an established SEV which has traded in the city for a long period of time without significant concern. Accordingly, the nil policy will not apply to the said SEV.

Generating and evaluating options

9. What are the different options being proposed to stakeholders?

The option proposed to stakeholders is adoption of the proposed Sexual Entertainment Venue Policy.

10. How will the options impact on protected groups or those experiencing deprivation?

The proposed policy is based on ensuring that types of sensitive uses including issues relating to protected groups under the Equality Act are not unduly impacted on by their

potential proximity to a sexual entertainment venue including residential areas and areas that are frequented by children and families or vulnerable adults, religious institutions and those parts of the city associated with commerce, family leisure and retail.

11. Please detail how you could mitigate any negative impacts.

na

12. Identify which contractors or service users would be negatively affected by the options

na

Formal consultation

13. Who took part in the consultation? Please also specify representatives of any protected groups.

More than 500 people responded to the City Council's consultation on a nil policy for SEVs which was open for consultation between 20th August and 11th November 2012.

Of those participants who answered the relevant questions, 56.9% were female and 43.1% male. A broad range of age groups were covered by the responses, the highest among 25-34 year olds totalling 28.9%.

12.1% of responses were from 16-24 year olds.

Respondents were asked to confirm their religion and of those participants who answered the relevant question 47.0% were Christian (including church of England and Catholic), 45.4% had no religion, .5% Buddhist, 2.2% Hindu, 0.3% Jewish, 1.9% Muslim, 1.6% Sikh and 1.1% recorded as any other religion.

83.5% of responses were from members of the public and 16.5% from representatives of organisations or associations.

14. What were the key findings of the consultation?

A total of 504 survey responses were received and a further 13 responses in the form of emails and letters were received by the Licensing Team

Of the 504 on line responses:

53.3% respondents strongly agreed that the number of sexual entertainment venues for any locality in Coventry should be nil

6.6% agreed to a nil policy

3.3% neither agreed nor disagreed

6.9% respondents disagreed that the number of sexual entertainment venues for any locality in Coventry should be nil

29.8% Strongly disagreed

Respondents in support of a nil policy identified a number of reasons enforcement of such a policy should be supported. These views included worries about exploitation/objectification of women, concerns regarding the potential sexual harassment of women, negative implications for women and the promotion of gender equality, children being exposed to sexual entertainment, risk of sexual violence and concerns about immorality.

Respondents against a nil policy identified a number of reasons why enforcement of such a policy was not supported. These views fell into broadly three areas. Firstly many felt that individuals should have the choice to attend such a venue and that a nil policy would inhibit this choice. This linked to the second area that suggested the city centre's night life was not vibrant and that the availability of a Sexual Entertainment Venue provided one of a limited number of options for city centre night time entertainment. The third area suggested that closure of the existing venue would mean the loss of a number of jobs, an impact on other night time businesses in the area and the increased risk of unregulated, illegal venues opening to meet demand.

The document also included the question "*To what extent do you agree that SEVs should not be located near to the following: residential areas, areas frequented by children and families or vulnerable adults, religious institutions, areas associated with commerce and areas associated with family leisure and commerce?*" The majority of respondents strongly agreed that SEVs should not be located near to these types of premises.

Summary of the key arguments for and against a nil policy

For

- It objectifies the workers
- SEVs have a negative impact on women's safety in the local vicinity
- SEVs make women in the area feel unsafe and uncomfortable
- SEVs contribute towards a decline in family relations and societal cohesion
- SEVs contradict some peoples personal faith

Against

- The proposed policy prevents freedom of choice for local people to both work and frequent SEVs

- Not allowing licensing of SEVs pushes the trade underground, putting workers at risk
- Loss of jobs for employees
- A loss of diversity to the evening economy in the city

15. Are there any gaps in the consultation?

Ultimately, while there may be considerable debate as to the detrimental impact SEVs have on both workers and the wider community, legislation allows for SEVs to exist. As detailed in 16 below should the City Council's Licensing and Regulatory Committee decide to grant any sexual entertainment venues in the city then a range of conditions are detailed in the Council's Entertainment Venue Policy would be applied.

16. Following the consultation, what additional equality issues have emerged?

A nil policy would not preclude the making of an application for a sexual entertainment venue licence. An individual will be entitled to make such an application which will be considered by the Licensing & Regulatory Committee which is an administrative body who will be guided by the policy and not bound by it and will be determining each application on its merits, having regard to all of the criteria contained within the policy.

Should the City Council's Licensing and Regulatory Committee decide to grant any sexual entertainment venues in the city, a range of conditions are detailed in the Sexual Entertainment Venue Policy to limit any potential negative on equality issues that have been highlighted by respondents.

17. Which of the options have changed following consultation and equality analysis, and how?

The Council recognises that there is an established SEV which has traded in the city for a long period of time without significant concern. Accordingly, the nil policy will not apply to the said SEV.

Equality impact of final option

18. Please confirm below which option has been chosen for implementation.

Having considered the responses to the consultation, the Council is proposing to proceed with a nil policy across the city subject to not applying that policy to the existing operator.

19. Please indicate which of the following best describes the equality impact of this analysis.



There will be no equality impact if the proposed option is implemented.



There will be **positive equality impact** if the proposed option is implemented.



There will be **negative equality impact** if the preferred option is implemented, but this can be objectively justified.

Please state clearly what this justification is and what steps will be taken to ameliorate the negative impact.

The analysis has identified equality issues for age, gender, faith and belief and the proposed policy responds to this by proposing that such venues should not be located in proximity to sensitive uses and areas that would impact on these protected groups.

A nil policy would not preclude the making of an application for a sexual entertainment venue licence. An individual will be entitled to make such an application which will be considered by the Licensing & Regulatory Committee which is an administrative body who will be guided by the policy and not bound by it and will be determining each application on its merits, having regard to all of the criteria contained within the policy.

Should the Council's Licensing and Regulatory Committee depart from a nil policy and grant a sexual entertainment venue licence then conditions detailed in the Council's Sexual Entertainment Venue Policy, which already apply to the existing operator would go some way to protecting the women who work in lap-dancing clubs. They would also go some way to address the concerns voiced about the perceived impact that such venues have on the wider community, including protecting children from harm.

20. What will be the impact on the workforce following implementation of the final option? Please make reference to relevant equality groups (with protected characteristics under the Equality Act).

There would be no impact on the City Council's direct workforce.

Formal decision-making process

Please detail below the committees, boards or panels that have considered this analysis

Name	Date	Chair	Decision taken
Streets and Neighbourhoods Scrutiny Board 4	7 th December 2012	Councillor Abbott	Comments on draft policy and consultation exercise
Cabinet	8 th January 2012	Councillor Mutton	Agree draft policy for consultation; and the consultation process

Approval

This equality analysis has been completed by:

Officer

Davina Blackburn

Service Manager

Hamish Simmonds

Note: Failure to comply with duties on equalities and consultation will put the Council (and specifically the elected member or officer making the decision) at risk of judicial review

Director

Brian Walsh

Elected Member

Councillor Townshend

Date

Monitoring and review

This section should be completed 6-12 months after implementation

- a) **Please summarise below the most up to date monitoring information for the newly implemented service, by reference to relevant protected groups.**

[Click **here** and type]

- b) **What have been the actual equality impacts on service users following implementation?**

Analyse current data relating to the service and think about the impact on key protected groups: race, sex, disability, age, sexual orientation, religion or belief, pregnancy or maternity, gender reassignment.

It may help to answer the following questions: Since implementation

- Have there been any areas of low or high take-up by different groups of people?

- Has the newly implemented service affect different groups disproportionately?
- Is the new service disadvantaging people from a particular group?
- Is any part of the new service discriminating unlawfully?

[Click **here** and type]

c) What have been the actual equality impacts on the workforce since implementation?

[Click **here** and type]

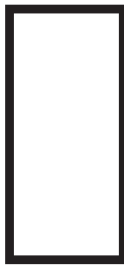
Equality Analysis and Consultation Template
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Coventry City Council



Sexual Entertainment Venue Policy

Consultation Response

This consultation seeks comments on the Council's proposals to establish a policy relating to the licensing of Sexual Entertainment Venues, (SEVs), within its area. SEVs are premises which typically provide lap dancing or striptease or other entertainment involving nudity. The consultation is open until 11th November 2012. For details of how to respond please see the notes as the end of this document.

How will we handle your information?

This survey is being carried out by Coventry City Council, in line with the Data Protection Act 1998. Please note that the survey asks for some personal information including respondents' name, address and contact details.

This information will be used for response monitoring purposes only, unless you give consent for us to refer to your information publicly. The consultation report will only show anonymised responses.

In relation to the online survey, the information you provide will be stored on servers in the United States of America and SurveyMonkey gives an undertaking never to disclose the survey questions or your response to others without permission. Please follow this link to read SurveyMonkey's privacy statement <http://www.surveymonkey.net/mp/policy/privacy-policy/>.

In relation to any responses made using the downloadable form, the information will be kept for a reasonable period of time in line with making the policy decision. To find out further information about Coventry City Council's privacy policy please visit: <http://www.coventry.gov.uk/terms>

Your details

Your name	Jeffrey Green Russell Limited (Solicitors and Agents)
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Address	7 City Arcade Coventry, West Midlands CV1 3HX
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Email:	RDS@JGRLAW.CO.UK
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<p>Name of organisation (if replying on behalf of organisation or association)</p> <p>Club Heat Coventry</p>
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Do you give us consent to refer to the details of your response in a public report?

- Yes** ✓
- No

If you have any comments about the policy, please give them below under the relevant question (continue on a separate sheet if necessary).

Consultation question 1 – To what extent do you agree that the number of Sexual Entertainment Venues for any locality in Coventry should be nil?

(please select one)

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly Disagree** ✓

Consultation question 2 – If the Council was to introduce a policy of not allowing any Sexual Entertainment Venues at any locality in the city, how would the decision affect you personally?

(please select one)

- Positive effect
- No difference
- Negative affect** ✓
- Don't know/can't say

Please give reasons for your answer.

We hold a Sexual Entertainment Venue licence and therefore would potentially affect our ability to trade and cause the loss of jobs for the staff employed and the performers who are self-employed and work at the premises.

Consultation question 3 – To what extent do you agree that SEV's should not be located near to:

- a. Residential Areas
- b. Areas frequented by Children and families or vulnerable adults
- c. Religious Institutions
- d. Areas associated with commerce
- e. Areas associated with Family leisure and retail

Scale to be used:

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree** ✓

Consultation question 4 – The Council is assuming that SEVs should not be located within a distance of 500 metres from sensitive premises (as listed above), do you agree that 500 metres is an appropriate distance to use?

Yes

No ✓

If no, what do you think a more appropriate distance would be? (write in)

We do not understand how a figure of 500 metres has been decided. A Freedom of Information request was made to Coventry City Council for an explanation but this has not been sufficiently answered.

We have considered the current policy adopted by the City council, in particular paragraph 10. We note the acceptance by the Council that “a small number of sex establishments have traded in the city without significant concern.” We share the council’s view that they do “not wish to see a proliferation of these types of premises within the city as a whole” The Council following consultation set a limit of 2 SEV’s within the city centre (within the ring road) and nil in the remainder of the city. We believe that the Councils current position reflects the Government’s advice and intention that City centres need to cater for a mix of commercial and leisure activity. Whilst the council may wish to revise the figure to 1 to determine a policy which will result in a nil maximum figure undermines this and ignores the current finding of the committee that current premises have operated in a discreet manner for a number of years without objection.

We note that the National Policy Planning Framework clearly states: *“Planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period. In drawing up Local Plans, local planning authorities should:*

- *allocate a range of suitable sites to meet the scale and type of retail, leisure, commercial, office, tourism, cultural, community and residential development needed in town centres. It is important that needs for retail, leisure, office and other main town centre uses are met in full and are not compromised by limited site availability.”* Clearly having a 500 metre policy would directly contravene this. We would like to point out a recent decision in Leamington Spa (Minutes of 13th August 2012) where the sub-committee granted the licence on the basis that *“no objections had been received from the Police or any other statutory authorities and the business had run successfully for the past four years. Members felt that this was not an unsuitable location for the premises because it was located in an area of mixed uses.”*

We believe that this is a very similar scenario to our one and therefore a distance of 500 metres should not have been used as starting basis for the Consultation. We would question whether, in light of the factual character of the locality, is a 500 metre radius actually appropriate? This is due to the fact that the area being considered is the City centre (rather than a residential area); it has been in operation for six years; the external appearance of the club is unremarkable during times that it is closed (during the day-evening) period; it is not in the immediate vicinity of a place of religious worship (as it is a shopping centre and only open at night time – after 9pm, two or on most nights three hours after the shopping centre has closed).

If the Council is determined to use the figure of 500 metres we would like to ask how this distance is measured? For instance, other Councils such as Merton, Salisbury and Haringey (draft) when establishing a Sexual Entertainment Venue policy have distinguished between the situation when there is a direct line of sight to a ‘sensitive area’ compared to a shorter distance if there is no direct line of sight. Merton Council’s policy states: *“A distance of 400 metres in direct line of sight between the proposed establishment and the following:*

- (a) Purely or primarily residential accommodation.*
- (b) Schools, play areas, nurseries, children’s centres or similar premises.*
- (c) Access routes to and from schools, play areas, nurseries, children’s centres or similar premises.*

(d) *Places of worship.*

(e) *Community facilities or public buildings including, but not limited to, swimming pools, leisure centres, public parks, youth centres/clubs and sheltered housing.*

(f) *Historic buildings or tourist attractions;
or 200 metres distance if there is no direct line of sight.”*

Haringey Council's draft policy states: *“Inappropriate proximity. A distance of 400 metres in direct line of sight between the proposed establishment and any residential property, school, care facility etc, or 200 metres distance if there is no direct line of sight.”*

We suggest that this view is taken into account when establishing a policy i.e. the direct or indirect line of sight from a 'sensitive area' to the Sexual Entertainment Venue entrance.

Alternatively, does 500 metres from sensitive premises mean on an ordnance survey map for instance or the actual distance in walking terms, and public footpath between a 'sensitive area' and the Sexual Entertainment Venue entrance?

Further in determining the character of the locality the Council should take into account the current use to which premises are put, including the current use of a Sexual Entertainment Venue premises which operates during limited hours in a discreet manner without problem and has done so for a number of years thus reflecting and shaping the character of the relevant locality leading to the conclusion that it is located in a suitable location and therefore the appropriate number for that relevant locality may be 1.

Consultation question 5 – If you have any further comments that you would like to make about this issue please write them below.

Generally speaking, Coventry is widely regarded as being within the top twenty largest cities in the U.K. This should correlate with having similar shops, religious establishments, entertainment venues and sporting venues as per other similar sized cities. When feedback was provided in terms of the initial consultation process – the cities that residents used to compare Coventry to included; Sheffield, Oxford, Birmingham and Bristol. It should be noted that each of these cities contains at least one Sexual Entertainment Venue.

We note that the information regarding the consultation policy on your website states: *“At the moment the Council has an interim policy which allows up to two sexual entertainment venues in the city centre (the area within the ring road) and none outside the city centre. Our preferred option in a new policy would mean no sexual entertainment venues would be allowed anywhere in the city...Coventry currently has one licensed sexual entertainment venue which has been operating from city centre premises for over six years.”*

While we can appreciate that you aspire to amend the interim policy from having the capacity for two sexual entertainment venues in the city centre we suggest that the appropriate number of Sexual Entertainment Venues could be one. See response above.

If the council is determined to adopt a 'nil policy' we submit there is scope for there to be a 'nil policy' but subject to exceptions, which would include existing premises. This is evident from Councils such as The London Borough of Camden which has the following policies:

“The Council has considered the nature of its wards and the views expressed by consultees on its sex establishment licensing policy and has determined that the appropriate number of sex establishments of any kind in each of its wards is nil. Thus a presumption exists that any applications for a sex establishment licence in any of Camden's wards shall be refused save for in exceptional circumstances. The presumption to refuse shall not apply to:

- *the renewal or variation of an existing sex establishment licence; or*
- *the grant of a new sex establishment licence during the transitional period 1 November 2011 to*

31 October 2012 to premises that can demonstrate that during the 12 months prior to the commencement of the transitional period they have been regularly providing sexual entertainment that previously fell to be licensed only under the Licensing Act 2003.”

By way of background the London Borough of Camden has 9 SEV premises all of which have applied for a new SEV licence and whilst not all applications have been determined but the 5 that have have been granted.

Likewise the London Borough of Islington has similar policies: “The council intends to adopt a policy to limit the number of sexual entertainment venues in the borough to nil however it recognises that there are a number of businesses that have been providing sexual entertainment in Islington for several years. The council will not apply this limitation when considering applications for premises that were already trading with express permission for the type of entertainment which is now defined as sexual entertainment on the date that the licensing provisions were adopted by the authority if they can demonstrate in their application:

- High standards of management
- A management structure and capacity to operate the venue
- The ability to adhere to the standard conditions for sex establishments.”

Our premises is in the town centre. We recognise that the demographic and profile of the person using the town centre is very different during morning –midday, midday until early evening, evening until midnight and after midnight. This is evident from our opening hours. We believe that there is a demand for use for our premises hence why we have been able to stay in operation for so many years. Indeed you note this on your website: “Coventry currently has one licensed sexual entertainment venue which has been operating from city centre premises for over six years.” Supplementary to this, we would like to stress that there has never been any complaints about our premises from either the Police or any local authority; neither have we ever breached any of the licensing policies or any of the licensing conditions on our premises so naturally The Council would expect us to obey any new conditions that are given.

We would suggest that the The Council considers The Human Rights Act 1998 which requires public authorities to act in accordance with the provisions of the European Convention on Human Rights. Article 1 of the First Protocol protects the right to peaceful enjoyment of possessions, and provides that “no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.” This protects someone who has a business which is currently in operation under a licence. While we recognise that it is considered that a licence is not a possession in itself, the goodwill and client value which has come about from the licensed trade that we have acquired – can be considered a possession: R (Countryside Alliance) v Attorney General [2008] 1.A.C.719, per Bingham at [21] and R (Malik) v Waltham Forest NHS Primary Care Trust [2007] 1 WLR 2092 (CA), [40]-[48] & [68]-[73]. Revocation of, or refusal to renew a licence amounts to an interference with the underlying possession: Van Marle v The Netherlands (1986) 8 EHRR 483 at [41]-[42]; Jain v Trent Strategic Health Authority [2009] 1 AC 853 at [12].

We would also ask where submissions have been raised due to moral considerations that these are discounted just as they are from the decision making process. If they are not then this would enable the moral issues to be part of the decision making process through the back door by influencing the policy that will be considered by the Council in making decisions on applications. The Home Office Guidance states that “objections should not be based on moral grounds/values” (Sexual Entertainment Venues: Guidance for England and Wales p.18, paragraph 3.23) supported by R v Newcastle Upon Tyne City Council ex parte The Christian Institute [2001] BLGR 165.

About you

Please provide some information about yourself so that we can monitor which groups of people are taking part in the consultation.

Please be advised that the information you provide will not be disclosed and all data will be held securely. You are under no obligation to complete this section of the survey if you do not wish to.

6. How old are you?

- Under 16
- 16 - 24
- 25 - 34
- 35 - 44
- 45 - 54
- 55 - 64
- 65 - 74
- 75 - 84
- 85+

7. What is your gender?

- Male
- Female

8. Is your gender different from the gender you were assigned at birth (or are you in the process of reassigning it)?

- Yes
- No

9. How would you describe your ethnic background? (please select one)

- White - English/ Welsh/ Scottish/ Northern Irish/ British
- White - Irish
- White - Gypsy or Irish Traveller
- White - Other (write in below)
- Mixed - White & Black Caribbean
- Mixed - White & Black African
- Mixed - White & Asian
- Mixed - Other (write in below)
- Asian/ Asian British - Indian
- Asian/ Asian British - Pakistani
- Asian/ Asian British - Bangladeshi
- Asian/ Asian British - Chinese
- Asian/ Asian British - Other (write in below)
- Black/ Black British - African
- Black/ Black British - Caribbean

- Black/ Black British - Other (write in below)
- Arab
- Any other ethnic group (write in below)

If Other, please state

10. What is your religion?

- No religion
- Christian (including Church of England, Catholic, Protestant and all other Christian denominations)
- Buddhist
- Hindu
- Jewish
- Muslim
- Sikh
- Any other religion

If you selected any other religion, please provide details below

11. Do you consider yourself a disabled person?

- Yes
- No

12. What is your sexual orientation?

- Heterosexual
- Gay man
- Gay women/lesbian
- Bisexual
- Prefer not to say
- Other

If you selected other, please provide details below:

How to respond to this consultation

To have your comments considered by the authority, please return this form to us no later than **11th November 2012**.

Please send to:

Coventry City Council
Licensing Team
Broadgate House
Broadgate
Coventry CV1 1NH

Telephone Number: 024 7683 1888
Fax Number: 024 7683 2154

e-mail licensing@coventry.gov.uk

Online Survey

Alternatively, you can complete this questionnaire using our online survey at -

www.coventry.gov.uk/sev

Further information

For further information about this consultation please contact Davina Blackburn, Licensing Manager, using the above contact details.



To: Cabinet

Date: 8th January 2013

Subject: Sexual Entertainment Venues Policy – Consultation Results

1 Purpose of the Note

- 1.1 To inform Cabinet of the outcome of the discussion of the Streets and Neighbourhoods Scrutiny Board (4) regarding the Sexual Entertainment Venues Policy – Consultation Results report

2 Recommendations

- 2.1 The Streets and Neighbourhoods Scrutiny Board support the recommendations to Cabinet, with a further recommendation that:
- 1) Training should be given to Licensing & Regulatory Committee members on dealing with SEV applications which should include guidance on the proper application of the nil policy and the correct approach that should be taken to considering any exemptions to that policy including the need for giving sound reasons for any decision.

3 Information/Background

- 3.1 At their meeting on 7th December 2012, the Streets and Neighbourhoods Scrutiny Board considered the Sexual Entertainment Venues Policy – Consultation Results report.
- 3.2 The Members supported a nil venues policy based on feedback from the consultation that venues should not be less than 500m from sensitive areas.
- 3.3 Members of the Board questioned officers on the implications of the policy, particularly the legal risks of implementing the policy.
- 3.4 Members of the Board were happy with to supported the recommendations to Cabinet and requested an additional recommendation as at paragraph 2.1

Gennie Holmes
Scrutiny Co-ordinator
Chief Executive's Directorate
Room 16 Council House
gennie.holmes@coventry.gov.uk
024 7683 1172

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Public report Cabinet

Cabinet
Council

8th January 2013
15th January 2013

Name of Cabinet Member:

Cabinet Member (Neighbourhood Action, Housing, Leisure & Culture) – Councillor Ruane

Director Approving Submission of the report:

Director of Community Services

Ward(s) affected:

All

Title:

Coventry Tenancy Strategy 2013-18

Is this a key decision?

Yes

The proposals within the report are likely to impact on residents across the whole of the City.

Executive Summary:

The Localism Act 2011 created a statutory requirement for local authorities to develop a Tenancy Strategy by 15th January 2013, setting out the Council's approach to tenancies in light of recent changes to social housing introduced by the Government. Changes have been made to the types of tenancies that Registered Providers of social housing (usually Housing Associations) can offer, the rents they can charge and the way that the Council can meet its duties towards homeless households.

In their Tenancy Strategy, Local authorities must set out the matters to which Registered Providers are to 'have regard' when developing their own Tenancy Policies.

Following consultation with the public, Registered Providers and a wide range of stakeholders, a Tenancy Strategy for Coventry has been developed. Cabinet and Council are requested to adopt this Tenancy Strategy.

Recommendations:

1. Cabinet are requested to recommend that the Council approve the Coventry Tenancy Strategy 2013-18 attached as Appendix 1 of this report.
2. Council are requested to approve the Coventry Tenancy Strategy 2013-18 attached at Appendix 1 of this report

List of Appendices included:

Appendix 1 – Draft Coventry Tenancy Strategy 2013-18.

Appendix 2 – Equality and Consultation Analysis.

Appendix 3 – Transport and Infrastructure Development Scrutiny Board (6) response to key consultation questions (considered at their meeting 17th October 2012).

Background papers:

None

Other useful documents

Coventry City Council's response to the Government consultation "Local Decisions: a fairer future for social housing" was considered at the Council meeting on 11th January 2011 and is available online: <http://internalmodern.gov.coventry.gov.uk/Data/Council/201101111400/Agenda/0813%20-%20Response%20Paper%20to%20CLG%20Local%20Decisions%20-%20A%20Fairer%20Future%20for%20Social.pdf>

Coventry City Council's response to the Government consultation paper – 'Implementing social housing reform: directions to the Social Housing Regulator' was considered at the Council meeting on 13th September 2011 and is available online:

<http://internalmodern.gov.coventry.gov.uk/Data/Council/201109131400/Agenda/07%20-%20Booklet%201%20-%20Recommendations.pdf>

Has it been or will it be considered by Scrutiny?

The Transport and Infrastructure Development Scrutiny Board (6) considered the consultation document at their meeting on 17th October 2012 and provided responses to key questions in the consultation. This has been used (alongside other consultation responses) to inform the development of the Tenancy Strategy document.

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 - 15th January 2013

1. Context (or background)

- 1.1 The Government have introduced wide-ranging reforms to social housing legislation, regulation and policy. This marks a significant shift in the way that social housing is developed, let and managed.
- 1.2 Changes have been made to the types of tenancies that Registered Providers of social housing (usually Housing Associations) can offer, the rents they can charge and the way that the Council can meet its duties towards homeless households.
- 1.3 These reforms have been implemented by the *Localism Act 2011* and by changes to the *Regulatory Framework for Social Housing in England from April 2012* (Homes & Communities Agency).
- 1.4 **Fixed Term Tenancies** - Registered Providers of social housing are now able to offer a Fixed Term Tenancy to new tenants, rather than a 'lifetime' tenancy. The Fixed Term Tenancy should be for a minimum term of 5 years (however, a minimum fixed term of 2 years is allowed in exceptional circumstances).
- 1.5 **'Affordable Rent'** - The Government has introduced a framework for delivering new affordable housing, changing the way new housing is funded through the Homes and Communities Agency (HCA). The level of grant to build new affordable housing has been significantly reduced and the cost of building new homes will be covered by letting them at 'Affordable Rents', which can be up to 80% of market rents. Registered Providers will also be able to convert a proportion of re-lets of existing homes to the Affordable Rent model, so the rents for new tenants moving into those specific homes will be up to 80% of market rent, rather than previous social rent levels
- 1.6 **Homelessness Duties** - The Council has a duty to find accommodation for certain eligible households who are homeless through no fault of their own and who have a priority need. This is known as the main homelessness duty. Previously, the Council could offer a tenancy in the private rented sector, but if the applicant refused, the Council still had a duty to find accommodation in social housing. The Localism Act 2011 has changed this – it gives local authorities the discretion to offer a suitable private rented property as the final offer to discharge the main homelessness duty, without requiring the consent of the applicant as before. The Act also introduced greater flexibilities for Councils in their Allocations Policies.
- 1.7 The Localism Act 2011 also created a statutory requirement for local authorities to develop a Tenancy Strategy by January 2013, setting out the Council's approach to tenancies. Coventry City Council transferred its housing stock to Whitefriars Housing Group in 2000 and no longer owns or manages social housing, but still has a strategic housing role and therefore must produce a Tenancy Strategy. Registered Providers of social housing are required to publish their own Tenancy Policy setting out their approach to using these new flexibilities.
- 1.8 The Council must set out the matters to which Registered Providers are to have regard when developing their Tenancy Policy, including:
 - The kinds of tenancies they grant
 - The circumstances in which they will grant a tenancy of a particular kind
 - Where they choose to grant fixed term tenancies, the length of the terms

- The circumstances in which they will grant a further tenancy when the existing tenancy comes to an end.
- 1.9 It is important to note that Registered Providers must have regard to the principles that the Council sets out in its Tenancy Strategy when developing their own Tenancy Policies, but are not required to comply with the Council's Tenancy Strategy.
- 1.10 Registered Providers were required to develop their Tenancy Policies by April 2012. Additionally, Registered Providers have already signed contracts with the Homes and Communities Agency (HCA) to use Affordable Rent tenancies for new affordable housing delivered under the 2011-2015 Affordable Housing Programme. This means they will already have plans in place for the use of Affordable Rent tenancies. Providers will, therefore, need to have regard to the Council's Tenancy Strategy after they have adopted their Tenancy Policy.
- 1.11 In January 2011 the Council responded to the Government's consultation on "*Local Decisions: a fairer future for social housing*", particularly expressing the Council's opposition to plans to introduce Fixed Term Tenancies in social housing.

2. Options considered and recommended proposal

- 2.1 Under the Localism Act 2011, the Council has a statutory duty to publish a Tenancy Strategy by 15th January 2013.
- 2.2 Following consultation with the public, Registered Providers and a wide range of stakeholders, a draft Tenancy Strategy for Coventry has been developed.
- 2.3 The Tenancy Strategy states that the Council is opposed to the use of Fixed Term Tenancies in the social housing sector.
- 2.4 However, recognising that these flexibilities have been introduced by the Government and in some cases have been implemented by Registered Providers working in the city, the Tenancy Strategy seeks to ensure that Fixed Term Tenancies are applied in a manner that does not undermine social investment in communities and to ensure that the most vulnerable tenants are provided with the level of stability they require. These opportunities should only be used by Registered Providers in a way that supports the Council's aim to create balanced, stable and sustainable communities.
- 2.5 The Council will make greater use of the private rented sector to house homeless people by using the opportunity to discharge the main homelessness duty into suitable private rented accommodation as a final offer, as described above (1.6), in the same way that a final offer of a social housing property would currently discharge the main homelessness duty. The Council will only use the private rented sector to discharge the main homelessness duty when the household has been assessed as being able to sustain a private rented tenancy and where a suitable property is available on a 12-month tenancy.
- 2.6 This means a wider range of properties will be available by using the private rented sector to discharge the main homelessness duty. It will enable greater opportunities for households to remain close to schools, family or support networks, especially in areas where there is a shortage of social housing. Also, applicants are likely to be provided with a settled home more quickly, reducing the negative impact of staying in temporary accommodation such as Bed & Breakfast rooms. This is particularly relevant for larger families who may face a long wait for a suitable social housing property to become available.

- 2.7 The Council will still be able to bring the main homelessness duty to an end with the offer of a social tenancy if the private rented sector is not suitable for the household or a suitable property is not available.
- 2.8 Cabinet are requested to recommend that the Council approve the Coventry Tenancy Strategy attached as Appendix 1 of this report.
- 2.9 Council are asked to approve the Coventry Tenancy Strategy 2013-18.

3. Results of consultation undertaken

- 3.1 Public consultation on the options for the Tenancy Strategy was carried out for eight weeks between 6th September and 31st October 2012. A consultation document was produced, outlining the main changes and options. This document and an online survey were available on the Council's website for anyone with an interest in housing in the city to complete.
- 3.2 An email was also sent to key stakeholders to alert them of this consultation and invite them to participate. This was sent to a wide range of contacts including: Registered Providers; advice agencies; key contacts for consultation of protected equalities groups; elected members; the Coventry Partnership Housing Theme Group and other key partnership groups; providers of housing-related support and homelessness services; tenants and residents associations; and private landlords. The email was also sent to residents on the Council's consultation contact database.
- 3.3 A total of 44 responses were received, including 11 from respondents that identified themselves as representing an organisation or group. 27 stated that they were responding as individuals (6 skipped this question).
- 3.4 The Transport and Infrastructure Development Scrutiny Board (6) also provided a collective response to key consultation questions during their meeting on 17th October 2012 (attached as Appendix 3).
- 3.5 Following this initial stage of consultation, a Draft Tenancy Strategy was developed. This was circulated to all Registered Providers that operate in Coventry for them to be able to comment, as required by the Localism Act 2011.
- 3.6 Using the results of the public consultation, the response from the Transport and Infrastructure Development Scrutiny Board (6) and comments from Registered Providers, the final draft Coventry Tenancy Strategy 2013-18 has been produced (as attached as Appendix 1).
- 3.7 Results of the consultation included the following key points.
- 3.8 Regarding the use of Fixed Term Tenancies:
- 3.9 74% of respondents answered that the Council should support the use of Fixed Term Tenancies, 26% answered that the Council should not support the use of Fixed Term Tenancies.
- 3.10 Those that thought the Council should support the use of Fixed Term Tenancies cited reasons such as: the opportunity to remove tenants who engaged in anti-social behaviour; the lack of social housing and opportunity to ensure best use of the existing housing available; changing needs of households over time; changing circumstances such as income levels; and reducing the 'complacency' of the guarantee of a home for life.

- 3.11 Those that thought the Council should not support Fixed Term Tenancies cited reasons such as: the threat to community stability and cohesion; the lack of security and anxiety the Fixed Term could cause; the need to remain close to family and support networks; and schooling for children.
- 3.12 Respondents felt that Fixed Term Tenancies were NOT suitable for: households with a long term health need or disability; elderly households; those moving into supported, extra care or sheltered housing; other vulnerable groups; and those whose housing needs were not likely to change.
- 3.13 Respondents felt that Fixed Term Tenancies WERE suitable for: young people; households whose circumstances were likely to change; those on their first tenancy; couples/single people without dependent children; those with a previous record of anti-social behaviour.
- 3.14 Some respondents felt that households with dependent children required the stability of a 'lifetime' tenancy, whereas others felt that Fixed Term Tenancies could be more suitable to ensure that the property meets the changing needs of the family through time (for example, when older children leave home and the property becomes under-occupied).
- 3.15 The Transport and Infrastructure Development Scrutiny Board (6) felt that the Coventry Tenancy Strategy should be consistent with previous Council decisions on consultation responses to Government. This would be to object to and oppose registered providers offering anything less than the most secure tenancy for households in social and affordable rent properties. The Board felt that weakening the security of tenure for new tenants would damage social cohesion in the City and lead to a group of second class tenants.
- 3.16 Regarding the use of Affordable Rent:
- 3.17 Respondents identified several factors which should be taken into account when setting the level of Affordable Rent including: the affordability for individual households; average incomes; average market rents; housing benefit changes and benefit caps; the conditions of the Registered Providers' contracts with the Homes & Communities Agency (HCA).
- 3.18 When asked whether any types of properties should NOT be let at Affordable Rents, respondents cited: supported/sheltered properties; large family homes; specially adapted properties.
- 3.19 Regarding the option to use the offer of a suitable private rented sector tenancy to discharge the main homelessness duty without requiring the consent of the applicant:
- 3.20 72% of respondents supported the use of the private rented sector in this way for homeless households, 28% did not.
- 3.21 Respondents felt that the private rented sector should not be used for homeless applicants who: are vulnerable; have a low income; are disabled or have long term health needs; have a previous record of anti-social behaviour.
- 3.22 Respondents felt that the private rented sector should be used for homeless households who: have high incomes or where income is likely to increase; are employed; have specific requirements to live in a particular area (such as schooling or support needs); cannot access social housing (for example due to former arrears); single people; young people.
- 3.23 During the Government's consultations into changes to the social housing sector, Coventry City Council stated clearly in its response that the Council is opposed to the use of Fixed

Term Tenancies in the social housing sector. The Tenancy Strategy restates this opposition. However, recognising that Registered Providers now have the power to issue Fixed Term Tenancies due to changes to the Regulatory Framework, the Tenancy Strategy seeks to ensure that where they are used, appropriate safeguards are in place for vulnerable households.

4. Timetable for implementing this decision

- 4.1 The Localism Act 2011 requires the Council to publish a Tenancy Strategy by 15th January 2013.

5. Comments from Director of Finance and Legal Services

5.1 Financial implications

There are no direct financial implications to the Council regarding the strategic guidance given to Registered Providers on the use of Fixed Term Tenancies or Affordable Rents.

The use of the private rented sector to discharge the main homelessness duty will increase the range of properties available to homeless households, enabling them to be offered a suitable settled home more quickly and reducing the time that certain households remain in temporary accommodation, which may include costly Bed & Breakfast accommodation.

5.2 Legal implications

Under the Localism Act 2011, the Council is required to publish a Tenancy Strategy by 15th January 2013.

Also under the Localism Act 2011, the Council may use an offer of a suitable property in the private rented sector to discharge the main homelessness duty without requiring the applicant's consent. When considering the suitability of a Privately Rented property, the Council must comply with *The Homelessness (Suitability of Accommodation) (England) Order 2012*, which came into force on 9th November 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)?

This will support the delivery of the Council Plan 2011-14, in particular the priority outcomes; 'Coventry, proud to be a city that works... for jobs and growth', through the objective of the provision of housing to meet the needs of residents; and 'Coventry, proud to be a city that works... to protect our most vulnerable residents', through the objective of preventing homelessness and supporting people who do become homeless.

It also contributes to the housing priority of "a good choice of housing to meet the needs and aspirations of the people of Coventry" in the Coventry Sustainable Community Strategy 2011-14.

6.2 How is risk being managed?

The Tenancy Strategy has tried to minimise risk by ensuring safeguards are in place for vulnerable households.

If the Council chooses to end the main homelessness duty with the offer of a suitable private sector property, there is a risk that the applicant may appeal against the decision based on the suitability of the property. This risk will be minimised by ensuring that any final offers made are suitable within the requirements of the *Homelessness (Suitability of Accommodation) (England) Order 2012*. The Council will still be able to bring the main homelessness duty to an end with the offer of a social tenancy if a private rented sector tenancy is not suitable for the household.

6.3 What is the impact on the organisation?

There is no impact on staffing/human resources, information and communications technology, accommodation, assets, or the council's corporate parenting responsibilities.

6.4 Equalities / EIA

An Equalities and Consultation Analysis (ECA) has been carried out and is attached at Appendix 2.

It is important to note that it is Registered Providers that will implement Fixed Term Tenancies and Affordable Rents based on their own Tenancy Policies, which must have regard to the Tenancy Strategy. We would expect that they undertake impact assessments on their own Tenancy Policies.

The ECA identified some potential negative impacts for groups with protected characteristics under the Equality Act that could arise from the use of Fixed Term Tenancies and Affordable Rents, in particular for age and disability.

As a result, the Tenancy Strategy aims to provide guidance to Registered Providers that will mitigate the potential impacts of changes to Fixed Term Tenancies and Affordable Rents on households with protected characteristics and to ensure that vulnerable people are not disadvantaged. It states the Council's opposition to Fixed Term Tenancies; however, where Registered Providers choose to use them, there must be safeguards in place to ensure that vulnerable customers are not disadvantaged. The Tenancy Strategy also states that Affordable Rents should strike a balance between being affordable to individual households and the need for Registered Providers to optimise their re-investment potential to increase the supply of affordable housing. Income levels and the impact of benefit caps must be taken into account, particularly in the case of large family homes.

The intention to use the private rented sector to discharge the main homelessness duty will have a positive impact by providing a greater range of available properties for homeless households in a wider range of locations. This will enable greater opportunities to remain close to schools, family or support networks. Also, homeless households owed the main duty are likely to be provided with a settled home more quickly, reducing the negative impact of staying in temporary accommodation such as B&B rooms. This is particularly relevant for larger families who may face a long wait for a suitable social housing property to become available. The Council will still be able to bring the main homelessness duty to an end with the offer of a social tenancy if the private rented sector is not suitable for the household.

The ECA identified an overall positive impact arising from the Tenancy Strategy due to the safeguards put in place to mitigate the potential negative impacts of Fixed Term Tenancies

and Affordable Rents and the positive impacts that will arise from the use of suitable private rented sector accommodation for homeless households.

6.5 Implications for (or impact on) the environment

None identified.

6.6 Implications for partner organisations?

Once the final Tenancy Strategy is published, Registered Providers will be required to have regard to the Tenancy Strategy in their own Tenancy Policies.

Report author(s):**Name and job title:**

Ayaz Maqsood, Head of Housing

Directorate:

Community Services Directorate

Tel and email contact:

024 7683 1958

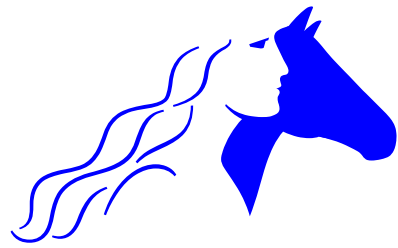
Ayaz.maqsood@coventry.gov.uk

Enquiries should be directed to the above person.

Contributor/approver name	Title	Directorate or organisation	Date doc sent out	Date response received or approved
Contributors:				
Sara Roach	Assistant Director Public Safety and Housing	Community Services	23/11/12	26/11/12
Lina Patel	Housing Policy Officer	Community Services	23/11/12	28/11/12
Kimberley Fawcett	Housing Development Officer	Community Services	23/11/12	28/11/12
Anthea Smith	Housing Options Service Manager	Community Services	23/11/12	28/11/12
Lara Knight	Governance Services Officer	Customer and Workforce Services	23/11/12	28/11/12
Names of approvers for submission: (officers and members)				
Finance: Diane Jones	Lead Accountant (Community Services)	Finance & Legal Services	23/11/12	28/11/12
Legal: Gill Carter	Senior Solicitor	Finance & Legal Services	23/11/12	29/11/12
HR: Carol Williams	Human Resources Manager for Community Services	Customer and Workforce Services	23/11/12	30/11/12
Director: Brian Walsh	Director of Community Services	Community Services	23/11/12	03/12/12
Members: Councillor Ed Ruane	Cabinet Member (Neighbourhood Action, Housing, Leisure & Culture)	Coventry City Council	23/11/12	25/11/12

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Coventry City Council



Coventry City Council Tenancy Strategy 2013-2018

Coventry City Council

Tenancy Strategy

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Introduction

The Government have introduced wide-ranging reforms to social housing legislation, regulation and policy. This marks a significant shift in the way that social housing is developed, let and managed. Changes have been made to the types of tenancies that social housing providers can offer, the rents they can charge and the way that the Council can meet its duties towards homeless households.

The Localism Act 2011 contains many of these reforms and also requires all local housing authorities to produce a Tenancy Strategy, setting out the objectives to which social landlords must have regard to when formulating their own Tenancy Policies. This relates to the:

- Kinds of tenancies they grant.
- Circumstances in which they will grant a tenancy of a particular kind.
- Lengths of the terms, if Fixed Term Tenancies are granted.
- Circumstances in which they will grant a further tenancy when the existing tenancy comes to an end.

This strategy is Coventry City Council's response to that duty. It is important to note that Registered Providers (RPs) were required to develop their Tenancy Policies by April 2012. Additionally, RPs have already signed contracts with the Homes and Communities Agency (HCA) to use Affordable Rent tenancies for new affordable housing delivered under the 2011-2015 Affordable Housing Programme. This means they will already have plans in place for the use of Affordable Rent tenancies. Providers will, therefore, need to have regard to the Council's Tenancy Strategy after they have adopted their Tenancy Policy.

This strategy should be read alongside the ***Regulatory Framework for Social Housing in England from April 2012*** (Homes & Communities Agency), which the Council expects Registered Providers to comply with.

How have we developed the Tenancy Strategy

The Council transferred ownership and management of its housing stock to Whitefriars Housing Group in September 2000. Therefore, the Tenancy Strategy

provides guidance to RPs operating in Coventry in the context of the Council's strategic housing role. Building on our strong and established working relationships, this Strategy has been developed collaboratively between the Council, RPs and other key stakeholders. Consultation has included:

- Meetings and a questionnaire sent to RPs.
- Eight week public consultation – this specifically included RPs, equality groups, homeless and housing related support providers, tenants' and residents' groups, private landlords and advice agencies.
- Consultation with all RPs in the City on the draft Tenancy Strategy.

What Our Tenancy Strategy Covers

Although the Tenancy Strategy is principally concerned with tenure reform, reforms in related areas such as rent models, housing allocations policies and measures to address homelessness also have an impact and in some cases overlap with tenure issues. Consequently, the Tenancy Strategy addresses not only tenure, but also homelessness, allocations and rents. Our Tenancy Strategy covers five areas:

- 1. Tenure (Fixed Term Tenancies)**
- 2. Affordable Rents**
- 3. Housing allocations**
- 4. Use of the private rented sector to house homeless people.**
- 5. Disposal of social housing stock**

Aims of the Tenancy Strategy

The Tenancy Strategy supports the Draft Coventry Housing & Homelessness Strategy 2013 -2018 and the ambition to 'Ensure Decent Homes, Housing Choice and Support for Coventry Citizens.'

The overarching aim of the Tenancy Strategy is specifically aligned to Theme 4 of the Draft Coventry Housing & Homelessness Strategy 2013-18, which is to:

Encourage balanced, stable and sustainable communities.

Monitoring & Review

This strategy will be reviewed every five years. However, the Council may review the Strategy before the end of the five year period to reflect any changes to legislation or policy, as well as any emerging issues that may arise. As stated in the 'Housing Allocations' section, the Strategy will also be updated to reflect the outcome of the Homefinder review – this will involve further separate consultation.

Future changes to the Tenancy Strategy will be informed by monitoring activity that is proposed to cover two main areas:

1. The extent to which the new measures are implemented and their effectiveness. This will include monitoring:
 - The number of Fixed Term Tenancies issued.
 - The number, type and location of Affordable Rent properties.
 - The impact of changes to allocations processes.
 - Homelessness placements in the private rented sector.

2. Changing market conditions and their possible impact on the demand on services. This will include monitoring:
 - Housing need.
 - Homelessness approaches, preventions and acceptances.
 - The number/tenure of new homes built.
 - Rent levels across all tenures.
 - The impact of welfare reforms.
 - Affordability.

1. Tenure

Background Information

- Changes to the Regulatory Framework mean that Registered Providers (RPs) can offer a 'Fixed Term Tenancy'. Whereas previously new tenants would expect to receive a lifetime tenancy (in some cases following an introductory period), RPs are now able to grant new tenancies on a fixed term basis.
- The Government has given RPs more flexibility to decide what length of tenancy they should offer based on their current levels of housing stock and the needs of individual tenants.
- The Government has indicated that the normal minimum duration of Fixed Term Tenancies should be at least five years. Two year tenancies can be issued only in exceptional circumstances.
- Under a Fixed Term Tenancy, the tenants' circumstances will be reviewed six months before the end of the tenancy to assess if the tenancy should be renewed or whether the tenants' circumstances have changed and they are now able to move to a different housing tenure.
- The Localism Act 2011 abolishes the right to succession and assignment (other than by way of a mutual exchange) to anyone other than the deceased's spouse, civil partner or partner. Other family members will no longer have an automatic right to succession, but RPs can set their own policies in relation to this.

Key Considerations

Introducing Fixed Term Tenancies

The Council is opposed to the use of Fixed Term Tenancies.

There is a likelihood that the increased turnover resulting from Fixed Term Tenancies could have a negative impact on community cohesion and sustainability and consequently lead to the residualisation of neighbourhoods. It is the Council's

view that when people are granted a tenancy for life, this provides a degree of security and in turn increases their feeling of belonging to their neighbourhood. This makes it easier for people to connect with support networks and increases their willingness to look after their home and engage with the community around them.

The Council acknowledges, however, that the decision to use Fixed Term Tenancies ultimately lies with the RP and that some providers have already chosen to take advantage of the new tenure flexibilities in order to make best use of their housing stock. Notwithstanding the Council's preferred position, where RPs have made the decision to use Fixed Term Tenancies, the Council's preferred tenancy terms are set out below. The Tenancy Strategy seeks to ensure that Fixed Term Tenancies are applied in a manner that does not undermine social investment in communities and to ensure that the most vulnerable tenants are provided with the level of stability they require.

Length of Fixed Term Tenancies

Where Fixed Term Tenancies are used, the Council encourages RPs to consider using Fixed Term Tenancies with a longer term than the minimum five year period. This must be in addition to any probationary, introductory or starter period. The Council does not support the granting of a tenancy period of less than five years.

Use of Fixed Term Tenancies

Fixed Term Tenancies should be applied to general needs stock only.

The Council's expectation is that social housing providers should offer lifetime tenancies to vulnerable tenants that have a continuing long-term need for support or care. This is to provide the protection and stability that they require to live successfully within their local community.

Vulnerable tenants that should be offered lifetime tenancies include:

- Older people (over the age of 60) living in general needs accommodation.
- Any tenant with a lifelong need for support or who has a lifetime illness or disability. This would apply to tenants in general needs accommodation,

adapted accommodation, specialist accommodation and older persons' accommodation such as sheltered or extra care housing. The Council acknowledges that in the case of an adapted property the RP may choose to issue a Fixed Term Tenancy where the disabled household member has a recoverable injury/condition and is fully expected to move on into a non-adapted home. This is to make best use of the City's limited supply of adapted housing.

- Tenants where a spouse or a dependent child is disabled or has a lifelong illness requiring long term care.

In light of the above, if a successful bidder on Homefinder falls into any of the above categories, the Council expects that the tenant/s will be offered a lifetime tenancy irrespective of whether the property was advertised as a Fixed Term Tenancy on Homefinder.

The Council considers the use of Fixed Term Tenancies as a housing management tool to be inappropriate, particularly in relation to tenants who are perceived to present a greater risk to tenancy sustainment or neighbourhood sustainability. Existing tools are available to social landlords to manage this risk such as Introductory and Starter Tenancies.

A longer minimum fixed term should be considered for those tenants that may benefit from additional security and stability. This includes households with school age children.

Existing Tenants (those with an existing social tenancy on 1 April 2012)

The Council expects that all existing social housing tenants who wish to transfer to another social rented home will be offered the opportunity, where possible, to transfer whilst retaining their existing level of security of tenure. There are exceptions to this requirement, covered in the revised Regulatory Framework Tenancy Standard, which RPs must comply with. Notwithstanding this, the Council encourages RPs to allow tenants who wish to transfer or carry out a mutual

exchange, to retain their existing security of tenure where it resolves a local strategic housing issue such as under-occupation.

Expiry of the Fixed Term

All RPs should ensure that they clearly publish the criteria and conditions they intend to apply to the allocation and review of Fixed Term Tenancies. This information should be provided to tenants prior to their tenancy commencement. RPs should also make clear the circumstances under which they will terminate or renew a Fixed Term Tenancy.

The Council expects that Fixed Term Tenancies will be reviewed **at least six months** prior to the tenancy end date and that there will be a presumption that the tenancy will be renewed unless there has been a significant change in circumstances. This could be because:

- The property is under-occupied.
- The property has been extensively adapted for someone with a disability who no longer lives there. This will allow the property to be released for someone who will benefit from the adaptations.
- The tenant has acquired another property.

The review process must give due regard to the need to create sustainable communities, containing a range of households with mixed income levels. We have, therefore, not set any household income criteria within the tenancy review process. Each household should be assessed and advised on the range of housing options that are available to them. Advice and assistance should be offered to higher income households so that they can consider home ownership products or private rent if this is affordable and an expressed desire of the household.

Terminating Fixed Term Tenancies

The Council expects RPs to give tenants appropriate advice and assistance about their housing options at the time they conduct a Fixed Term Tenancy review and at the point a decision is made that a tenancy will not be renewed. When a Fixed Term Tenancy is reviewed, RPs should assess the circumstances of the tenant(s) and

explore the full range of housing options available to them. The housing options could include home ownership, a private rented home or a more suitable social housing property. Registered Providers should have particular regard to their duty to co-operate with the local housing authority to prevent homelessness. The Council also expects that a decision not to renew a tenancy will not result in a homelessness application being made to the Council.

Succession

Although the change in the legal requirement on succession excludes other close relatives that lived with the tenant at the time of their death automatically succeeding the tenancy, social landlords can choose to allow discretionary successions to additional groups. The Council considers this a housing management matter but would wish the RP to use their discretion and put measures in place to avoid the possibility that this change will result in more households becoming homeless and seeking assistance with re-housing.

Summary of Coventry City Council's Position – Fixed Term Tenancies

- The Council is opposed to the use of Fixed Term Tenancies.
- Should RPs wish to introduce Fixed Term Tenancies, their use must be considered very carefully in order to ensure that communities are sustainable and the most vulnerable tenants or prospective tenants are provided with the appropriate type and length of tenancy. In order to achieve this the Council recommends that:
 - Any Fixed Term Tenancy is offered for a longer term than the minimum five year period (in addition to any introductory, probationary or starter period).
 - Fixed Term Tenancies are applied to the general needs housing stock only.
 - Vulnerable tenants are offered lifetime tenancies only.
 - A longer term tenancy should be considered for those households that may benefit from additional security and stability.
- RPs should publish a clear Tenancy Policy setting out their tenancy terms.
- There should be a presumption that the Fixed Term Tenancy will be renewed.
- All existing social housing tenants who wish to transfer to another social rented home should, where possible, be offered the opportunity to transfer whilst retaining their existing level of security of tenure.

2. Affordable Rents

Background Information

- Affordable Rent is a new affordable housing product that was introduced by the coalition Government in April 2011.
- The Government has reduced the amount of grant funding it provides to Registered Providers (RPs) to build new affordable housing. Instead, it has allowed RPs to increase some rents to up to 80% of the market rent at the time of letting (inclusive of service charges) and they can use the difference to raise money to fund new-build housing.
- RPs who have entered into a development contract with the Homes and Communities Agency are able to develop new housing to be let as Affordable Rent tenancies and are also able to convert a proportion of existing properties to Affordable Rent tenancies that become available for re-let.

Key Considerations

Affordability

Although the Council acknowledges that the use of Affordable Rent is essential to the delivery of new housing, especially homes being delivered under the Affordable Homes Programme, affordability is a key consideration for the Council. There is an expectation that rents will be kept affordable for households in housing need, taking into account local factors and the Local Housing Allowance rate. The approach should be to strike a balance between Affordable Rents being affordable to individual households and the need for RPs to optimise their re-investment potential.

The Strategic Housing Market Assessment (SHMA) research, commissioned by the Council, demonstrates that potential rent increases for larger properties could be significant. The Affordable Rent could be around £717 per month for 4 bedroom properties (depending on the City location), which is around £294 per month higher

than a 4 bedroom Social Rent property. Unless the rent is supported by Housing Benefit, such rates will be unaffordable for many low-income tenants.

The Council expects the implementation of Affordable Rent to be carefully assessed and monitored by RPs on affordability grounds. The SHMA indicates that one bedroom homes at Affordable Rent at 80% of market rent would be more affordable than a Social Rented one bedroom property – there would, therefore, be little benefit in converting one bedroom properties to Affordable Rent. Larger properties could be subject to some increases, but those having 4 bedrooms or more should be let at a lower percentage of market rent to maintain affordability. Rent increases to new dwellings on specific sites should be considered on a case by case basis, taking into account viability and delivery issues, to ensure that affordability for the intended occupants is achieved.

Affordable Rent tenancies for elderly households in sheltered or extra-care housing are not supported, as elderly tenants are likely to have fixed incomes. The higher rent levels could also discourage older under-occupiers from downsizing to smaller accommodation.

Welfare Reform

It is recognised that affordability challenges could be further exacerbated by the impact of welfare reforms. The Government plans to introduce a Universal Credit system from October 2013 and further Housing Benefit reforms from April 2013, which will cap overall benefits and reduce housing related benefit for some under-occupying households in social housing. The Council, therefore, expects RPs to be mindful of the potential impact of the proposed welfare reform changes and offer advice and assistance on how these changes will impact on affected tenants. This includes helping under-occupying tenants move to smaller housing should they wish to do so.

Social Rented Housing Supply

There is a need to ensure that there is an adequate supply of affordable housing for people on the lowest incomes. Whilst the Council accepts that RPs will want to develop Affordable Rent properties, the continued provision of Social Rented homes on sites where viability allows, will be strongly encouraged.

The Council also wants to avoid the possibility that the relative shortage of certain Social Rented housing types such as larger family homes is made worse by their conversion to Affordable Rent.

The Council expects to be kept informed about Affordable Rent conversions in the City and provided with details regarding the property type, location and rent level prior to conversions being implemented. The number and property type of the conversions in each locality must be carefully managed by the RP to ensure that neighbourhoods continue to contain households with a mix of incomes and that the local community is sustainable.

Lettings

The Council expects that Affordable Rent properties will be allocated in the same way as Social Rented properties. The existing regulatory obligation on providers to co-operate with local authorities' strategic housing function on the allocation of Social Rent properties, will also apply to Affordable Rent. However, it is understood that RPs are considering their allocations policies in light of the greater flexibilities provided by Government. Most RPs participating in Coventry Homefinder advertise all their general needs vacancies on the system in accordance with the Homefinder policy. The Council acknowledges that based on their own need to make best use of their stock and to assist tenants affected by welfare reforms and other policies, partner housing providers are considering their future involvement in Coventry Homefinder.

Summary of Coventry City Council's Position – Affordable Rent

- The Council recommend that Affordable Rents are capped at the Local Housing Allowance rate at the time of allocation and RPs should also take into account the impact of the overall benefit cap on affordability grounds.
- To enable the effective monitoring of the local social housing supply, it is important that RPs keep the Council informed regarding the conversion of existing stock to Affordable Rent – including details of the property type, size and location.
- Although there are no contractual requirements for RPs to reinvest income generated by Affordable Rent conversions within Coventry, the Council are seeking a commitment from RPs that a reasonable level of investment in the City will take place.
- The Council will seek to ensure that affordable units for the social rented element of affordable housing delivered under Section 106 agreements will be provided for Social Rent, in accordance with our current Supplementary Planning Guidance.
- For the Intermediate Affordable Housing element of affordable housing delivered under Section 106 agreements, any units that have been agreed with Developers to be designated for renting may be at either Affordable Rents (via RPs) or Intermediate Rents.
- The Council recommends that RPs participating in Coventry Homefinder should advertise Affordable Rent properties on Homefinder to ensure fairness and transparency.

3. Housing Allocations

Background Information

- Coventry Homefinder currently operates as an 'open' register. This means that almost anyone can apply for social housing, regardless of their level of need or where they live (provided that they meet the eligibility criteria, which is based mainly on immigration status and residence in the UK).
- The Localism Act 2011 allows local authorities the flexibility to decide which categories of applicant should qualify to join the waiting list. This would allow, for example, a Council to exclude people who don't live in the local area or those who don't have a housing need.
- The statutory 'reasonable preference requirements' remain in force. These rules specify that certain groups of people, for example, those with medical needs and people who are homeless, must be given appropriate priority. This is to ensure local authorities continue to provide for vulnerable people.
- The Localism Act 2011 also enables local authorities to review the basis on which they prioritise applications for housing. Although reasonable preference must still be given to specified groups, it is now possible to give preference to other people for other reasons depending on the needs of the area. For example, it would be possible to give additional priority based on the length of residence or employment status.

Summary of Coventry City Council's Position – Housing Allocations

The new freedoms now available through the Localism Act 2011 are so far-reaching that a substantial review of the Allocations Policy has become necessary. Therefore, the Council's housing allocations system will be subject to a fundamental review.

Separate consultation will be conducted to consider these issues. The Tenancy Strategy will be updated with the key considerations and details of any changes to the allocations policy once this has been undertaken.

As the Government has not changed the 'reasonable preference' categories, these will remain at the forefront of any revised allocations policy.

4. Use of the Private Rented Sector to House Homeless People

Background Information

- The Council has a duty to find accommodation for certain eligible households who are homeless through no fault of their own and who have a priority need; this is the main homelessness duty.
- Previously the Council could offer homeless people accommodation in the private rented sector, but they were under no obligation to accept the offer.
- The Localism Act 2011 gives local authorities the discretion to discharge their main homeless duty into the private rented sector without the consent of the applicant, providing a tenancy is offered for at least 12 months and the property is suitable.
- The homeless duty would recur if the applicant became unintentionally homeless again within two years.

Key Considerations

The Council intend to use the opportunity presented in the Localism Act 2011 to discharge its main homeless duty into the private rented sector.

The Council already work closely with landlords and letting agents in the private rented sector to secure accommodation for homeless people in the City. However, there are key considerations that need to be taken into account – these are set out below.

Demand for social housing

The economic downturn together with reduced government spending and welfare reform is likely to put further pressures on household incomes, which in turn could increase the demand on homelessness services. Alongside this, there is already a shortage of social housing for those in the most urgent need in the City.

Having the flexibility to extend the offer of accommodation for homeless households, to include suitable private sector accommodation would ease some of the pressure on the demand for social housing. In April 2012, there were 22,718 households on the

Homefinder register, of which 2,359 were in urgent or extremely urgent need, but only 2,299 properties became available for letting in 2011/12. The private rented sector can offer households a wider choice of housing types, sizes and locations in the City.

Inappropriate & Expensive Temporary Accommodation

The cost of placing households in temporary accommodation is high. Some households have refused an offer of private rented accommodation even though this has meant them staying in expensive and less appropriate temporary accommodation. By fulfilling our duty to homeless households via an offer of suitable accommodation in the private sector, the Council should be able to reduce temporary accommodation costs.

The physical condition, stress, insecurity and inconvenience of living in temporary accommodation can also impact on people's health and wellbeing and compound the difficulties that people experience on becoming homeless. Living in temporary accommodation can be particularly detrimental to the health and development of children, offering minimal space for children to play and complete homework.

Suitability of accommodation

The Council would need to ensure that only suitable, good quality, properties are used and that properties meet the suitability requirements set out in the Homelessness (Suitability of Accommodation) (England) Order 2012. This is also important to reduce the risk of repeat homelessness.

Working in partnership with private landlords

There is a risk that there could be a lack of suitable properties in the private rented sector and a lack of willing private landlords to house households who have presented as homeless. To mitigate this risk, the Council will maintain and strengthen its relationship with private sector landlords and offer appropriate incentives for them to work with the Council. This includes developing the Council's Access to Private Rented Properties (APRP) scheme. The new scheme provides a non-cash deposit guarantee on behalf of the tenant and advice and support to landlords.

Summary of Coventry City Council's Position – use of the private rented sector to house homeless people

- The Council proposes to make greater use of the private rented sector to house homeless people in suitable accommodation without requiring the consent of the applicant.
- The Council will only use the private rented sector to discharge the homelessness duty when the household has been assessed as being able to sustain a private rented tenancy and where a suitable property is available on a 12-month tenancy.
- The Council will closely monitor the effect of placing people into the private rented sector and whether households present as homeless again after the 12-month tenancy.
- The Council will encourage landlords to offer tenancies of 12 months or more using a range of incentives – for example, advice and support and a non-cash rent deposit guarantee.
- The Council will monitor the impact of welfare benefit changes on the supply of private rented housing as well as on those presenting as homeless due to financial difficulties.

5. Disposal of Social Housing Stock

Background information

- In certain circumstances Registered Providers (RPs) may choose to dispose of their housing stock as it provides a means of securing future investment within the local authority area for more appropriate housing.

Key Considerations

The disposal of social housing stock leads to a loss in the much needed supply of affordable housing. However, it is acknowledged that in certain circumstances this may be justifiable where it allows for future investment within the City to provide more appropriate housing. RPs could decide to dispose of social housing stock because the property requires excessive investment to bring it up to a decent standard or there is such a lack of demand that continual investment is no longer deemed value for money. The Council expects RPs who wish to dispose of any stock to seek agreement from the Council beforehand.

The Council expects RPs to have a disposal policy, which should clearly set out their approach to the disposal of stock and how this will benefit the organisation and the local authority area(s) in which it operates. The Council also expects that all disposal decisions will be taken at RP Board level. If RPs wish to dispose of stock within Coventry, the Council will require the following information to be provided:

- Address of property.
- Type and size of property.
- Whether the property is currently tenanted and if so, how the current tenant will be assisted to find suitable alternative accommodation.
- The projected income from the disposal.
- How and where this income will be used.
- The reason for the disposal (including any cost implications).

Summary of Coventry City Council's Position – Disposal of social housing stock

- The (non-statutory) disposal of social housing properties is discouraged by the Council as it results in a loss in the affordable housing supply.
- If RPs wish to dispose of stock within Coventry, the Council will expect the RP to provide relevant information to the Council beforehand and to provide strong justification for the disposal.

Where Registered Providers' policies can be found

The Localism Act 2011 requires the Tenancy Strategy to include details of where the Tenancy Policies of Registered Providers can be found. As part of the development of the Tenancy Strategy the website link to access this information was requested from Registered Providers operating in Coventry – this is included below if it has been provided.

Tenancy Policies for each Registered Provider are available by contacting the Registered Provider directly.

Registered Provider	Head Office Address	Website
Accord Housing Association Limited	178 Birmingham Road, West Bromwich, West Midlands B70 6QG	www.accordha.org.uk
Anchor Trust	2nd Floor, 25 Bedford Street, London WC2E 9ES	www.anchor.org.uk
Ashram Housing Association Limited	Fairgate House, 205 Kings Road, Tyseley B11 2AA	http://www.ashram.org.uk
ASRA Midlands Housing Association Limited	3 Bede Island Road, Leicester, LE2 7EA	www.asra.org.uk
Bromford Carinthia Housing Association Limited	1 Exchange Court, Brabourne Avenue, Wolverhampton WV10 6AU	www.bromfordgroup.co.uk
Central and Cecil Housing Trust	266 Waterloo Road, London SE1 8RQ	www.ccht.org.uk
Coventry & Warwickshire YMCA	Endeavour Court, 20 Chelmarsh, Daimler Green CV6 3LB	www.coventryandwarwickshire-ymca.org.uk
Coventry Church (Municipal) Charities	c/o Godfrey-Payton, Old Bablake, Hill Street CV1 4AN	
Dimensions UK Limited	1st Floor Churchill House, 6-8 Meetinghouse Lane, Sheffield S1 2DP	www.dimensions-uk.org
Fry Housing Trust	43 Rowley Village, Rowley Regis, West Midlands B65 9AS	www.fryha.org.uk
Habinteg Housing Association Limited	Holyer House, 20-21 Red Lion Court, London EC4A 3EB	www.habinteg.org.uk

Registered Provider	Head Office Address	Website
Heart Of England Housing Association Limited (Orbit)	10 Greenhill Street, Stratford-upon-Avon, Warwickshire CV37 6LG	www.orbitheartofengland.org.uk Policy available: http://www.orbit.org.uk/main.cf?m?type=POLICIES
Home Group Limited	2 Gosforth Park Way, Gosforth Business Park, Salters Lane, Gosforth NE12 8ET	www.homegroup.org.uk
Housing 21	Housing 21 Head Office, The Triangle, Baring Road HP9 2NA	www.housing21.co.uk
Jephson Homes Housing Association Limited	Jephson House, 1 Stoneleigh Road, Blackdown CV32 6RE	www.jephson.org.uk
Jephson Housing Association Limited	Jephson House, 1 Stoneleigh Road, Blackdown CV32 6RE	www.jephson.org.uk
Mercian Housing Association Limited	Gee Business Centre, Holborn Hill, Aston B7 5JR	www.mercian.org.uk
Midland Heart Limited	20 Bath Row, Birmingham B15 1LZ	www.midlandheart.org.uk
Nehemiah United Churches Housing Association Limit	5 Beacon Court, Birmingham Road, Great Barr B43 6NN	www.nehemiah-ucha.co.uk
Starley Housing Co-operative Limited	17a Starley Road, Spon End, Coventry CV1 3JU	
The Abbeyfield Society	Abbeyfield House, 53 Victoria Street, St Albans AL1 3UW	www.abbeyfield.com
The Guinness Trust	17 Mendy Street, High Wycombe, Buckinghamshire HP11 2NZ	www.guinnesspartnership.com
Whitefriars Housing Group Limited	9 Little Park Street, Coventry, CV1 2UR	www.whitefriarshousing.co.uk Policy available: http://www.whitefriarshousing.co.uk/upload/public/documents/webpage/Publications/Policies/Tenancy_Policy.pdf

Equality Issues

Alongside the development of the Tenancy Strategy a full Equality and Consultation Analysis (ECA) has been completed. This considers the effect of the Strategy on different groups protected from discrimination by the Equality Act 2010. It also identifies how any negative impacts identified can be mitigated.

As a result of the ECA, the Tenancy Strategy aims to provide guidance to Registered Providers that will mitigate the potential impacts of changes to Fixed Term Tenancies and Affordable Rents on households with protected characteristics and to ensure that vulnerable people are not disadvantaged. The use of the private rented sector to discharge the main homelessness duty will have a positive impact by providing a settled home more quickly, with a greater range of properties available for homeless households in a wider range of locations.

The ECA identified an overall positive impact arising from the Tenancy Strategy due to the safeguards put in place to mitigate the potential negative impacts of Fixed Term Tenancies and Affordable Rents and the positive impacts that will arise from the use of suitable private rented sector accommodation for homeless households.

The Council expects all RPs to undertake equality analysis of their own Tenancy Policies.

Appendix 1

The Coventry Context – Tenancy Strategy

This appendix presents statistics about Coventry's housing stock and housing market, the demand for housing, the supply of new housing and the affordability of different tenure types. It is intended to provide evidence to support the Tenancy Strategy 2013. In doing so it draws upon various sources of information, including:

- CORE and NROSH+ data sets (nationally collected data on social housing lettings and stock).
- The Coventry Strategic Housing Market Assessment (SHMA) 2012.
- The Draft Coventry Private Sector Stock Condition Survey 2012 (PSSCS). This is currently in draft form and potentially subject to change. This appendix will be updated with the findings of the final document if necessary.
- Data sets managed by Coventry City Council such as the Coventry Homefinder register.

Social Housing in Coventry

Coventry City Council transferred all of the council housing stock to Whitefriars Housing Group in 2000 in a Large Scale Voluntary Transfer (LSVT). This means that the social housing in the City is owned and managed by Registered Providers.

Tenure Profile

The table below shows the tenure distribution of properties in Coventry, as identified by the draft Private Sector Stock Condition Survey 2012. The private rented sector has increased since 2001 and is now estimated at approximately 21% of the total housing stock in the City. Registered Providers own almost 19% of the housing in Coventry.

Table 1: Tenure of Properties in Coventry 2012

Tenure	Dwellings	Per cent
Owner Occupied	82,100	60.6%
Privately Rented	27,900	20.6%
Total - Private Sector Stock	110,000	81.2%
Registered Provider (social housing)	25,400	18.8%
Total – All tenures	135,400	100%

(Draft Private Sector Stock Condition Survey 2012)

The table below shows the change in tenure in Coventry's housing stock between 2001 and 2011. The public sector (social housing) reduced by 5.6% and the private sector stock increased by 6.9%, with an overall increase of 4.3%. The reduction in public sector housing was slower than in the West Midlands (-9.6%) or England (-6.7%). The growth of the private sector (and overall) was also slower in Coventry than the West Midlands or England.

Table 2: Change in tenure in the ten years between 2001 and 2011

		Coventry	West Midlands	England
Public Sector	2001 total	25,840	507,100	4,402,000
	2011 total	24,400	458,400	4,109,000
	Ten year change	-1,440	-48,700	-293,000
	% Change	-5.6%	-9.6%	-6.7%
Private Sector	2001 total	101,250	1,727,600	16,959,000
	2011 total	108,190	1,899,900	18,705,000
	Ten year change	6,940	172,300	1,746,000
	% Change	6.9%	10.0%	10.3%
Total	2001 total	127,090	2,234,700	21,361,000
	2011 total	132,590	2,358,300	22,814,000
	Ten year change	5,500	123,600	1,453,000
	% Change	4.3%	5.5%	6.8%

(SHMA 2012)

Demand for Social Housing - Coventry Homefinder

Coventry Homefinder is the choice based lettings system by which the majority of general needs social housing in Coventry is allocated. Applicants register on the system and are placed in a band (from Band 1A to Band 3B), giving relative priority depending on their housing needs. Band 1A and 1B are those with very urgent housing needs, Bands 2A, 2B and 2C are those with urgent housing needs, and Bands 3A and 3B are other applicants.

Once registered, applicants can 'bid on' (express an interest in) available social housing properties that are advertised each week by the 12 partner Registered Providers.

Numbers on the Register

The total number of applicants on the Coventry Homefinder register has fluctuated since it was introduced in September 2007. From a base of 6,493 in April 2007, the number of applicants rapidly rose to a peak of over 25,000 in 2009/10. A review of the register was carried out in early 2010 and this resulted in a considerable fall in numbers on the register. Since that review, the number of households registering had increased the register again to similar levels, but an upgrade of the IT system carried out in November 2011 now allows an automatic review of each household's application on the anniversary of their registration date. The proportion of households in priority bands 1 and 2 has stayed relatively consistent throughout, at approximately 10% of the total register.

Figure 1 – Trends in the number of applicants on the Coventry Homefinder Register since 2008/09

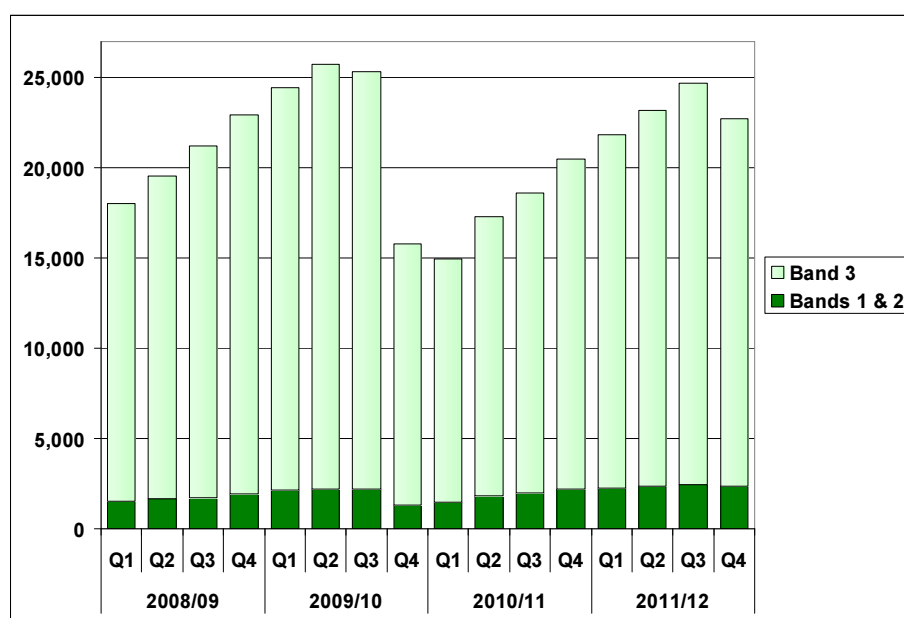


Table 3 – The Coventry Homefinder Register as at 1st April 2012

Band 1A	70
Band 1B	78
Band 2A	1,148
Band 2B	433
Band 2C	630
Band 3A	19,005
Band 3B	1,354
Total	22,718

Priority need bands 1A-2C	2,359	10.4%
Non-priority need bands 3A-3B	20,359	89.6%
Total	22,718	

Active Participation

The Choice Based Lettings system requires applicants to take an active part and exercise choice, by placing a 'bid' on the system to register their interest in particular properties that become available for letting.

Overall, 36% of applicants have never placed a bid on the system, and only 43.5% of applicants (9,885 applicants) placed a bid within the year 2011/12.

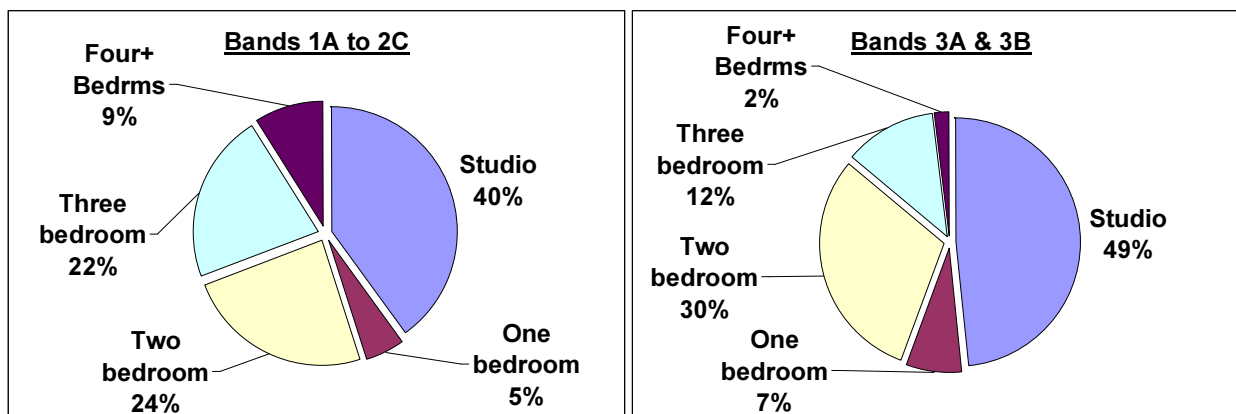
Minimum Bedroom Requirements

When an applicant registers with Coventry Homefinder, their household composition is assessed to determine the minimum number of bedrooms they require. Generally, a higher proportion of applicants in Bands 1 & 2 (priority need bands) require larger, family sized properties.

Table 4 – Minimum Bedroom Requirements of Applicants (2012)

	Numbers			Percentages		
	Bands 1&2	Band 3	Total	Bands 1&2	Band 3	Total
Studio	944	9,835	10,779	40%	48%	47%
One bedroom	115	1,501	1,616	5%	7%	7%
Two bedroom	570	6,204	6,774	24%	30%	30%
Three bedroom	519	2,423	2,942	22%	12%	13%
Four+ Bedrooms	211	396	607	9%	2%	3%
Total	2,359	20,359	22,718	100%	100%	100%

Figure 2 – Minimum Bedroom Requirements of Applicants in Priority Bands 1A – 2C and Non-Priority Bands 3A – 3B (2012)



Mobility and Adapted Properties

Applicants may identify a need for a property with particular design features or adaptations due to a physical disability or mobility need. The number of applicants that have these requirements is relatively small (182 applicants - less than 1% of the overall register) but the group is significant as over 60% of those with mobility needs are in very urgent or urgent housing need (Bands 1&2).

Under occupation and Overcrowding

The 2001 Census indicated that in Coventry 8.1% households were overcrowded compared to 7.1% nationally and 5.6% across the West Midlands. Whitefriars Housing estimate that 2,400 of their working-age tenants are currently under-occupying their property.

In October 2012 there were 686 households in a priority band on the Homefinder register who were recognised as being overcrowded. At the same time, there were 218 households in priority bands on the Homefinder register who were recognised as under-occupying their social home.

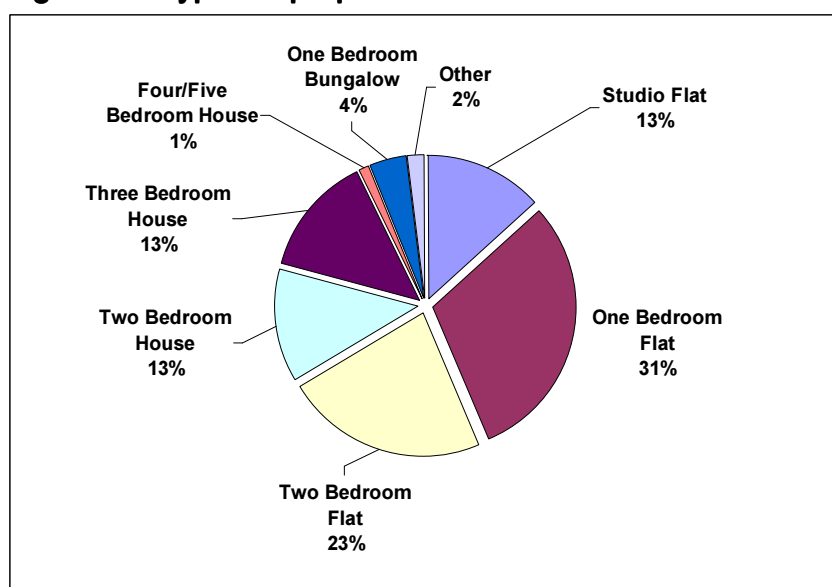
Supply of Social Housing – Properties available through Homefinder

2,299 properties were advertised on Homefinder during 2011/12 and successfully let. Only 16% of the properties advertised had three or more bedrooms. 48% were studio or one bedroom properties suitable for one or two occupants only. 68% of the properties advertised were flats or maisonettes.

Table 5 – Types of properties advertised on Homefinder 2011/12

Property Type	Number	Percentage
Studio Flat	309	13.4%
One Bedroom Flat	695	30.2%
Two Bedroom Flat	520	22.6%
Two Bedroom House	299	13.0%
Three Bedroom House	308	13.4%
Four/Five Bedroom House	30	1.3%
One Bedroom Bungalow	91	4.0%
Other	47	2.0%

Figure 3 – Types of properties advertised on Homefinder 2011/12

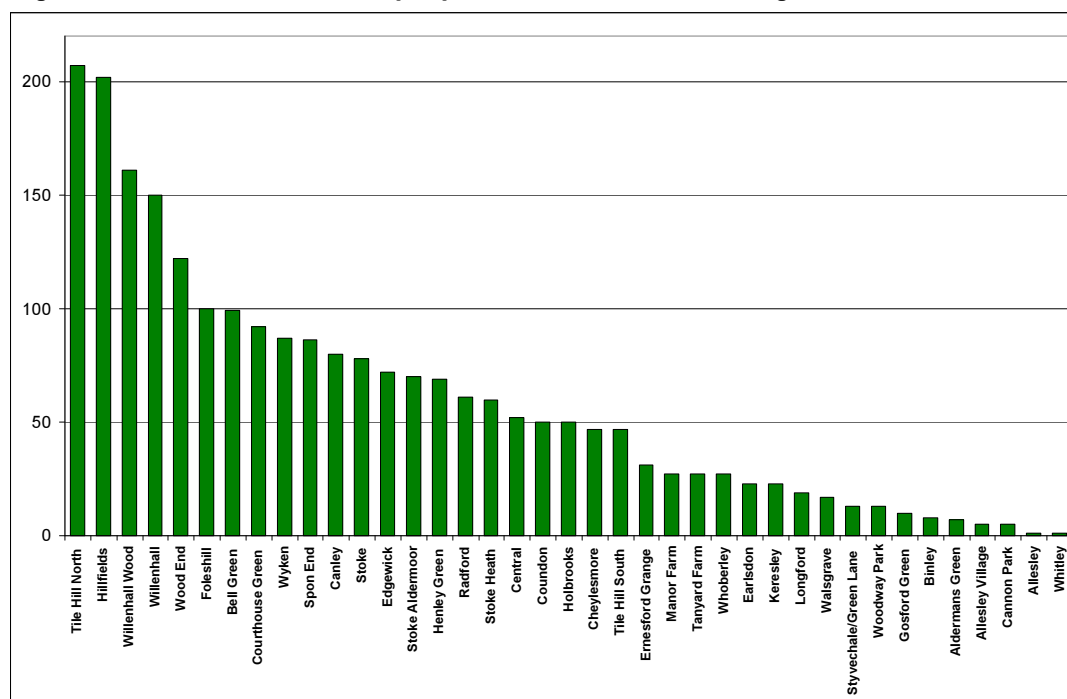


Of the properties advertised and let during 2011/12, 57% were in just ten areas of the City. Much of the City's social housing stock is concentrated in these areas of former Council housing estates.

Table 6 – Area/Location of properties advertised during 2011/12

	Area	Total	%		Area	Total	%
1	Tile Hill North	207	9.00%	21	Cheylesmore	47	2.04%
2	Hillfields	202	8.79%	22	Tile Hill South	47	2.04%
3	Willenhall Wood	161	7.00%	23	Ernesford Grange	31	1.35%
4	Willenhall	150	6.52%	24	Manor Farm	27	1.17%
5	Wood End	122	5.31%	25	Tanyard Farm	27	1.17%
6	Foleshill	100	4.35%	26	Whoberley	27	1.17%
7	Bell Green	99	4.31%	27	Earlsdon	23	1.00%
8	Courthouse Green	92	4.00%	28	Keresley	23	1.00%
9	Wyken	87	3.78%	29	Longford	19	0.83%
10	Spon End	86	3.74%	30	Walsgrave	17	0.74%
11	Canley	80	3.48%	31	Styvechale/Green Lane	13	0.57%
12	Stoke	78	3.39%	32	Woodway Park	13	0.57%
13	Edgewick	72	3.13%	33	Gosford Green	10	0.43%
14	Stoke Aldermoor	70	3.04%	34	Binley	8	0.35%
15	Henley Green	69	3.00%	35	Aldermans Green	7	0.30%
16	Radford	61	2.65%	36	Allesley Village	5	0.22%
17	Stoke Heath	60	2.61%	37	Cannon Park	5	0.22%
18	Central	52	2.26%	38	Allesley	1	0.04%
19	Coundon	50	2.17%	39	Whitley	1	0.04%
20	Holbrooks	50	2.17%				

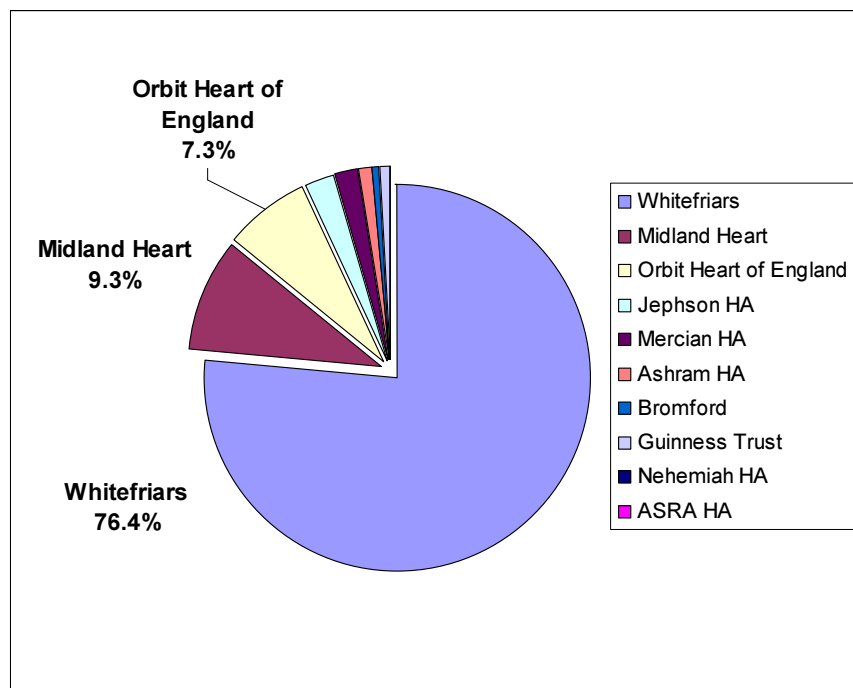
Figure 4 - Area/Location of properties advertised during 2011/12



The majority of social housing properties in Coventry are owned and managed by Whitefriars Housing Group, and this is reflected in the properties that became

available for letting during 2011/12. 76.4% were Whitefriars properties, 9.3% were Midland Heart properties, 7.3% were Orbit properties.

Figure 5: Landlords of Properties Advertised on Coventry Homefinder 2011/12



Comparison –

Demand and Supply of Social Housing through Coventry Homefinder

A total of 272,573 bids were placed on the Homefinder system during 2011/12, which gives an overall average of 117 bids per property. The highest number of bids for a single property during 2011/12 was 752, for a three bedroom house in Radford.

Table 17 shows the minimum bedroom need of the applicants on the Homefinder register on 1st April 2012, and the bedroom numbers of the properties that were actually advertised during 2011/12.

This gives an illustration of the shortage of large, four bedroom properties for households with reasonable preference (30 properties available during the year, compared to 211 households with priority banding and 396 without). It also shows that the number of smaller studio/one bedroom properties that were advertised is

similar to the number with reasonable preference, but the number of households in Band 3 with this bedroom need is very high.

Table 7: Coventry Homefinder comparison of bedrooms required by applicants and properties available 2011/12

Properties by Bedroom - Advertised during 2011/12		Requirement by minimum bedroom need - Register on 1st April 2012	
Property Size	Number of properties	Bands 1&2 (very urgent/urgent housing need)	Band 3
Studio/1 bedroom	1,103	1,059	11,336
2 bedrooms	824	570	6,204
3 bedrooms	342	519	2,423
Four+ bedrooms	30	211	396
Total	2,299	2,359	20,359

CORE data on new social housing lettings 2011/12

The CORE database contains details of new social housing lettings made during 2011/12. 2,208 general needs lettings were made during 2011/12.

Of the 2,208 general needs lettings made during 2011/12:

- 515 lets (23%) were made to households that were already tenants of a Registered Provider.
- 1,080 (49%) were properties that had become available due to the previous tenant moving to the private sector or to other accommodation.
- 1,304 (59%) of lettings were made to households whose source of income is solely from state benefits/state pension. A further 264 (12%) have income partly made up from state benefits/state pension. These may be affected by welfare reform.

Table 8 - Types of tenancies issued by Registered Providers for general needs lettings during 2011/12:

Tenancy Type	Number
Assured	1,832
Secure	2
Starter/introductory tenancy	374
Total	2,208

(CORE 2012)

Homelessness in Coventry

During the year 2011/12, 1146 households approached the Council for assistance and completed a homelessness application. After assessment, 576 were found to be homeless, eligible, in priority need and not intentionally homeless (known as 'statutorily homeless' or 'acceptances', and owed the main homelessness duty).

Table 9 - Homelessness Applications - Decisions Made

Year	Applications/ Decisions Made	Accepted as Statutorily Homeless
2007/08	1159	528
2008/09	1859	550
2009/10	1533	538
2010/11	1751	703
2011/12	1146	576

New Affordable Housing Development

The Strategic Housing Market Assessment (SHMA) carried out in 2008 identified the need for an additional 304 affordable homes to be provided in the City each year. This was the target for affordable housing development for the period 2008/09 to 2011/12. Over the past five years, there has been an average of 335 additional affordable dwellings per year.

An updated SHMA has been completed during 2012, which has identified that the annual need for additional affordable homes has increased to 649 per year. This includes 1295 dwellings that have already gained planning permission (259 annually over the 5 year period) and an additional 1949 homes required (390 annually) in addition to this. A proportion of this need will be met in the private rented sector.

Table 10 – Affordable Housing Completions since 2005/06

Year	Social Rented	Intermediate	Total
2005/06	144	10	154
2006/07	109	145	254
2007/08	275	97	372
2008/09	254	114	368
2009/10	220	92	312
2010/11	117	154	271
2011/12	204	147	351

Housing Market and Affordability

The Strategic Housing Market Assessment (SHMA 2012) identified five housing market sub-areas in the City. More detail on the characteristics of each sub-area can be found in the SHMA, but a summary is provided below:

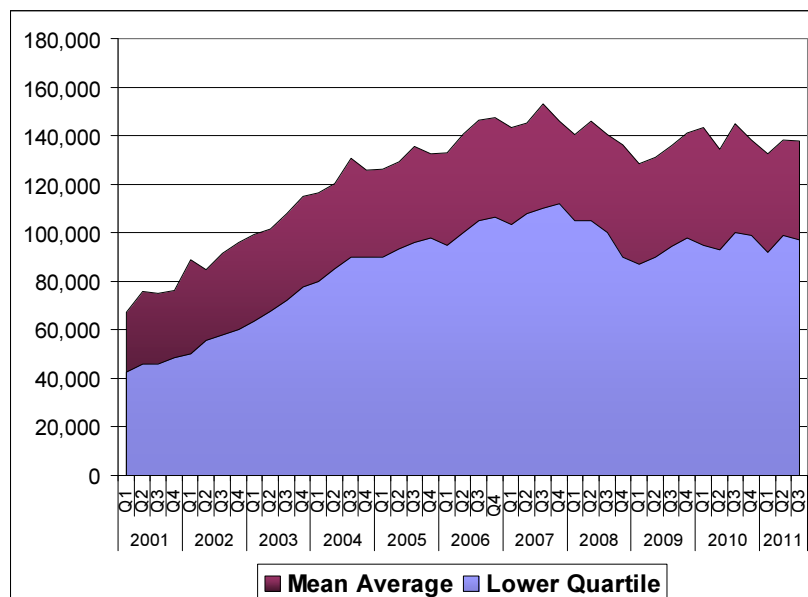
Table 11: Housing Market Sub-Areas identified in the SHMA 2012

Higher-Value South	<ul style="list-style-type: none"> • Earlsdon and Wainbody wards. • Highest house prices across all types. • Low proportion of social housing. • Affluent socio-economic profile.
Mid Value Suburbs	<ul style="list-style-type: none"> • Westwood, Woodlands, Cheylesmore and Bablake wards. • Mix of property types. • Higher values than most of the City but lower than the south areas. • Some areas of social housing concentration.
Mixed Character Inner	<ul style="list-style-type: none"> • Whoberly, Sherbourne, Lower Stoke and Wyken wards. • More urban and mixed in character. • Medium-level house prices.
Peripheral Estates	<ul style="list-style-type: none"> • Henley and Binley & Willenhall wards. • Large estates built as social housing. • Relatively high proportion of flats.
Lower Value North	<ul style="list-style-type: none"> • St Michael's, Foleshill, Longford, Radford, Holbrook and Upper Stoke wards. • Lowest property prices in the City. • Greatest spatial concentrations of deprivation

Property Prices in Coventry

Due to the credit crunch in 2008 and the recession which followed, property prices in Coventry fell, as they did across the country. Average prices have since been unstable and have stayed below the peak average price of £153,149 in quarter 3 of 2007.

Figure 6: Average (mean) and Lower Quartile property prices in Coventry.



(CLG Live Tables 581 and 583)

Market (Private Sector) Rents

The SHMA also analysed the cost of renting in the private sector in each of the housing market sub-areas of Coventry.

Table 12: Market (private sector) rents by size and housing sub-area

	Higher Value South	Mid Value Suburbs	Mixed Character Inner	Peripheral Estates	Lower Value North	City Wide
1 bedroom	£400	£378	£390	£375	£350	£370
2 bedrooms	£525	£505	£508	£444	£495	£500
3 bedrooms	£675	£591	£595	£595	£550	£580
4 bedrooms	£1,000	£900	£971	£650	£800	£895

(SHMA 2012)

'Affordable Rents' in Coventry

As part of the Homes and Communities Agency funding programme for 2011-15, a new tenure called 'Affordable Rent' has been developed, allowing Registered Providers to charge rents of up to 80% of market rents on new build properties and a proportion of re-let social housing properties.

As Affordable Rents are based on a percentage of market rental value, they are subject to greater variation across the City and Affordable Rent properties in high value areas may cost more to rent than those in low value areas. The SHMA contains details of the potential level of Affordable Rents in the housing market sub-areas of the City.

Table 13 - Potential maximum cost of 'affordable rented' housing by size and sub-area (per month)

Property Size	Higher Value South	Mid Value Suburbs	Mixed Character Inner	Peripheral Estates	Lower Value North	City Wide
1 bedroom	£320	£302	£312	£300	£280	£296
2 bedrooms	£420	£404	£406	£355	£396	£400
3 bedrooms	£540	£473	£476	£476	£440	£464
4 bedrooms	£800	£720	£777	£520	£640	£716

(SHMA 2012)

Social Housing Rents in Coventry

Social Rents are regulated by the Government and calculated using a formula which takes into account the location, type and size of the property, and average local earnings.

Table 14 - Monthly average social rent levels

Property Size	Higher Value South	Mid Value Suburbs	Mixed Character Inner	Peripheral Estates	Lower Value North	City Wide
1 bedroom	£353	£316	£316	£318	£319	£318
2 bedrooms	£394	£377	£365	£354	£347	£356
3 bedrooms	£410	£400	£392	£359	£373	£375
4 bedrooms	-	£422	£448	£423	£412	£423

(SHMA 2012)

Affordability analysis

A household is considered able to afford to buy a home if it costs 3.5 times the gross household income (or less); and a household is considered able to afford rented housing in cases where the rent payable would constitute no more than 25% of gross income.

The Strategic Housing Market Assessment (SHMA) used entry-level (lower quartile - LQ) housing costs to analyse the affordability of purchasing and renting market housing in Coventry, alongside Affordable Rents at 80% of market rents, and Social Rents.

Table 15 - City-wide prices and rents used for affordability analysis

Size	LQ purchase price	LQ private rent (pcm)	'Affordable rent' (pcm)	Social rent (pcm)
1 bedroom	£64,400	£369	£296	£318
2 bedrooms	£85,500	£499	£400	£356
3 bedrooms	£117,600	£578	£464	£375
4 bedrooms	£193,400	£896	£716	£423

(SHMA 2012)

Table 16 - Indicative annual income required to purchase/rent a 2 bedroom property without additional subsidy.

	Income required for purchase/rent			
	Entry level purchase price	Entry level private rent	Affordable rent (80% market)	Average social rent
City Wide	£24,400	£24,000	£19,200	£17,100

(SHMA 2012)

Affordability analysis shows that the difference between Social Rent and Affordable Rent is much greater for larger property types. It, therefore, follows that there is a bigger gap between the percentage of households that are able to afford Social Rents and those that are able to afford Affordable Rents for larger property size needs.

The data for four bedroom homes is stark – if Affordable Rented housing is provided at 80% of market rents, over one quarter (28%) of households who would have been

able to afford Social Rents, would not be able to afford Affordable Rents without the need for Housing Benefit.

Table 17 – Monthly affordability analysis for Affordable Rented accommodation by accommodation size.

	1 bed	2 bed	3 bed	4 bed
Affordable Rent (AR) - set at 80% of market rent	£295	£399	£462	£717
Social Rent (SR)	£318	£356	£375	£423
Difference between Social and Affordable Rents	-£23	£43	£87	£294
% of households unable to afford Affordable Rent	78.4%	64.4%	66.7%	90.0%
% of households unable to afford Social Rent	82.1%	56.4%	52.3%	61.7%
% of households in the gap between AR & SR	-3.7%	8.0%	14.3%	28.3%

(SHMA 2012)

Affordable Rent may be set at levels up to 80% of market rent, but it may be appropriate to set the rent levels at a lower percentage of market rent, particularly for higher cost housing and larger properties. The table below shows the percentage of people who would be able to afford Affordable Rent at different levels of discount from market rent.

Table 18 - Affordability at different levels of discount from Market Rents, by size required.

% of households	1 bedroom	2 bedrooms	3 bedrooms	4 bedrooms
Unable to afford market entry-level housing	88.8%	78.8%	80.7%	94.7%
Unable to afford at 80% of market entry-level	78.4%	64.4%	66.7%	90.0%
Unable to afford at 70% of market entry-level	69.5%	55.1%	58.0%	84.2%
Unable to afford at 60% of market entry	60.6%	44.2%	46.7%	76.4%
Unable to afford at 50% of market entry	46.6%	33.5%	35.4%	64.9%
Unable to afford Social Rents	82.1%	56.4%	52.3%	61.7%
Difference between 80% market rent & Social Rent	-3.7%	8.0%	14.3%	28.3%

(SHMA 2012)

Directory of Registered Providers with housing stock in Coventry

Table 19 – Stock owned by Registered Providers in Coventry

RP Name	General needs - Self contained	Supported housing	Housing for older people	Low Cost Housing Units (eg shared ownership)
Accent Foundation Limited	0	0	0	1
Accord Housing Association Ltd	293	6	49	0
Advance Housing & Support Limited	0	0	0	7
Anchor Trust	0	0	184	0
Ashram Housing Association Limited	132	0	0	25
Bromford Housing Association Ltd	19	0	0	0
Central and Cecil Housing Trust	0	0	11	0
Coventry & Warwickshire YMCA	32	15	0	0
Coventry Church (Municipal) Charities	0	0	75	0
Dimensions (UK) Limited	0	13	0	0
Fry Housing Trust	0	17	0	0
Habinteg Housing Association Limited	2	0	0	0
Heart Of England Housing Association Limited (Orbit)	1340	105	209	0
Home Group Limited	0	31	0	0
Housing 21	0	0	19	0
Jephson Homes Housing Association Limited	415	31	60	79
Jephson Housing Association Limited	68	4	62	0
Mercian Housing Association Limited	556	0	0	101
Midland Heart Limited	2558	254	517	229
Nehemiah United Churches Housing Association Limit	21	0	0	0
Orbit Group Limited	34	0	0	81
Places for People Homes Limited	0	0	0	13
Starley Housing Co-operative Limited	125	0	0	0
The Abbeyfield Society	0	0	9	0
The Guinness Trust	300	0	9	0
West Mercia Homes Limited	16	0	0	34
Whitefriars Housing Group Limited	16017	0	710	11

(NROSH+ data 2012)

Appendix 2



Glossary of Terms

Affordable Housing	Affordable housing includes Social Rent, Affordable Rent and Intermediate housing (including Low Cost Home Ownership options), provided to eligible households whose needs are not met by the market.
Affordable Rent	Rented housing let by Registered Providers to eligible households at a rent of no more than 80% of the local market rent.
Equality Impact Assessment	A tool to assess the consequence of a service, strategy or policy has on certain groups to ensure that, as far as possible, negative consequences are eliminated, no individual or group is discriminated against and opportunities for promoting equality are maximised.
Extra Care Housing	Housing set up to provide care and housing support to elderly people who are finding it increasingly difficult to cope due to physical frailty.
Fixed Term Tenancies (FTT)	A tenancy which runs for a fixed period of time and is reviewed, and either renewed or terminated, at the end of the fixed term. From April 2012, councils and Registered Providers are able to offer FTTs instead of having to offer long-term security of tenure as previously required.
Homefinder	The name of the Housing Register for the allocation of affordable housing to rent in Coventry.
Homes and Communities Agency (HCA)	The national housing and regeneration delivery agency for England, with the role to contribute to economic growth by enabling and helping communities to deliver high-quality housing that people can afford.
Housing Benefit & Local Housing Allowance (LHA)	Financial assistance offered by the Government to eligible people on low incomes, whether they are working or not, to help to pay all or part of their rent.

Housing Need	Defined as the number of households who lack their own housing or live in unsuitable housing and who cannot afford to meet their needs in the market.
Intermediate Housing	Housing at prices and rents above those of social rent but below market price or rents.
Low Cost Home Ownership	Housing schemes that allow households with modest incomes to purchase a share of a home, e.g. through Shared Ownership (part-rent, part-buy).
Market housing	Housing available for purchase on the open market and at full price.
Registered Provider (RP)	All providers of social housing who are registered with the HCA. A Registered Provider can be either a non profit organisation or a profit-making organisation.
Section 106 agreements	Through negotiation, a planning condition can be imposed whereby a proportion of new homes must be made available for affordable housing (e.g. for rent or low cost home ownership).
Sheltered Housing	Sheltered housing is age restricted accommodation designed for people who wish to maintain and improve their independent lifestyle.
Social Rented housing	Rented housing owned and managed by Registered Providers for which guideline target rents are determined through the national rent regime.
Strategic Housing Market Assessment (SHMA)	An assessment of housing need and demand within a defined housing market area. This provides a good understanding of how housing markets operate.
Supported or Specialist Housing	The term describing housing for a particular client group e.g. elderly, people with a disability or suffering from mental illness.
Sustainable Communities/development	Based on the idea that the quality of people's lives, and our communities, are affected by a combination of economic, social and environmental factors. Sustainability is achieved by understanding the links between these factors.
Tenancy Policy	A RP's policy that defines how the provider will make decisions about the types of tenancy they will provide to tenants.

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Equality and Consultation Analysis Template

Guidance for completion

- Equality analysis is a way of considering the effect on different groups protected from discrimination by the Equality Act 2010, during the Council's decision making processes.
- These 'protected groups' are those defined by race, age, gender, disability, sexual orientation, gender reassignment, religion or belief, pregnancy, maternity or breastfeeding.
- Please remember to consider children and young people as a specific group that you may need to consider the impact on, and engage with during this analysis.
- Equality analysis will help you consider whether the decision you want to take:
 - will have unintended consequences for some groups; and
 - if the service or policy will be fully effective for all target groups.
- The Council also has a statutory duty to consult.
- This equality and consultation analysis template will require you to demonstrate how equality information and the findings from consultation with protected groups and others, has been used to understand the actual or potential effect of your service or policy on the protected groups and to inform decisions taken.
- The template should summarise key issues arising from information that has been collected, analysed and included in other key documents e.g. Needs Analysis, Baseline Reports etc.
- This form should be completed on an ongoing basis at each stage of any formal decision making process. Failure to comply with this will put the Council (and specifically the elected member or officer making the decision) at risk of judicial review.
- For further help and support please contact Helen Shankster on 7683 4371 (consultation advice), Sheila Bates on 7683 1432 (CLYP consultation advice) or Jaspal Mann on 7683 3112 (equalities advice).

Context

Name of analysis	Coventry Tenancy Strategy 2013-18
Officer completing analysis	Kimberley Fawcett
Date	November 2012

1. Briefly describe the area of work this analysis relates to:

This analysis relates to the Coventry Tenancy Strategy 2013-18, which sets out the Council's position on how Registered Providers should use Fixed Term Tenancies and Affordable Rents, and how the Council intends to use the new power to discharge the main homelessness duty with the offer of a private rented property/tenancy. These reforms have been introduced by the Localism Act 2011 and by changes to the Regulatory Framework for Social Housing in England from April 2012 (Homes & Communities Agency). The Localism Act 2011 placed a statutory requirement on local authorities to develop a Tenancy Strategy.

Coventry City Council no longer owns social housing following a Large Scale Voluntary Transfer of its stock to Whitefriars Housing Group in 2000. It is important to note that Registered Providers must 'have regard' to the Council's Tenancy Strategy, but are not required to comply with it. Registered Providers will implement their own policies on Fixed Term Tenancies and Affordable Rent. They must also comply with the Regulatory Framework for Social Housing in England from April 2012 (Homes and Communities Agency)

A brief description of the main changes that are addressed in the Tenancy Strategy:

Fixed Term Tenancies - Registered Providers of social housing are now able to offer a Fixed Term Tenancy to new tenants, rather than a 'lifetime' tenancy. The Fixed Term Tenancy should be for a minimum term of 5 years (however, a minimum fixed term of 2 years is allowed in exceptional circumstances).

'Affordable Rent' - The Government has introduced a framework for delivering new affordable housing, changing the way new social housing is funded through the Homes and Communities Agency (HCA). The level of grant to build new affordable housing has been significantly reduced and the cost of building new homes will be covered by letting them at 'Affordable Rents', which can be up to 80% of market rents. Registered Providers will also be able to convert a proportion of re-lets of existing homes to the 'Affordable Rent' model, so the rents for new tenants moving into those specific homes will be up to 80% of market rent, rather than previous social rent levels.

Homelessness Duties - The Council has a duty to find accommodation for certain eligible households who are homeless through no fault of their own and who have a priority need (known as the main homelessness duty). Previously, the Council could offer a tenancy in the private rented sector, but if the applicant refused, the Council still had a duty to find accommodation in social housing. The Localism Act 2011 has changed this – it gives local authorities the discretion to offer a suitable private rented property as the final offer to discharge the main homelessness duty, without requiring the consent of the applicant. The Act also introduced greater flexibilities for Councils in their Allocations Policies.

Scoping the analysis

2. Who are the key stakeholders, both existing and potential, that could be impacted by this work?

Members of the public and their families including residents of the city in general, but particularly those living in or needing social housing.

Applicants who have registered with Coventry Homefinder (wishing to access social housing).

Homeless households.

Registered Providers operating in Coventry.

Private Landlords.

3. From the list above, which of these constitute protected groups?

None of the key stakeholder groups constitute a protected group in their entirety, however, applicants on the Coventry Homefinder Register, residents who require affordable housing in the future and homeless households will contain households or individuals that have protected characteristics. However, as can be seen from the data analysis in question 8 below, certain protected groups are over-represented within some of the key stakeholder groups.

4. Which of the key stakeholders (including representatives of protected groups) will need to be kept informed, consulted or actively involved in this area of work?

Key Stakeholder	Type of Involvement*	Method(s) used
Residents	Consultation	Public online consultation
Registered Providers	Involvement and Consultation	Meetings. Public online consultation with an email invitation to participate. Specific consultation on the draft strategy document.
Private Landlords	Consultation	Public online consultation with an email invitation to participate.
Representatives of protected groups	Consultation	Public online consultation with an email invitation to participate.
Advice Agencies	Consultation	Public online consultation with an email invitation to participate.

* *Information, Consultation or Involvement*

5. Which, if any, parts of the general equality duty is the service relevant to? Please mark with an 'X'.

Eliminate discrimination, harassment and victimisation.

Advance equality of opportunity between people who share relevant protected characteristics and those who do not.

Foster good relations between people who share relevant protected characteristics and those who do not.

6. What information is available to be used as part of this analysis?

Analysis of the Coventry Homefinder register, including equalities monitoring data.
Analysis of homelessness applications made to the Council, including those households accepted as Statutorily Homeless and owed the main homelessness duty.
Outcomes of the consultation exercises undertaken.

7. What are the information gaps?

Equalities monitoring data is collected as part of the application process for Coventry Homefinder via a self-completed application form. Some of the equalities data fields are mandatory (date of birth, ethnicity) and information is comprehensive. However, some fields are not mandatory (religion, sexual orientation, etc) and therefore there are gaps where a significant proportion of applicants have opted not to provide the information. Information on disability is recorded when an applicant's housing situation has an impact on their disability and they require a property with specialist adaptations.

Data analysis

8. Please summarise below the key issues that your data is telling you.

Data from the Homefinder Register as at 1st April 2012 shows:

Ethnic Origin - 63% of households on the Homefinder register identify their ethnic origin as White-British, compared to an estimated 74% of the total population of Coventry. 33% identify their ethnic origin as a group other than White-British (4% choose not to state their ethnic origin).

11.4% of the households in the priority bands (and 9.1% of the total register) identify themselves as Black-African, but population estimates state that Black-African people make up 1.6% of the Coventry population. Other groups that are over-represented compared to the population of Coventry (although to a lesser extent) include: White-Other; Asian-Other; Black Caribbean; Black-Other; Mixed White and Black Caribbean; and Other ethnic origin.

1.9% of applicants on the Homefinder register are Asian-Indian, compared to 7.7% of the total population of the city, meaning that this group are under-represented on the

register. Other groups that are under-represented include: White-British (described above); Chinese; White Irish.

Age - The majority of Homefinder applicants are aged between 18 and 45 years (79% of the total register). Those aged over 65 make up a small proportion of the overall register (3.9% of the total) but a disproportionately large proportion of those over 65 have a housing need which has resulted in them being placed in a priority band. 21% of those registered over 65 are in a priority need band, compared to 10.4% of the overall register in a priority need band.

Disability - Disability is recorded on the Homefinder register when an applicant's housing situation has an impact on their disability and they require a property with specialist adaptations. The number of applicants with a disability that requires specially adapted housing is low (less than 1% of the register). However, of those that are registered that require adapted housing, 60% are in a priority band due to their housing need.

Gender - A higher proportion of main applicants on the register are female (56%) than male (44%).

Data regarding applicants who have made a homelessness application to the Council in 2011/12 shows:

In 2011/12, there were 1146 homelessness applications. Of these 576 were accepted as meeting the statutory criteria of homelessness - homeless, eligible, unintentionally homeless, and in priority need. (P1E data).

Race - Where race was stated 62% of statutorily homeless people were White, 13% Black, 6% Asian 5% mixed race .The demographics of Coventry (2009) show that there is a population of 3.1% Black/Black British people in the City – this group is significantly over represented in the homelessness statistics. 0.5% of statutory homelessness was due to racially motivated violence or racially motivated harassment.

Age – 35% of statutorily homeless people were aged between 16 and 24. The highest age group affected are people aged between 25 and 44, these account for 54%.

Gender - Many of the statutorily homeless households were family units, gender is only recorded for single applicants and lone parents. There were 315 single homeless people with dependent children – 14 of these were male applicants, the other 301 were female. There were 122 single homeless people with no dependents. These were split more evenly – 60 were female and 62 male. 122 Households were couples with dependent children.

Disability – 55 statutorily homeless people stated they had a disability, of these 30 were people with physical disabilities and 25 people with a mental illness.

Pregnancy –60 statutorily homeless women stated they were pregnant with no dependent children.

Generating and evaluating options

9. What are the different options being proposed to stakeholders?

The stakeholders were asked to consider:

Whether the Council should support the use of Fixed Term Tenancies.

What circumstances should be taken into account when considering the use of Fixed Term Tenancies.

Whether the Council should support the use of Affordable Rents.

What circumstances should be taken into account when considering the use of Affordable Rent.

Whether the Council should use the new power to discharge the main homelessness duty with the offer of a suitable private rented property, without requiring the applicant's consent.

What circumstances should be taken into account when deciding whether to discharge the main homelessness duty in the private rented sector.

10. How will the options impact on protected groups or those experiencing deprivation?

The Department for Communities and Local Government carried out Equality Impact Assessments for the Affordable Rent policy and the changes to discharging the main homelessness duty. They are available online:

<http://www.communities.gov.uk/publications/localgovernment/localismhomelessnesseia>
<http://www.communities.gov.uk/publications/housing/affordablerentpolicy>

Regarding Fixed Term Tenancies:

Fixed Term Tenancies would impact new tenants of social housing providers that opt to use them (not existing tenants remaining in their current homes).

No impact has been identified based on race, religion/belief, pregnancy and maternity, gender, gender re-assignment, or sexual orientation.

There may be some impact based on age and disability. Shorter than lifetime tenancies, if offered, may be less suitable for some disabled households who have long term specific housing needs and for whom there is more limited alternative adapted accommodation available. Families with school-age children may be negatively impacted if they are required to move away from existing schooling arrangements. However, there may be a positive impact on overcrowded households with children if more large properties are made available if Registered Providers chose not to renew the Fixed Term Tenancies of under-occupiers.

Depending on how Fixed Term Tenancies are implemented by Registered Providers, there may be a positive impact on the wider group of households in housing need as more social housing properties may become available for re-letting where Fixed Term Tenancies are not renewed. However, there may be a negative impact on wider community cohesion and stability if households are required to move from established community and support networks if their Fixed Term Tenancy is not renewed.

Regarding Affordable Rents:

The use of Affordable Rents for new build affordable housing and a proportion of social housing re-lets may negatively affect households who are on a low income or on full benefits in terms of affordability and may act as a disincentive for out of work households to seek employment. Affordable Rents are, however, at least 20% lower than equivalent market rents and enable development of additional housing for households in housing need.

The use of Affordable Rent has been agreed in the funding contracts entered into by individual Registered Providers and the Homes & Communities Agency. It is, therefore, largely outside of the Council's control.

Regarding the use of the private rented sector to discharge the main homelessness duty:

Within homelessness legislation, priority is given to certain groups who have vulnerability or priority need for housing assistance (this can include a disability, dependent children or pregnancy, young people etc). Combined with the fact that some groups with protected characteristics are over-represented (such as those from BME communities) among homelessness acceptances, means that these groups will be affected by any change in the way that the main homelessness duty can be fully discharged. However, if accommodation in the private rented sector is offered, it must be suitable for the applicant's household (including affordability, location, condition, size etc) and applicants have a right to appeal.

There may be positive impacts for individual households if a wider range of properties is available by using the private rented sector to discharge the main duty. This will enable greater opportunities for households to remain close to schools, family or support networks. Also, applicants are likely to be provided with a settled home more quickly, reducing the negative impact of staying in temporary accommodation such as B&B rooms. This is particularly relevant for larger families who may face a long wait for a suitable social housing property to become available. The Council will still be able to bring the main homelessness duty to an end with the offer of a social tenancy if the private rented sector is not suitable for the household.

11. Please detail how you could mitigate any negative impacts.

Negative impacts can be mitigated by ensuring that the final Tenancy Strategy takes into account the needs of different groups and sets out appropriate safeguards for vulnerable households.

12. Identify which contractors or service users would be negatively affected by the options

Fixed Term Tenancies and Affordable Rents will be implemented by Registered Providers, who must have regard to the Tenancy Strategy but are not required to comply with the Tenancy Strategy. We would expect that they undertake their own impact assessment to ensure that any negative impacts on protected equalities groups are minimised.

Formal consultation

13. Who took part in the consultation? *Please also specify representatives of any protected groups.*

The consultation document and an online survey were available on the Council's website for anyone with an interest in housing in the city to complete.

An email was sent to key stakeholders to alert them of the consultation and invite them to participate. This was sent to a wide range of contacts including: Registered Providers; advice agencies; key contacts for consultation of protected equalities groups; elected members; the Coventry Partnership Housing Theme Group and other key partnership groups; providers of housing-related support and homelessness services; tenants and residents associations; and private landlords.

The email was also sent to residents on the Council's consultation contact database.

A total of 44 responses were received, including 11 from respondents that identified themselves as representing an organisation or group. 27 stated that they were responding as individuals (6 skipped this question).

Equalities monitoring questions were asked of the respondents that identified themselves as an individual. 25 respondents completed the equalities monitoring questions.

Five individuals identified themselves as disabled, one of whom had a disability which meant that they had specific housing requirements. The majority of respondents were in the 35-64 years age group (80%). 24% (6) were male and 76% (19) were female. The majority (80% - 20 respondents) identified their ethnic origin as White British. Other respondents were Indian (8% - 2), Caribbean (4% - 1), White Irish (4% - 1) and White Other (4% - 1).

Following this initial consultation, a Draft Tenancy Strategy was developed. This was circulated to all Registered Providers that operate in Coventry for them to be able to comment, as required by the Localism Act 2011.

14. What were the key findings of the consultation?

Regarding the use of Fixed Term Tenancies:

74% of respondents answered that the Council should support the use of Fixed Term Tenancies, 26% answered that the Council should not support the use of Fixed Term Tenancies.

Those that thought the Council should support the use of Fixed Term Tenancies cited reasons such as: the opportunity to remove tenants who engaged in anti-social behaviour; the lack of social housing and opportunity to ensure best use of the existing housing available; changing needs of households over time; changing circumstances

such as income levels; and reducing the 'complacency' of the guarantee of a home for life.

Those that thought the Council should not support Fixed Term Tenancies cited community stability and cohesion, concern over the fair application of Fixed Term Tenancies, the lack of security and anxiety the Fixed Term could cause, the need to remain close to family and support networks, and schooling for children.

Respondents felt that Fixed Term Tenancies were NOT suitable for: households with a long term health need or disability; elderly households; those moving into supported, extra care or sheltered housing; other vulnerable groups; and those whose housing needs were not likely to change.

Respondents felt that Fixed Term Tenancies WERE suitable for: young people; households whose circumstances were likely to change; those on their first tenancy; couples/single people without dependent children; those with a previous record of anti-social behaviour.

Some respondents felt that households with dependent children required the stability of a 'lifetime' tenancy, whereas others felt that Fixed Term Tenancies could be more suitable to ensure that the property meets the changing needs of the family through time (for example, when older children leave home and the property becomes under-occupied).

Exceptional circumstances where a two year fixed term may be appropriate were identified as - tenants who had a poor tenancy history (past evictions or arrears) and those with a record of anti-social behaviour.

Regarding the use of 'Affordable Rent':

Respondents identified several factors which should be taken into account when setting the level of Affordable Rent including: the affordability for individual households; average incomes; average market rents; housing benefit changes and benefit caps; the conditions of the Registered Providers' contracts with the HCA.

When asked whether any types of properties should NOT be let at Affordable Rents, respondents cited: supported/sheltered properties; large family homes; specially adapted properties.

Regarding the option to use the offer of a suitable private rented sector tenancy to discharge the main homelessness duty without requiring the consent of the applicant:

72% of respondents supported the use of the private rented sector in this way for homeless households, 28% did not.

Respondents felt that the private rented sector should not be used for homeless applicants who: are vulnerable; have a low income; are disabled or have long term health needs; have a previous record of anti-social behaviour.

Respondents felt that the private rented sector should be used for homeless households who: have high incomes or where income is likely to increase; are employed; have specific requirements to live in a particular area (such as schooling or support needs); cannot access social housing (for example due to former arrears); single people; young people.

15. Are there any gaps in the consultation?

An email was sent out to a wide range of stakeholders, including representatives for protected groups, informing them of the consultation and inviting them to take part. This was sent to over 225 stakeholders and to 660 members of the public on the Corporate Research consultation contact database. Despite this, the response rate was low.

16. Following the consultation, what additional equality issues have emerged?

The consultation responses showed a clear steer that some groups with protected equalities characteristics require additional consideration when considering the use of Fixed Term Tenancies, Affordable Rent and discharging the main homelessness duty with the offer of a suitable Private Rented property. In particular, the needs of those households with a long term health need or disability, elderly households and families with dependent children require particular safeguards to ensure that they are not disadvantaged.

17. Which of the options have changed following consultation and equality analysis, and how?

The results of the consultation have been used to ensure that the Draft Tenancy Strategy incorporated appropriate safeguards for the vulnerable groups that have been identified.

Equality impact of final option

18. Please confirm below which option has been chosen for implementation.

Following the consultation, a Tenancy Strategy has been developed which sets out the Council's position, to which Registered Providers must have regard when setting their own policies and choosing whether/how they are to implement the new freedoms regarding Fixed Term Tenancies and Affordable Rent. We would expect each Registered Provider to carry out their own assessments of the impacts of their individual policies on equalities protected groups.

The Council's position (as set out in the Tenancy Strategy) is:

The Council is opposed to the use of Fixed Term Tenancies.

However, where Registered Providers choose to use them, there must be safeguards in place to ensure that vulnerable customers are not disadvantaged. There should be a presumption that the Fixed Term Tenancy will be renewed at the end of the term. Fixed Term Tenancies should not be used for elderly households and those with a lifetime disability, illness or support need. Longer term tenancies should be used for families with school age children.

Affordable Rents should strike a balance between being affordable to individual households and the need for Registered Providers to optimise their re-investment potential to increase the supply of affordable housing. Income levels and the impact of benefit caps must be taken into account, particularly in the case of large family homes. Properties that are let at Affordable Rents should be allocated through the Coventry Homefinder system to ensure transparency and fairness.

Coventry City Council intends to use the new power to discharge the main homelessness duty with the offer of a suitable private rented property, without requiring the consent of the applicant. The Council will only use the private rented sector to discharge the homelessness duty when the household has been assessed as being able to sustain a private rented tenancy and where a suitable property is available on a 12-month tenancy.

19. Please indicate which of the following best describes the equality impact of this analysis.

There will be no equality impact if the proposed option is implemented.

There will be **positive equality impact** if the proposed option is implemented.

There will be **negative equality impact** if the preferred option is implemented, but this can be objectively justified.

Please state clearly what this justification is and what steps will be taken to ameliorate the negative impact.

The Tenancy Strategy aims to provide guidance to Registered Providers that will mitigate the impacts of potential changes to Fixed Term Tenancies and Affordable Rents on households with protected characteristics and ensure that vulnerable people are not disadvantaged.

The intention to use the private rented sector to discharge the main homelessness duty will have a positive impact by providing a greater range of available properties for homeless households in a wider range of locations. This will enable greater opportunities to remain close to schools, family or support networks. Also, homeless households owed the main duty are likely to be provided with a settled home more quickly, reducing the negative impact of staying in temporary accommodation such as B&B rooms. This is particularly relevant for larger families who may face a long wait for a suitable social housing property to become available. The Council will still be able to bring the main homelessness duty to an end with the offer of a social tenancy if the private rented sector is not suitable for the household.

20. What will be the impact on the workforce following implementation of the final option? Please make reference to relevant equality groups (with protected characteristics under the Equality Act).

There will be no impact on the workforce of the Council.

Formal decision-making process

Please detail below the committees, boards or panels that have considered this analysis

Name	Date	Chair	Decision taken

Approval

This equality analysis has been completed by:

Officer

Kimberley Fawcett

Service Manager

Ayaz Maqsood

Note: Failure to comply with duties on equalities and consultation will put the Council (and specifically the elected member or officer making the decision) at risk of judicial review

Director

Brian Walsh

Elected Member

Cllr. Ed Ruane

Date

3rd December 2012

Monitoring and review

This section should be completed 6-12 months after implementation

- a) **Please summarise below the most up to date monitoring information for the newly implemented service, by reference to relevant protected groups.**

[Click **here** and type]

- b) **What have been the actual equality impacts on service users following implementation?**

Analyse current data relating to the service and think about the impact on key protected groups: race, sex, disability, age, sexual orientation, religion or belief, pregnancy or maternity, gender reassignment.

It may help to answer the following questions: Since implementation

- Have there been any areas of low or high take-up by different groups of people?
- Has the newly implemented service affect different groups disproportionately?
- Is the new service disadvantaging people from a particular group?
- Is any part of the new service discriminating unlawfully?

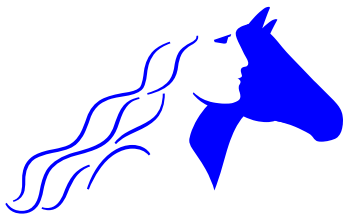
[Click **here** and type]

- c) **What have been the actual equality impacts on the workforce since implementation?**

[Click **here** and type]

**Equality Analysis and Consultation Template
July 2012 · Version 2.0.1**

The latest version of this template can be found at:
<http://beacon.coventry.gov.uk/equalityanddiversity/>
Please ensure you are using the latest version of the template.



Coventry City Council

Notes re the conclusions of discussions by the Transport and Infrastructure Scrutiny Board (6) regarding the development of a Coventry Tenancy Strategy.

The Board considered 6 of the questions contained in the consultation paper:

Q1. Should the Council support the use of Fixed Term Tenancies?

The Scrutiny Board's view was that the Coventry Tenancy Strategy should be consistent with the City Council's response (September 2011) to the recent Government White Paper on the subject. This would be to object to and oppose registered providers offering anything less than the most secure tenancy for households in social and affordable rent properties. The Board felt that weakening the security of tenure for new tenants would damage social cohesion in the City and lead to a group of second class tenants.

Q3. Are there any particular groups of people that should only be offered lifetime tenancies?

To reiterate the above, the Board's view was that only lifetime tenancies should be offered. However should registered providers seek to restrict lifetime tenancies then they should definitely be available to:

- Those whose housing needs are unlikely to change
- The Elderly / Retired
- People who require specialised, adapted or sheltered housing, extra care etc.,
- People with disabilities or long term / lifetime illnesses.

Q4. If Fixed Term Tenancies are to be used, do you think that a minimum 5 year fixed term tenancy is reasonable? Should a longer term tenancy (eg 7 years) be used?

The Board was firmly of the view that it does not support Fixed Term Tenancies. Should registered providers choose to introduce them the Board felt that as long a length of time as possible should be allowed before any review takes place, perhaps 7 years or longer. The Board also re-emphasised that reviews at the end of fixed term tenancies are particularly vital part of the process. There should be robust renewal criteria developed and assistance given to households if their tenancies are not renewed. The option should be investigated for shorter contract extensions to be available in circumstances where tenancies are not renewed to allow tenants some security whilst finding alternative accommodation. Vulnerable tenants in particular should be supported in this process.

Q7. What factors should be taken into account when setting the level of 'Affordable Rent'?

The Board considered carefully the issues around the introduction of 'affordable rents' which can be set up to 80% of comparable market rents. The introduction of this measure could have a particularly serious impact, particularly for those families in low paid work who pay their rent and are not dependent on benefits. The Board was concerned that the introduction of a measure to fund the increased availability of affordable rented properties was being funded inappropriately and was likely to contribute to further exacerbating housing problems in the City.

Should the measure be introduced household incomes and housing as a part of universal Credit should be a fundamental consideration along with careful analysis of the mix of social and

affordable housing in different parts of the City. There will also need to be protection to ensure that the introduction of 'affordable rent' particularly for tenants with longer term tenancies should have built in protection to ensure that subsequent rent increases do not take them above the 80% threshold.

Q.9 Are there any types of properties that should NOT be converted to 'Affordable Rent' when they become available for re-letting?

The Board had some concerns about the appropriateness of converting large family housing, specialist or adapted properties for disabled people and sheltered housing to 'Affordable Rent'. These properties were unlikely to be occupied by tenants who would be in a position to pay additional rent to fund additional affordable provision. In this regard however the Board also was concerned that there should be some consideration of the individual circumstances of each tenant who was being asked to contribute more.

Q.10 Should the Council use the option to discharge the main homelessness duty in the private rented sector without the applicant's consent, provided the accommodation is suitable and is available for a minimum of one year?

The Board was concerned by the report of the Head of Housing regarding the increased pressure on the Council to meet its homelessness obligations, and in particular the amount of time young families might be spending in short term accommodation which whilst adequate was not ideal for families. Concluding that in fact the move to looking more to the private rented sector may actually provide more opportunities for families to be placed in parts of the City with limited social and affordable housing availability they agreed that the move proposed in the consultation paper should be supported.



Public report Cabinet Report

Cabinet
Council

8th January 2013
15th January 2013

Name of Cabinet Member:

Cabinet Member (Education) - Councillor Kershaw

Director Approving Submission of the report:

Director (Children, Learning & Young People)

Ward(s) affected: All

Title:

Caludon Castle School – Proposed Academy Conversion

Is this a key decision?

No

Executive Summary:

Caludon Castle School is proposing to convert to an academy. The Secretary of State for Education issued an Academy Order under Section 4 of the 2010 Academies Act in March 2011 which enables the school to convert to an academy on an agreed conversion date. Caludon Castle is a Private Finance Initiative (PFI) scheme and therefore in addition to the standard legal documentation which has to be completed for a conversion (Lease and Asset Transfer Agreements), the City Council are also required to agree a School Agreement and Principal Agreement. This report therefore sets out the position agreed with the school in relation to the treatment of risks/liabilities under the PFI Project Agreement post conversion and seeks Cabinet approval to the legal agreements necessary for the conversion to take place.

Recommendations:

Cabinet is requested to recommend that the City Council:

1. Enters into the following legal agreements in respect of the proposed academy conversion of Caludon Castle School as set out in appendices 3 to 8 of this report:
 - 125-year lease agreement at a peppercorn rental;
 - asset transfer agreement;
 - School Agreement;
 - Principal Agreement;
 - the Deed of Amendment for the PFI Project Agreement
2. Authorise the authorised signatory within Finance and Legal Services to issue the certificate under the Local Government (Contracts) Act 1997 to confirm the Council's

power to enter into the Deed of Amendment to the PFI Project Agreement and grant an indemnity from the Council to the authorised signatory against any claim arising from signature of the certificate; and

3. Delegate authority to the Cabinet Member (Strategic Finance and Resources), Cabinet Member (Education), Director of Children, Learning & Young People and Director of Finance & Legal to agree any minor amendments to the documents in 1) above arising from further consideration by Coventry Education Partnership, Sumitomo Mitsui Banking Corporation, Department for Education and Caludon Castle School.

Council are requested to approve the above recommendations.

List of Appendices included:

Appendix 1: Risk Allocation Matrix

Appendix 2: Proposed Land transfer map showing the extent of the demise under the 125 year leased edged red

Appendix 3 Draft Lease Agreement

Appendix 4: Draft Asset Transfer Agreement

Appendix 5: Draft School Agreement

Appendix 6: Draft Principal Agreement

Appendix 7: Draft Deed of Amendment for the PFI Project and;

Appendix 8: Draft Certificate under the Local Government (Contracts) Act 1997.

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 – 15th January 2013

Report title: Caludon Castle School – Proposed Academy Conversion

1. Context (or background)

- 1.1 In 2001 and in response to governor and community concerns about the poor condition of Caludon Castle, the City Council agreed to bid for PFI (Private Finance Initiative) credits to rebuild the school as this was the only funding route available to the City Council at that time. Financially this was only possible because all Coventry schools agreed to fund the final affordability gap (c £320,000 per annum) as a topslice to all school funding in the City. The school also makes an annual contribution towards the costs of the project.
- 1.2 In December 2004 the Council entered a PFI contract to design, build and operate a new Caludon Castle Secondary School. The contract was awarded to Coventry Education Partnership (CEP). The new school opened in September 2006 and provides places for 1500 students aged 11-18+ and also houses the Wyken Community Library. Day to day facilities management is provided by Integral UK Ltd and outside of school hours, extended services are managed by Active Leisure Management (ALM). Facilities available to the local community as part of the extended services include a swimming pool, fitness suite, floodlit all weather pitch, 6 floodlit tennis courts, sports hall, dance studio and a large theatre style main hall. The PFI contractor has generally been performing well with few performance/unavailability deductions being made.
- 1.3 The PFI Contract and the Governing Body Agreement (by which the school agrees to financially contribute towards the annual payments) were written assuming that the school continue to be part of the local authority. In 2004 the possibility of Caludon's transition to an independent academy could not be predicted – academies were for “poor performers.” However, now faced with Government policy aimed at encouraging conversion to Academy status and the school's desire to convert, the Council has had to understand the implications of this proposed change, not least in terms of the significant financial obligations that exist within the PFI contract and the extent to which the Council is exposed financially if the school converts and the Council loses control over the school and its funding.
- 1.4 The stated policy of the coalition government is over time to enable any maintained school who wishes to do so to apply to become an Academy. Schools choosing this option would no longer be schools maintained by the Local Authority. The decision maker in establishing an Academy is the Department for Education (DFE). The Local Authority has no decision making role in the process. The Academies Act 2010 introduced a fast track approach for schools wishing to convert to academy status.
- 1.5 In the summer term 2010, Caludon Castle School was invited to convert to academy status by the Secretary of State for Education, because they were rated by OFSTED as an 'outstanding' school. Between June and December 2010 the benefits of academy status were discussed at full Governors meetings. At their meeting on 2nd February 2011, the Governing Body formally resolved to apply for academy status. A further consultation meeting was held with parents on 2nd March 2011. The Secretary of State issued an Academy Order under Section 4 of the 2010 Academies Act on 30th March 2011, which will effectively enable the school to convert to an academy on an agreed conversion date. This was not an issue that the Council had any control over.

- 1.6 At its meeting on 29th November 2011, the City Council adopted a formal policy on local authority maintained schools converting to academy status. This policy set out the Council's approach to academy conversions including the Council's opposition to forced academy conversions. The proposed conversion by Caludon Castle School has been led and approved by the School's Governing Body and is therefore not a forced conversion.
- 1.7 In July 2011, officers issued a formal Variation Notice to CEP, as required under the PFI contract, to facilitate changes to the Project Agreement to reflect the proposed conversion of Caludon Castle School to Academy status under the 2010 Academies Act. In particular, the variation is intended to reflect the Academy's role in the administration and operation of Caludon Castle School and will be implemented so as to maintain the current risk profile in the project for CEP and its lenders, on a "no better, no worse" basis.
- 1.8 The Local Authority is expected to cooperate with schools seeking to convert. In addition to the formal agreements, the authority will effectively at its own expense have to agree closure of accounts and financial transfers, and provision of HR support and information (including staff transfer, TUPE and pension data).
- 1.9 At the Scrutiny Coordination Committee Meeting held on 27th April 2011, the Cabinet Member (Education) proposed that necessary leases, loan agreements and other agreements for each academy application be the subject of formal consideration by the relevant Cabinet Member or Cabinet.
- 1.10 The Cabinet Member (Education) also decided to request that schools seeking conversion should undertake specific consultation with their local communities in relation to the lease and specifically whether any claims had been made in relation to access or rights of way from the general public. Officers were asked to liaise with ward councillors on the same matter.
- 1.11 The recently completed Wyken Extended Learning Centre built on the Caludon Castle School site does not constitute part of the existing PFI contractual arrangements or conversion proposal and therefore would remain unaffected. The area to the south of the River Sowe, which formerly constituted part of the school playing fields also remains under the control of the City Council and is unaffected.

2. Options considered and recommended proposal

- 2.1 Caludon Castle School have been invited to convert to academy status by the Secretary of State for Education, because they are rated by OFSTED as an 'outstanding' school. At their meeting on 2nd February 2011, the Governing Body formally resolved to apply for academy status.
- 2.2 Under Schedule 1 of The Academies Act 2010 therefore, the Authority is required to grant to the Academy a 125 year lease at a peppercorn rental for land wholly or mainly used by the school in the preceding 8 years. Failure to agree a lease for the playing fields may result in the Secretary of State using a discretionary power under Schedule 1 of the 2010 Act to step in and make a transfer scheme.
- 2.3 The Authority is expected by DFE to agree an Asset Transfer Agreement with the academy. In the event that the conversion proceeds without the agreement being in place the Council may be exposed to potential liabilities in respect of assets and contracts post-conversion which would have been assumed by the Academy under the model agreement prepared by the DFE.

- 2.4 Given that Caludon Castle School is funded under the Private Finance Initiative, the Authority will also need to enter into a School Agreement (which is in effect the new Governing Body Agreement covering the Academy contribution to the Unitary charge payment that the Authority pays to CEP). In the event that the Authority does not enter into a School Agreement with the academy the worst case scenario for the Local Authority is that the DfE allow the conversion to take place, the current Governing Body Agreement ceases and we lose the school contribution which would leave the Council with a significant affordability gap on the scheme. There is no national precedent for this and the official DfE line is that they would prefer the City Council and school to resolve issues locally. It is unclear as to when/if the DfE were likely to 'step in' and force a resolution.
- 2.5 Officers have therefore been negotiating with the school over the treatment of risk post conversion and the final agreed position is set out in paragraph 5 and appendix 1 of this report. It is on the basis of this negotiated position that Cabinet is being requested to recommend to the City Council that the necessary legal documents for academy conversion now be entered into.

3. Results of consultation undertaken

- 3.1 The DfE approach is that the Council and the school need to agree the way that PFI costs and risks are handled post conversion. The Council has been engaged in these discussions for the last 18 months and has previously reported back to the Cabinet Member (Education) on the progress of discussions. Crucially, officers have been negotiating to transfer as much risk as possible to the school or DfE.
- 3.2 There is no requirement by DfE on local authorities or converting schools to consult specifically on the proposed lease of land/buildings. However, following the Scrutiny Coordination Committee meeting on 27th April 2011, the Cabinet Member (Education) requested schools seeking academy status to undertake a formal consultation exercise with their local community to ascertain if any rights of way or access claims exist for the land to be contained within the lease. The proposed lease will include a clause seeking to protect such rights (if any) affecting the Property which are still subsisting and capable of taking effect.
- 3.3 Caludon Castle School has undertaken two public consultation exercises, one general consultation on academy conversion (undertaken in March 2011 which included a parents meeting) and more recently the school undertook specific consultation on the proposed lease and associated land via a published Public Notice in the Coventry Telegraph. This consultation period ended on 24th June 2011. The local Ward Councillors were also advised of the consultation exercise. No comments were received from the public.
- 3.4 Headteacher groups, service providers and other stakeholders have been kept informed regarding proposals for academy conversion of all converting schools. This practice would continue as necessary in the future.

4. Timetable for implementing this decision

- 4.1 Subject to Cabinet and City Council approval, officers will seek to finalise and sign the required Agreements in liaison with each of the solicitors representing the school, DfE, CEP and their funders to enable the school to convert. The proposed

conversion date is 1st February 2013 but this is subject to the finalisation of all the necessary conversion agreements.

5. Comments from Director of Finance and Legal Services

5.1 Financial implications

General

- 5.1.1 Academies receive their funding directly from the Education Funding Agency (EFA) which includes a share of the central funding currently received by Local Authorities for maintained schools.
- 5.1.2 The Academy inherits the closing financial balance of the predecessor maintained school at the date the school ceases to be maintained by the local authority. This applies whether the balance is a surplus or a deficit. The Local Authority will need to be involved in calculating this, and paying to the Academy (where in surplus) within 4 months. If an Academy has a deficit at the point of conversion the Local Authority will be required to notify the Secretary of State. Once the amount is validated and agreed, the LA will be paid a sum equivalent to this by the Secretary of State. In the event that the Local Authority makes an underpayment or overpayment in relation to any historic liabilities (including, without limitation, any payments relating to the School's accounts), the commercial transfer agreement should state that the Local Authority and the Company agree to repay any such sums to the other (as appropriate).
- 5.1.3 In regard to specific financial implications on the land/buildings lease the Authority will only retain reversionary freehold risk. The Academies will acquire leaseholder and occupier risk. We have had clarification from the DfE Capital Review team that there will be no priority for capital given to schools that become Academies under the new system.

PFI Contract

- 5.1.4 There are also some significant issues regarding the operation of the PFI contract post conversion. Despite DfE's simple assumption that post transfer the position should be no better and no worse for the school and the Council, there are actually a series of complex issues about who pays for what and who bears future risk as set out in the Project Agreement between the Council and the PFI provider. Currently the City Council manages these risks, but going forward, we would wish the school to take responsibility for as many risks as possible.
- 5.1.5 These risks are identified in Appendix 1 and have been subject to wide debate with the school (and their solicitors), CEP and DfE since early 2011. Officers have now reached a negotiated position where the allocation of risks post conversion have been formally agreed with the school and incorporated within the draft School Agreement as set out in Appendix 1 of this report. These include variations, utilities and insurance. Officers do not believe that the risks associated with the library contribution (£53k per annum) and Termination of the contract (if it was the Council's fault) are transferrable over to the school so these will be retained by the Council.

One of the most significant financial risks is indexation. The school do not believe they can afford the contract if the Council does not take on this risk. Indexation of the unitary charge in the original PFI financial model was based on annual increases of

2.5%. Since the start of the Caludon Castle PFI contract inflationary increases have averaged 3.5%. Inflation for 2011/12 was 5.1% and 4.0% for 2012/13, which significantly affects the cost of the contract now and going forward. As a result, the Council funded a £155k in year gap from DSG reserve in 2011/12 and this gap is expected to rise to £197k for 2012/13. This gap is an annual gap ongoing for the remaining years of the contract and will index annually. It is currently unfunded. The Council will seek to fund any ongoing affordability gap from DSG and will still retain the overall responsibility for ensuring the project is affordable over its life even after the school converts.

- 5.1.6 Although your officers have therefore agreed that Indexation Risk will sit with the City Council post conversion, there is a commitment through the Draft School Agreement for both parties to review and make recommendations regarding any issues arising from budgetary pressures (Schedule 1 – School Liaison Procedure AND Schedule 2 Calculation of the Company's Contribution). It should be noted however that the commitment through the School Agreement will not be legally binding on any party, so the Council's exposure to affordability gap pressures can only be limited to a certain extent through the agreements and given the levels of uncertainty on wider school funding reforms.
- 5.1.7 The affordability position of the project is affected by the amounts contributed from the DSG topslice and the school, which contribute towards the unitary charge costs. The DfE is considering proposals to reform the method of allocating funding to schools which may affect the DSG topslice levels and how they index over time. Currently the affordability gap (refer to paragraph 1.1) is allocated to the school as part of their budget share. It is not clear how the Education Funding Agency will allocate this budget to the school and index it over time. This will need to be resolved as part of the process of discussions with the school and DfE post conversion, as it is unlikely to have been resolved pre conversion. Our expectation is that this budget will be passed in full to the school for them to return to the City Council as part of their school contribution.
- 5.1.8 As part of the discussion around managing the affordability position, your officers have reached agreement with the school, on how their contribution will be calculated for 2012/13, the financial year during which academy conversion is proposed. Beyond 2012/13 the budgetary position of the school is unclear and therefore officers will discuss with the school once the position is known and this may be post conversion. In the meantime officers have sought to agree a definition of Adjusted Schools Budget (ASB) with the school. We have sought to ensure any definition does not leave room for wide interpretation post conversion. The definition is critical because it will impact upon the level of contribution made by the school for the duration of the contract period post conversion. It therefore will potentially have a significant effect on affordability and any resultant 'gap' that the Council may have to fund.
- 5.1.9 DfE have requested the City Council to retain the original drafting of the definition of ASB. Officers have now therefore agreed to define the ASB as the sum of money which the City Council would otherwise have allocated annually to Caludon Castle, were the school not to have closed and the Academy not to have opened (refer to Appendix 5), on the basis that there is a worked example in Schedule 2 of the School Agreement showing the budget items that will be deducted from the ASB (e.g. rates). Schedule 2 also now clarifies the methodology used to calculate the school's contribution post conversion, including the calculation of the relevant proportion which is currently 9.5% of the ASB (less specific items as detailed in Schedule 2 of

the draft School Agreement). Officers have made it clear that this will be reviewed once the academy funding position post conversion is known.

- 5.1.10 The extended services delivered by ALM under the Project Agreement are benchmarked every three years. Under the Project Agreement, ALM are required to pay a subsidy of £35k to CEP (the Minimum Net Income), which helps with the overall affordability of the scheme. Given the problems in attracting and retaining a leisure operator on site during the first five years after full service commencement, CEP have effectively been meeting the cost of this subsidy. They have now indicated that they can no longer meet this going forward. Likewise the school has also indicated that it will not meet the cost of this subsidy. ALM have indicated that they would be prepared to pay a subsidy of £18k plus 50% of any profits over £10k per annum. Discussions are therefore currently taking place with CEP and ALM to progress this issue.
- 5.1.11 The Library Service make an annual contribution of £53k towards the unitary charge to reflect the running costs associated with the Wyken Community Library. This contribution will be payable for the duration of the contract even in the event that the library facility is no longer required.
- 5.1.12 Officers have, throughout this process, attempted to protect the Council from financial risk associated with the conversion. However, the Council will continue to be responsible for managing the overall affordability implications of the PFI contract post conversion. A number of factors that influence this affordability position are outside of the Council's control and therefore there is no guarantee that the project may not require additional funding in the future. If this arises, discussions will be held with the school, the DfE and the Schools Forum to try to achieve a cost neutral position for the Council.

5.2 Legal implications

- 5.2.1 The current PFI contract between the City Council and CEP is set out in a Project Agreement. There is also a Governing Body Agreement between the City Council and the School through which the school is legally committed to pay a contribution towards the Unitary Charge payable to CEP.
- 5.2.2 Unlike standard maintained schools, PFI academy converters are required to sign additional legal agreements. The conversion will involve the signing of a suite of legal documents which are the responsibility of the City Council, school and/or the DfE. These include:
- The Funding Agreement between the Secretary of State and the Academy
 - The Lease between the Authority and the Academy (Appendix 3)
 - The Commercial Transfer Agreement (Appendix 4)
 - The School Agreement (Appendix 5)
 - The Principal Agreement (Appendix 7)
 - The Corporate and Constitutional Documents of the Academy
 - The Deed of Amendment to the Project Agreement
 - Certificate under the Local Government (Contracts) Act 1997
- 5.2.3 The Principal Agreement is a document to be entered into between the DfE, the City Council and the school and is designed to offer protection to the City Council in the event that the new Academy Company defaults on its obligations in the School Agreement. This document will be prepared by the DfE once the draft School

Agreement has been agreed in principle by the City Council and the School. One issue that has been the subject of extensive discussion between the DfE and the City Council is the form of indemnity that will be given by the DfE to the City Council. Under the current PFI Project Agreement, the Authority and CEP indemnify each other for losses arising out of their breach of the project agreement. The indemnity given by the Authority covers the acts of an 'Authority Related Party' which will include the new Academy. The issue under discussion is the form of indemnity to be given by the DfE to the Authority if an act of the Academy causes the Authority to be in breach of the project agreement and the extent to which the DfE will compensate the Authority if it has to pay compensation to CEP.

The DfE would not agree to provide an indemnity to the City Council and the school would not agree that the indemnity in the School Agreement would be removed, modified or that they would give an indemnity to the City Council. Their position is supported by DfE. On that basis the indemnity in the template School Agreement has been reinstated. The risk of an act occurring which would trigger the indemnity is low but it is likely to be high impact in terms of monetary compensation payable by the City Council. Officers will seek to mitigate this risk through the existing contract monitoring arrangements established under the PFI Project Agreement, which has now been in place since 2006. In that period there have been no calls upon the indemnity.

- 5.2.4 The School Agreement is to be entered into between the Authority and the Academy and replaces the current Governing Body Agreement between the Authority and the school. It sets out the mechanism by which the Academy will meet its financial obligations to the Authority and covers the risk issues identified in the Risk Matrix (Appendix 1). The risks have been agreed with the school and although it appeared that the school was changing its position on insurance, the school has now withdrawn its proposed amendment.
- 5.2.5 The Academy is required to liaise with the land owner (in this case the Council as Local Authority) to agree the terms of a land transfer for land they have wholly or mainly occupied as a maintained school at any time in the previous 8 years. In the event of agreement not being reached the Secretary of State has a discretionary power under Schedule 1 of the 2010 Act to step in and make a transfer scheme.
- 5.2.6 Schedule 1 of the Academies Act 2010 requires the Academy and the Council execute legal documentation in the form of a grant of a long lease for a term of 125 years. In accordance with Schedule 1 of the 2010 Act the Council is obliged to grant to the Academy a 125 year lease at a peppercorn rental of the land shown edged red on the plan attached to the Lease currently forming the site of the school's existing land. Guidance on land transfer from the Department of Education suggests that if land is held by a local authority then a long leasehold interest should be granted rather than a transfer of the freehold. The form of lease has been based upon the "model long term lease" produced by the Department for Education.
- 5.2.7 The Asset Transfer Agreement will deal with assets, contracts and certain liabilities to be transferred to the Academy. The form of agreement is based upon the model form document produced by the Department for Education.
- 5.2.8 In the event that the Authority and the school cannot agree the terms of the School Agreement, the worst case scenario is that the DfE allow the conversion to take place. In that event the current Governing Body Agreement ceases and we lose the school contribution which would leave the Council with a significant affordability gap on the scheme. There is no national precedent for this and the official DfE line is that

they would prefer the City Council and school to resolve issues locally. It is unclear as to when/if the DfE were likely to 'step in' and force a resolution.

- 5.2.9 A further area of concern had been in relation to a potential vires issue relating to the payment of the Unitary Charge by the Council post conversion, when in effect we would cease to maintain the school. Lawyers acting on behalf of the Sumitomo Mitsui Banking Corporation (SMBC) who are the sole funders for the scheme, have advised CEP that the potential vires issue has been resolved through last years amendment to the 2010 Academies Act. There will, therefore, be no question of any future PFI payments made by the City Council under the current contract, being ultra vires. The funder is therefore now content that the current contractual relationship between the school, Council, CEP and SMBC would be unaffected if the school was to convert to an academy at a future date.

6. Other implications

Any other specific 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)?

- 6.1.1 The creation of Academies, if they are not part of a positive partnership of schools, has the potential to significantly reduce the City Council's ability to pursue its corporate objectives that all children and young people are safe, achieve and make a positive contribution to the City. However, to date, in relation to the academy conversion process for Caludon Castle School, good relationships have been maintained and the school has expressed a commitment to continue to work with the City Council and other schools.
- 6.1.2 A revised Education and Learning Strategy is currently being developed. It will come forward for discussion and approval by Council during the Autumn 2012. The aim of the Strategy is to continue to improve the quality of education provision and outcomes for Coventry children and young people. It will be delivered in a way that maintains the strong relationship and commitment to partnership and collaboration between schools and with the Local Authority within the Coventry 'family of schools'. Schools and Academies are at different stages in identifying what expertise they can offer and how they can work with other schools across the City. Some new ways of working are already in place, for example Fredrick Bird Teaching School and Swan Alliance, hard federated arrangement between Walsgrave and Clifford Bridge primary schools, school networks such as 'fresh eyes' and 'Network 9' and National and Local Leaders of Education. Caludon Castle School's agreed commitment will be managed within the context of the Education Improvement Strategy involving all schools across the City.
- 6.1.3 Caludon Castle is an outstanding school (Ofsted November 2011) and recognised nationally as a National Lead School with the Headteacher a National Leader of Education. The school has a strong history of partnership working with the Local Authority and secondary and primary schools across the City. The School senior leaders and Governors are committed to making a significant contribution to the Coventry family of schools, both now as a Local Authority School and in the future as an Academy and Teaching School. Some of this will be funded by the Academy and provided at no cost to the Local Authority, some will be at a cost to the Local Authority.

- 6.1.4 The school's vision is to strengthen and develop its work and relationship with other schools in the City, both informally and formally, for example through targeted support arrangements, shared appointments, federated arrangements and as a future Academy Sponsor should this be necessary.
- 6.1.5 Caludon Castle is a strategic partner in Coventry's Teaching School Alliance and is leading one of three Leadership Hubs in the City. The Headteacher makes a significant contribution to the City's Over-coming Barriers to Learning Strategy and the priority to improve our Primary Schools. The school is building capacity and infrastructure now to be ready to take on a role across a number of schools in the future.
- 6.1.6 The School has an excellent track record of providing effective support to other schools within and outside Coventry. The quality of the work has been very highly regarded and made a significant contribution to improvement. For example, Caludon Castle been a lead school in the secondary school leadership and management development programme for a number of years and more recently is providing leadership and teacher support to Henley Green Primary School and a drama/English teacher to work with Year 6 children at Clifford Bridge primary school, currently in Special Measures. The school has also released 2 teachers for this academic year to teach music and drama at Wyken Extended Learning Centre.
- 6.1.7 The School's future role in supporting educational improvement across the city is now set out in a Memorandum of Understanding which is included at Schedule 7 of the draft School Agreement. It is estimated that the City Council could benefit from the Academy and its expected Teaching School Status to the value of approximately £105,000 per annum.

6.2 How is risk being managed?

The approach to managing the financial risks associated with the PFI Project Agreement are detailed in paragraph 5. The City Council will retain overall responsibility for managing the PFI Project Agreement and will therefore manage risk through the mechanisms set out in the School Agreement and the Principal Agreement. The City Council will retain overall responsibility for managing affordability risk under the contract.

6.3 What is the impact on the organisation?

Academies are independent bodies from the City Council. As such they will have freedom to decide where they obtain some services and support from. Hard and soft facilities management (FM) services will continue to be provided by CEP as part of the PFI Project Agreement. Should the academy decide to procure other non FM related services elsewhere than the City Council (e.g. HR) then this may impact on the services involved. For many Council services this means no change as under Fair Funding legislation and Budget Delegation requirements, schools have held such budgets and service delivery decision-making powers for several years. However, where services have been provided as part of a corporate statutory service then academies will need to purchase such services from the City Council or seek an alternative provider. When bidding for Academy business, all Local Authority services will have to base bids on commercial rates that achieve full recovery of Authority costs.

As Academies are the employers of the school's staff, Caludon Castle will be required to follow TUPE legislation. Under the Local Government and Teachers Pension Scheme Regulations the Academy will be a scheme employer for teacher and support staff and will post conversion be responsible for paying pension contributions for eligible employees. These obligations are contained in the Asset Transfer Agreement. In this case the transfer of staff will be between Coventry City Council and the Caludon Castle academy company. Staff and trade unions have been and will continue to be consulted on the transfer.

6.4 Equalities / EIA

There are no specific EIA issues directly related to the land transfer. The agreement of a lease for the land and buildings to the academy will in itself not have any adverse affect on the community access or enjoyment of the site compared to that currently available from the school as a community school. Parts of the current school buildings and certain site locations may have access restrictions or limits for those with a disability (eg wheelchair users, blind/partially sighted) or movement restriction (eg elderly), however, these issues will not worsen with the agreement of the lease. Responsibility for monitoring and addressing access issues on the site will transfer from the City Council to the Academy with the school's conversion to academy status and it will be for the academy to prioritise improvement works in the usual way.

6.5 Implications for (or impact on) the environment

Academies, as an independent organisation from the City Council, will be responsible for working towards its own agenda for environmental improvements. The Carbon Reduction Commitment (CRC) Energy Efficiency Scheme as amended is a mandatory carbon emissions tax covering non-energy intensive users in both public and private sectors, and is a central part of the UK's strategy to deliver the emission reduction targets set in the Climate Change Act 2008. Emissions from academies are to be included in the total reported carbon emissions for their participating local authority. As such Academies will be responsible for providing appropriate information to the City Council to enable us to procure Carbon Credits on their behalf.

6.6 Implications for partner organisations?

None that have not already been addressed

Report author(s):**Name and job title:**

Ashley Simpson, Education Capital and Strategic Planning Manager

Directorate:

Children, Learning & Young People

Tel and email contact:

024 7683 1520 or ashley.simpson@coventry.gov.uk

Enquiries should be directed to the above person:

Contributor/approver name	Title	Directorate or organisation	Date doc sent out	Date response received or approved
Contributors:				
Rosalyn Lilley	Senior Solicitor	Finance & Legal	11/10/2012	16/10/12
Nigel Clews	Assistant Director – Property Services	City Services & Development	11/10/2012	12/10/12
Rachel Sugars	CLYP Finance	Finance & Legal	11/10/2012	10/12/12
David Haley	Assistant Director : Education & Learning	Children, Learning and Young People	11/10/2012	
Lisa Commane	Assistant Director – Special Projects Finance	Finance & Legal	11/10/2012	6/12/12
Names of approvers for submission: (officers and members)				
Rachel Sugars	CLYP Finance	Finance & Legal	11/10/2012	10/12/12
Rosalyn Lilley	Solicitor	Finance & Legal	11/10/2012	16/10/12
Colin Green	Director	Children, Learning and Young People	11/10/2012	12/10/12
Lisa Commane	Assistant Director – Special Projects Finance	Finance & Legal	11/10/2012	16/10/12
Neelesh Sutaria	CLYP HR Manager	Customer & Workforce Services	11/10/2012	12/10/12
Lara Knight	Governance Services Officer	Governance Services	11/10/2012	12/10/12
Cllr David Kershaw	Cabinet Member (Education)		11/10/2012	11/12/12

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Appendices

Appendix 1: Risk Allocation Matrix

Appendix 2: Proposed Land transfer map showing the extent of the demise under the 125 year leased edged red

Appendix 3 Draft Lease Agreement

Appendix 4: Draft Asset Transfer Agreement

Appendix 5: Draft School Agreement

Appendix 6: Draft Principal Agreement

Appendix 7: Draft Deed of Amendment for the PFI Project Agreement and;

Appendix 8: Draft Certificate under the Local Government (Contracts) Act 1997.

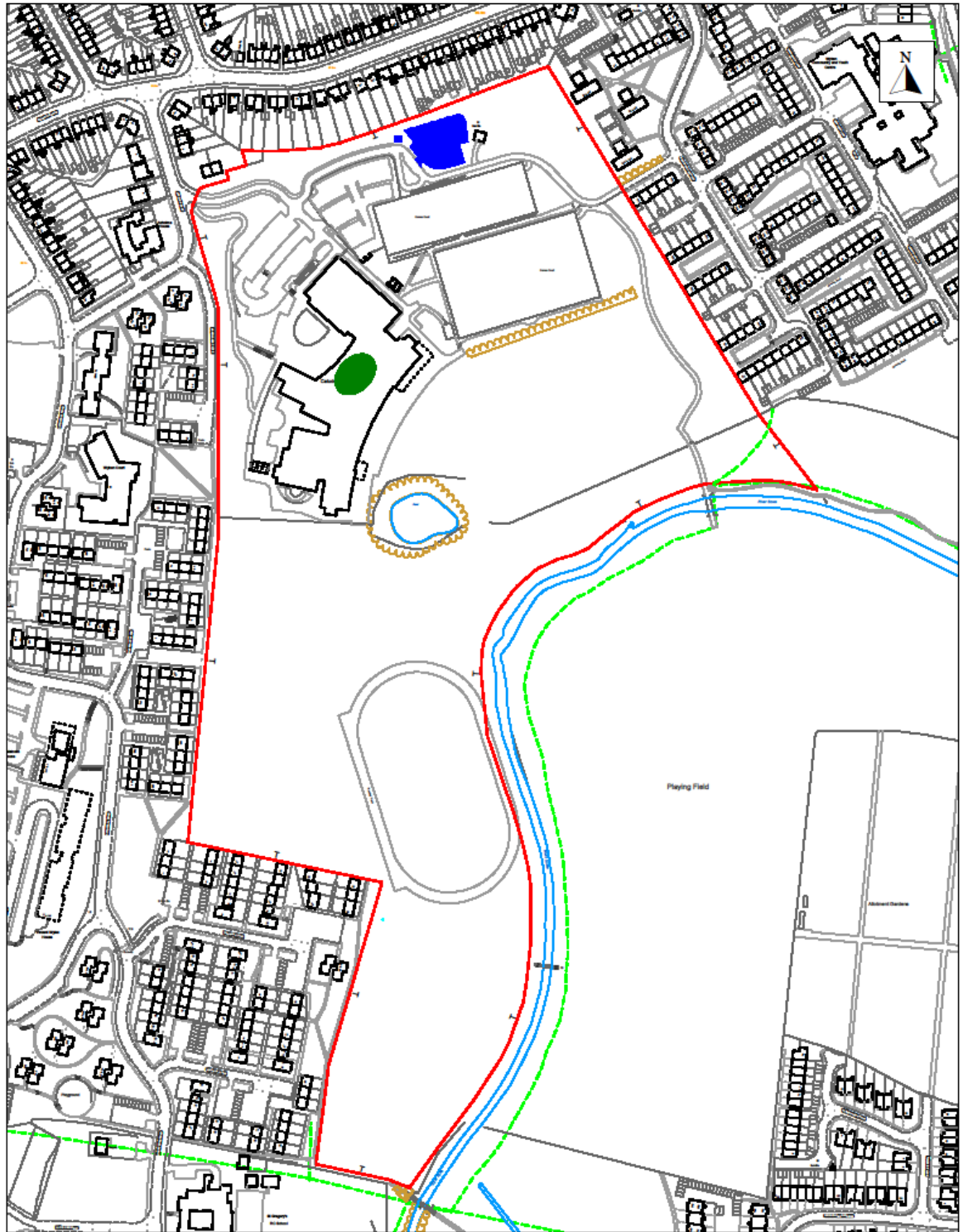
Agreed Allocation of Risk post Academy Conversion


Ref	Risk / Responsibility	Caludon Castle	Coventry City Council	DfE	Notes	DRAFT SCHOOL AGREEMENT REFERENCE
a	Free school meals	✓			The School has agreed to bear the financial risk on free school meals being higher than the 60 meals per day built into the unitary charge model at financial close.	Clause 12A <i>Catering and NNDR (National Non Domestic Rates)</i>
b	Utilities tariff and consumption risk	✓			The School has agreed to bear these risks. The School will now benefit from any beneficial movement in either energy tariff or consumption. Previously any benefit was to be paid into a Unitary Charge Contribution Account (UCCA) managed by the City Council for the benefit of the scheme.	Clause 15.5 <i>Utilities</i>
c	Benchmarking and market testing	✓			The School has agreed to bear any costs associated with benchmarking/market testing for soft services provided by the FM provider (who is a sub contractor of the PFI Provider). By the same token, the school will take the benefit of any reduction in costs as a result of benchmarking/market testing to support the overall affordability position for the scheme. The costs associated with benchmarking/ market testing of the Extended User Services operated at the school is still being negotiated but the school has indicated it is not willing to bear the risks of these costs.	Clause 18 <i>Benchmarking and Market Testing</i>
d	Variations	✓			The School will bear costs resulting from variations it requests, this includes capital cost and any uplift in the unitary charge as a result. The Council would not expect to initiate any variations post-conversion.	Clause 26.2 <i>Changes Proposed by the Company</i>

Ref	Risk / Responsibility	Caludon Castle	Coventry City Council	DfE	Notes	DRAFT SCHOOL AGREEMENT REFERENCE
e	Insurance	✓			The School will bear the cost of any adverse impact of insurance benchmarking. The school will now benefit from any beneficial movement in insurance cost. Previously any benefit was to be paid into a Unitary Charge Contribution Account (UCCA) managed by the City Council for the benefit of the scheme.	Clause 16.5 <i>Sharing of Insurance Cost Differentials</i>
f	Change in law	✓		✓	The School will bear this risk for change in law, but for some types of change in law, the DfE would be expected to contribute towards costs resulting from such changes (as was the case with the catering change in law).	Clause 26A <i>Change in Law</i>
g	Library contribution		✓		Should the library service withdraw from Caludon Castle, the Council will continue to contribute £53k per annum.	
h	Deductions	✓			All benefits from deductions will go to the school via a benefit to the overall scheme through the affordability model.	Schedule 2 <i>Calculation of Adjusted Schools Budget</i>
i	Termination and authority indemnity		✓		The Council will retain risks associated with this, as per the Project Agreement, save where any fault lies with the DfE. The probability of this risk materialising (i.e. authority actions leading to a termination) is remote.	Clause 21 <i>Authority Indemnity</i> and Clause 27 <i>Termination</i>
j	Remaining affordability risk - namely (i) affordability implications that arise as a result of Indexation to the Unitary Charge being higher than predicted at financial close, (ii)		✓		The Council has requested a "super indemnity" from DfE to cover this risk, which has not been accepted by DfE. DfE have clarified that indexation risks (i) and (ii) should continue to be borne by the Council.	

Ref	Risk / Responsibility	Caludon Castle	Coventry City Council	DfE	Notes	DRAFT SCHOOL AGREEMENT REFERENCE
	indexation cost being higher than predicted due to any or all risks a -i materialising, and or (iii) DSG topslice indexation being lower than predicted at financial close.				DfE have clarified that in terms of indexation risk (iii) the Council will continue to bear this risk whilst the recoupment model for funding schools is in operation. Post-recoupment, the DfE is unwilling to give any assurances about taking on the risk from the Council.	

Proposed Land transfer map showing the extent of the demise under the 125 year leased edged red



<p>CITY SERVICES & DEVELOPMENT DIRECTORATE COMMERCIAL PROPERTY MANAGEMENT FLOOR 11, CIVIC CENTRE 4 MUCH PARK STREET COVENTRY CV1 2PY 024 7683 2709</p> 	<p>CALUDON CASTLE SCHOOL, COVENTRY</p>
<p>Marlin Yardley - Director of City Services and Development Nigel Clews - Assistant Director (Property Management)</p>	<p>Drawn by ACB Scale: 1:2500</p> <p style="text-align: right;">Date 21/07/11</p>

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Dated

2013

**(1) The Council of the
City of Coventry
(Landlord)**

**(2) Caludon Castle School
(Tenant)**

Clean copy - Dec'12

Lease

Land and buildings at
Caludon Castle School
Axholme Road
Wyken in the City of Coventry

Term: 125 years

Rent: Peppercorn (if demanded)

Ref: L/JS/7002-1011

Caludon Castle School-12-js



Coventry City Council

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	SCHEDULE 1 - THE PROPERTY	
	SCHEDULE 2 - RIGHTS GRANTED	
	SCHEDULE 3 - RIGHTS EXCEPTED AND RESERVED	



LR1.	Date of lease:	2013						
LR2.	Title number(s):	<table border="0"> <tr> <td style="vertical-align: top;">LR2.1</td> <td style="vertical-align: top;">Landlord's title number(s):</td> <td style="vertical-align: top;">WM801376</td> </tr> <tr> <td style="vertical-align: top;">LR2.2</td> <td style="vertical-align: top;">Other title number(s):</td> <td style="vertical-align: top;">None</td> </tr> </table>	LR2.1	Landlord's title number(s):	WM801376	LR2.2	Other title number(s):	None
LR2.1	Landlord's title number(s):	WM801376						
LR2.2	Other title number(s):	None						
LR3.	Parties to this lease:	<table border="0"> <tr> <td style="vertical-align: top;">Landlord:</td> <td style="vertical-align: top;">The Council of the City of Coventry Council House Earl Street Coventry CV1 5RR</td> </tr> <tr> <td style="vertical-align: top;">Tenant:</td> <td style="vertical-align: top;">Caludon Castle School a company limited by guarantee registered in England and Wales (Company number.....) whose registered office is at Axholme Road Wyken Coventry CV2 5BD</td> </tr> </table>	Landlord:	The Council of the City of Coventry Council House Earl Street Coventry CV1 5RR	Tenant:	Caludon Castle School a company limited by guarantee registered in England and Wales (Company number.....) whose registered office is at Axholme Road Wyken Coventry CV2 5BD		
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Tenant:	Caludon Castle School a company limited by guarantee registered in England and Wales (Company number.....) whose registered office is at Axholme Road Wyken Coventry CV2 5BD							
LR4.	Property: (referred to in the remainder of this lease as the "Property")	<p>Please see the definition of "Property" in clause 1.1</p> <p>In the case of conflict between this clause and the remainder of the lease then for the purpose of registration this clause shall prevail</p>						
LR5.	Prescribed statements etc:	<p>LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity) 180 (dispositions by a charity) or 196 (lease under the Leasehold Reform Housing and Urban Development Act 1993) of the Land Registration Rules 2003</p> <p>See clause 10 of this Lease</p> <p>LR5.2 None</p>						
LR6.	Term for which the Property is leased: (referred to in the remainder of this lease as the "Term")	<p>The term is as follows: 125 years from and including the day of 2013</p>						
LR7.	Premium:	None						
LR8.	Prohibitions or restrictions on disposing of this lease:	This lease contains a provision that prohibits or restricts dispositions						
LR9.	Rights of acquisition etc:	<table border="0"> <tr> <td style="vertical-align: top;">LR9.1</td> <td style="vertical-align: top;">Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land:</td> <td style="vertical-align: top;">None</td> </tr> </table>	LR9.1	Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land:	None			
LR9.1	Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land:	None						

	LR9.2	Tenant's covenant to (or offer to) surrender this lease:	None
	LR9.3	Landlord's contractual rights to acquire this lease:	None
LR10.		Restrictive covenants given in this lease by the Landlord in respect of land other than the Property:	None
LR11.		Easements:	
	LR11.1	Easements granted by this lease for the benefit of the Property:	The easement(s) set out in the First Schedule to this lease
	LR11.2	Easements granted or reserved by this lease over the Property for the benefit of other property	The easement(s) set out in the Second Schedule to this lease
LR12.		Estate rentcharge burdening the Property:	None
LR13.		Application for standard form of restriction:	The parties to this Lease apply to enter the following standard form N Restriction against the title to the Property: <i>"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London WS1P 3BT"</i>
LR14.		Declaration of trust where there is more than one person comprising the Tenant:	Not applicable



BETWEEN:

- (1) **THE COUNCIL OF THE CITY OF COVENTRY** of Council House Earl Street Coventry CV1 5RR ("the Landlord")
- (2) **CALUDON CASTLE SCHOOL** a company Limited by guarantee registered in England and Wales whose registered office is at Axholme Road Wyken Coventry CV2 5BD ("the Tenant")

NOW IT IS HEREBY AGREED as follows:-

PART A: PRELIMINARY

1. Definitions and Interpretation

1.1 In this Lease unless the context otherwise requires the following words and expressions shall have the following meanings:-

"Amenities"	drainage water gas electricity telephone and any other services or amenities of like nature
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"Buildings"	all building structures and other erections whether temporary or permanent that are in the course of being constructed or have already been constructed in on or under the Property
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"Conduits"	gutters gullies pipes sewers drains watercourses channels ducts flues wires aerials cables mains cisterns tanks and all other conducting media together with all meters and other apparatus used in connection with them
-------------------	--

"Environment Acts"	the Environmental Protection Act 1990 the Environment Act 1995 the Water Resources Act 1991 the Water Industry Act 1991 and any other Law or Laws of a similar nature in force at any time during the Term
---------------------------	--

"Extended Learning Centre and Youth Centre"	all that area shown coloured blue on the Plan
--	---

"Fixtures and Fittings"	all fixtures and fittings in or upon the Property to include plant machinery lifts boilers central heating air conditioning lighting plumbing sanitary and sprinkler systems hardware and cabling fibre patch panels cables and leads and any other apparatus from time to time in or upon the Property
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"Funding Agreement"	(a) an agreement pursuant to [Section 1 of the Academies Act 2010] made between (1) the Secretary of State for Education and (2) [name of Academy Trust]
----------------------------	--



- (b) any replacement or renewal of such agreement between the same parties and in substantially the same form and
- (c) any replacement agreement made between the Tenant and the Secretary of State for Education (or the successor government body which assumes his functions for funding educational organisations of the Tenant's kind) and which provides funding for the Tenant in relation to the operation of educational services at the Property

"Insured Risks"

- (a) during the period that the Project Agreement subsists the Project Insurances and
- (b) where there is no Project Agreement subsisting

fire smoke damage lightning explosion earthquake storm tempest flood subsidence landslip heave impact terrorism bursting or overflowing of water tanks and pipes damage by aircraft and other aerial devices or articles dropped therefrom riot and civil commotion labour disturbance and malicious damage and such other risks as the Tenant insures against from time to time Subject in all cases to any exclusions or limitations as may from time to time be imposed by the insurers or underwriters Provided that if in respect of any period of time the Tenant is unable to effect insurance against any one or more of such risks or upon terms or at a premium which the Tenant considers reasonable then during such period such risk or risks are deemed to be excluded from the definition of "Insured Risks"

"Interest"

interest at the rate of four per cent (4%) per annum above HSBC Bank plc Base Rate for the time being in force (both before and after any judgment) such interest to be compounded with rests on the usual quarter days or if such Base Rate ceases to be published then at the rate of 1 per cent per annum above the

"Law"	any statute or any order instrument or regulation made under it or any notice or order issued by a government department the legislative making institutions of the European Union minister or local public regulatory or other authority
"Lease"	this Lease as varied from time to time together with any other deed document or agreement at any time during the Term amending supplemental or collateral to it
"the Library"	shall mean all that community library situate on the ground floor of the building forming part of the Property shown coloured green on the Plan
"Necessary Consents"	means those authorisations in valid form which are necessary lawfully to carry out the demolition of any Buildings including without limitation (1) planning permission and approval of reserved matters; (2) building regulation consents and byelaw approvals; (3) the requirements of all competent authorities regulating the Property and/or its use; (4) all necessary orders for the stopping-up or diversion of highways or footpaths; and (5) the consents of all parties having interests in or rights over the Property who in the absence of such consent could impede the demolition of any Buildings by its lawfully exercising their powers
"Outgoings"	all present and future rates taxes duties charges assessments impositions and outgoings whatsoever (whether parliamentary local or of any other description including capital or non-recurring and including any novel expenses)
"PFI Licence"	means the licence granted to the Project Co pursuant to clause 8 of the Project Agreement
"Plan"	the plan annexed to this Lease
"Planning Acts"	the Town and Country Planning Act 1990 the Planning (Listed Buildings and Conservation Areas) Act 1990 the Planning (Hazardous Substances) Act 1990 the Planning (Consequential Provisions) Act 1990 the Planning and Compensation Act 1991 the Planning and Compulsory Purchase Act 2004 and

"Premises Acts"	the Occupiers' Liability Act 1957 the Factories Act 1961 the Offices Shops and Railway Premises Act 1963 the Fire Precautions Act 1971 the Defective Premises Act 1972 the Health and Safety at Work etc. Act 1974 the Occupiers' Liability Act 1984 and any other Law or Laws regulating the safety of premises and those occupying or visiting the same in force at any time during the Term
"President"	the President of the Institution of Chartered Surveyors
"Principal Agreement"	means the agreement between the Landlord (1) the Tenant (2) and the Secretary of State for Education known as the Principle Agreement and dated day of 20
"the Project Co"	means Coventry Education Partnership Limited
"Project Agreement"	means an agreement made between the Landlord (1) and Project Co (2) and dated the 7th December 2004 relating to the construction and provision of services to various buildings and services on the Property and any variation or renewal of such agreement
"Project Insurances"	the insurance policies set out in the Project Agreement taken out and maintained by the Project Co pursuant to the Project Agreement
"Property"	the property described in Schedule 1
"Public Right of Way"	shall mean all that public right of way shown with a broken green line on the Plan
"Reinstatement Value"	the full cost of reinstating the Property including:- <ul style="list-style-type: none">(a) temporarily making the Property safe and protecting any adjoining structures(b) debris removal demolition and site clearance(c) obtaining planning and any other requisite consents or approvals(d) complying with the requirements of any Law



	(e) architects' surveyors' and other fees incurred by the Tenant in relation to the reinstatement
	(f) all construction costs
	(g) any VAT chargeable on any of the reinstatement costs (save where the Tenant is able to recover such VAT as an input in relation to supplies made by the Tenant)
"Rent"	a peppercorn (if demanded)
"Retained Land"	all that Extended Learning Centre and Youth Centre together with all and any adjoining land and premises belonging to the Landlord for the time being and referred to in Schedule 2 and Schedule 3
"Secretary of State"	the Secretary of State for Education or such other Minister of the Crown who is a successor to such person and who is party to the Funding Agreement with the Academy at the relevant time
"School"	Caludon Castle School Axholme Road Coventry West Midlands CV2 5BD
"School's Agreement"	an agreement made between the Landlord (1) the Tenant (2) dated day of 20
"Term"	125 years from and including the Term Commencement Date
"Term Commencement Date"	day of 2013
"Termination Date"	the date of expiration or sooner determination of the Term
"the 1954 Act"	the Landlord and Tenant Act 1954
"the 1995 Act"	the Landlord and Tenant (Covenants) Act 1995
"VAT"	Value Added Tax or any equivalent tax which may at any time during the Term be imposed in substitution for it or in addition to it and all references to rents or other sums payable by the Tenant are exclusive of VAT

- 1.2 In interpreting this Lease:-
- 1.2.1 references to Clauses pages and Schedules are to Clauses and pages of and Schedules to this Lease unless stated otherwise
 - 1.2.2 the expression "Landlord" includes the person for the time being entitled to the immediate possession of the Property on the expiry of the Term
 - 1.2.3 the expression "Tenant" includes the person in whom for the time being the Tenant's interest under this Lease is vested
 - 1.2.4 where reference is made to a statute this includes all prior and subsequent enactments amendments and modifications relating to that statute and any subordinate legislation made under such statute
 - 1.2.5 references to a "person" include any individual firm unincorporated association or body corporate and words importing the singular number include the plural number and vice versa and words importing one gender include all genders
 - 1.2.6 if the Tenant is or are at any time more than one person any reference to the Tenant is deemed to refer to each such person and any obligation on the part of the Tenant takes effect as a joint and several obligation
 - 1.2.7 any covenant by the Tenant not to carry out any action is to be construed as if it is (where appropriate) additionally a covenant by the Tenant not to permit or suffer such action to be done
 - 1.2.8 the words "include" and "including" are to be construed without limitation and in construing this Lease the ejusdem generis principle does not apply and general words are not to be given a restrictive meaning because they are followed by particular examples intended to be embraced by the general words
 - 1.2.9 a reference to an act or omission of the Tenant includes an act or omission of any undertenant and any other person deriving title under the Tenant and includes an act or omission of their respective employees and visitors
 - 1.2.10 a reference to the Property includes any part of it except where the word is used in Clause 3.12
 - 1.2.11 a reference to the end of the Term or to the Termination Date is to the end of the Term however it terminates
 - 1.2.12 a consent of the Landlord shall be valid if it is either:-
 - (a) given in writing and signed by a person duly authorised on behalf of the Landlord;
 - or
 - (b) (if required by the Landlord after any request for consent from the Tenant but prior to consent being given) it is by deed andif a consent is not by deed it will not affect the Landlord's ability to require that any other consent should be by deed
 - 1.2.13 any notice given to the Landlord shall not be valid unless it is in writing
 - 1.2.14 the Landlord is entitled to withhold its consent where it requires the corresponding consent of any mortgagee or superior landlord of the Property until it obtains that consent (and the Landlord shall use all reasonable endeavours to obtain such consent and shall ensure that any

charges or superior leases created after the date of this Lease shall contain obligations on the mortgagee or superior landlord not unreasonably to withhold or delay consent in circumstances where the Landlord's consent cannot be unreasonably withheld or delayed under this Lease)

- 1.2.15 a right of the Landlord or anyone else to have access to or entry upon the Property extends to any superior landlord and any mortgagee of the Landlord's Property and to anyone authorised by the Landlord or any superior landlord or mortgagee including during the period that the Project Agreement subsists the Project Co or its successors under the Project Agreement and their servants agents contractors and includes a right of entry with workmen equipment and materials
- 1.2.16 pursuant to the Perpetuities and Accumulations Act 1964 the perpetuity period applicable to this Lease is eighty (80) years from the Term Commencement Date and whenever a future interest is granted it shall vest within that period and if it does not it will be void for remoteness
- 1.2.17 the table of contents and headings to Clauses paragraphs and Schedules do not affect the construction of this Lease
- 1.2.18 a right granted by the Landlord is granted in common with all other persons entitled to it and/or authorised by the Landlord to exercise it
- 1.2.19 a right excepted or reserved to the Landlord is also reserved to any other person entitled to it and/or authorised by the Landlord and during the period that the Project Agreement subsists shall also be exercisable by or on behalf of the Project Co or its successors under the Project Agreement and their servants agents and contractors
- 1.2.20 where the Landlord is entitled to enter the Property on giving notice it is also entitled to enter without notice in emergency and may break and enter if it considers it necessary
- 1.2.21 nothing entitles the Tenant to enforce any obligation given by anyone to the Landlord
- 1.2.22 any person undertaking any obligation under or by virtue of this Lease which is a 'landlord covenant' for the purposes of the 1995 Act does so only in respect of the period of time during which the immediate reversion to this Lease is vested in such person and not further or otherwise
- 1.2.23 any works (whether of repair decoration alteration or otherwise) that the Tenant is permitted or obliged to carry out in accordance with this Lease shall be carried out in accordance with good modern practice
- 1.2.24 a provision of this Lease which is void or unenforceable shall be severed from all other provisions of this Lease and the remaining provisions shall continue to have effect
- 1.2.25 if a provision of this Lease extends beyond the limitations set by any Law or rule of law but if it were not so extended would remain unaffected by the Law or rule of law the provision is deemed to be varied so as not to extend beyond the limitations
- 1.2.26 if any matter is referred to arbitration pursuant to this Lease:
- (a) it is to be conducted in accordance with the Arbitration Act 1996 and

- (b) the arbitrator has no power:-
 - (i) to order rectification setting aside or cancellation of this Lease
 - (ii) to direct that the recoverable costs of the arbitration or any parts of the arbitral proceedings will be limited to a specific amount
 - (iii) where there are provisions in this Lease for the payment of interest at a specified rate to award interest whether in addition to or in substitution for such interest provisions

1.2.27 if any matter in this Lease is to be determined by an arbitrator:-

- (a) he is to be appointed by agreement between the Landlord and the Tenant or at the request and option of either of them is to be nominated by the President
- (b) if he dies delays or declines to act the President may on the application of either the Landlord or the Tenant discharge him and appoint another to act in his place in the same capacity and
- (c) if either the Landlord or the Tenant pays his fees and expenses it may recover the proportion (if any) the other party was obliged to pay from that other party as a debt recoverable on demand

1.2.28 wherever and to the extent that any provision of this Lease would or might contravene the provisions of section 25 of the 1995 Act then:-

- (a) such provision is to take effect only in so far as it may do so without contravening section 25 of the 1995 Act (and where such provision extends beyond the limits permitted by section 25 of the 1995 Act that provision is to be varied so as not to extend beyond those limits) and
- (b) where such provision is incapable of having any effect without contravening section 25 of the 1995 Act this Lease is to be construed and interpreted as if such provision were deleted and
- (c) the legality validity and enforceability of any of the remaining provisions of this Lease is not in any way to be affected or impaired as a result

2. Demise Rents and Other Payments

2.1 The Landlord demises the Property to the Tenant for the Term (subject to the provisions for earlier termination contained in this Lease) the Tenant paying therefor by way of rent throughout the Term without any deduction counterclaim or set off (whether legal or equitable) of any nature whatsoever:-

2.1.1 the Rent (if demanded)

2.1.2 all other sums (including VAT) due under this Lease from the Tenant to the Landlord

2.2 The Property is demised:-

2.2.1 together with the rights specified in Schedule 2

2.2.2 excepting and reserving to the Landlord and all others now entitled (or who may become entitled) and all others authorised by them (to include any adjoining or neighbouring owners or occupiers) as specified in Schedule 3

2.2.3 subject to the Public Right of Way and such other rights of way (if any) affecting the Property which are still subsisting and capable of taking effect

3. **Tenant's Covenant**

Save to the extent that any of the Tenant's obligations contained in this Clause 3 are the responsibility of Project Co under the Project Agreement the Tenant covenants with the Landlord as follows:-

3.1 **Rent and Payments**

To pay the Rent and all other sums reserved as rent by this Lease at the times and in the manner at and in which they are reserved in this Lease

3.2 **Outgoings**

3.2.1 Promptly to pay the Outgoings which are now or may during the Term be payable in respect of the Property or its owner or occupier except any payment occasioned by any disposition of or dealing with the ownership of any estate or interest expectant in reversion on the Term provided always that if any Outgoings are payable in respect of the Retained Land as well as the Property without apportionment to pay a fair and proper proportion of the same to be conclusively determined by the Landlord acting reasonably

3.2.2 To pay for all Amenities exclusively used by or available to the Property (including all standing charges) provided that whilst the Project Agreement is subsisting the Tenant's obligation to pay for Amenities shall be suspended and the Tenant shall during this period comply with its obligations set out in Clause [] of the School's Agreement

3.2.3 To observe and perform all present and future regulations and requirements of the authorities or companies supplying or providing the Amenities

3.3 **Repair and Upkeep**

3.3.1 **Repair and Upkeep**

3.3.1 At all times during the Term to keep the Property (including for the avoidance of doubt all buildings structures landscaping and other erections) clean and tidy and make good:-

- (a) any damage it causes to the Property and/or
- (b) any deterioration to the condition of the Property that may arise from the Term Commencement Date

provided that the Tenant shall not be in breach of this covenant if and for so long as disrepair arises due to damage caused to the Property by any of the Insured Risks and the Tenant is diligently pursuing its insurance claim and reinstating such damage

Provided that the Tenant shall not be in breach of this covenant in the event that the Property is not in the required state of condition and repair as a result of a breach by the Landlord of the Landlord's obligations under the Schools Agreement

- 3.3.2 To notify the Landlord in writing immediately if any structural damage occurs to the Property
- 3.3.3 to maintain and repair all the boundary walls fences and hedges serving the Property shown with "T" marks on the Plan PROVIDED THAT nothing in this clause shall oblige the Tenant to put fencing across the public footpath running through the South West of the Property nor to erect any new fencing in that area not in existence at the date of this Lease

3.4 Access of Landlord and Notice to Repair

To permit the Landlord and all persons authorised by the Landlord (with or without equipment) upon reasonable prior notice to the Tenant (but at any time without notice in case of emergency) to enter the Property as follows:-

- 3.4.1 in the final 3 years of the Term in order to take inventories of any Fixtures and Fittings to be yielded up at the end of the Term

- 3.4.2 at reasonable intervals during the Term in order to view and examine the state of repair and condition of the Property and to give to the Tenant or the Tenant's agent or leave on the Property notice in writing to the Tenant of all breaches of any of the tenant covenants in this Lease relating to the condition or repair of the Property ("Repair Notice") and the Tenant covenants (subject to having obtained any necessary consents to any required works, which the Tenant shall use all reasonable endeavours to obtain as soon as possible) to repair and make good the Property according to such notice and the covenants in that behalf contained in this Lease within the following time periods:-

- (a) where (b) and (c) below do not apply or where the state of repair is causing a breach of health and safety or other legislation or is causing structural damage ("Safety Breach"), the works shall be commenced within the period of 56 days after the service of the Repair Notice and shall be completed diligently thereafter
- (b) where there is no Safety Breach, if the Tenant does not immediately have the funds to carry out such works but could complete the works within a reasonable period without requiring further funding under the Funding Agreement it shall demonstrate this to the Landlord by providing to the Landlord within 56 days of the service of the Repair Notice:-
 - (i) a statement of the maintenance budget for the Property (included within the funding already received under the Funding Agreement) and the sums expended that financial year to date on the repair and maintenance of the Property ("Funding Statement") and
 - (ii) a programme of works setting out a reasonable time period for the works to be carried out taking into account the nature of the disrepair and the funds available

and the works shall be commenced and carried out within the periods set out in the programme of works referred to at (ii) above

- (c) where there is no Safety Breach and where the Tenant cannot demonstrate that it can carry out the works within a reasonable time under (b) above but requires to make an application ("Funding Application") to the Secretary of State for funding under the Funding Agreement in order to carry out such works, the relevant section of works shall be commenced as soon as reasonably practicable after the payment of the funding instalment relating to that section of works under the programme of works agreed pursuant to the Funding Application ("Works Programme") and all works shall be completed within a reasonable period following the last payment under the Works Programme

and if the Tenant fails satisfactorily to comply with such notice in accordance with (a) (b) or (c) above the Landlord and all persons authorised by the Landlord are entitled at any time without notice (but without prejudice to the right of re-entry contained in this Lease) to enter the Property with all necessary equipment to repair and make good the Property in accordance with the covenants and provisions contained in this Lease and the expense of such repairs together with all reasonable legal and surveyors' fees properly incurred in connection with this sub-clause must be repaid by the Tenant to the Landlord upon demand and on a full indemnity basis as a contractual debt

- 3.4.3 where the Tenant has served notice on the Landlord pursuant to Clause 3.3.2 of the occurrence of structural damage to the Property then to permit the Landlord to enter onto the Property to view and examine the state of repair and condition of the Property
- 3.4.4 at any time during the Term to view the Property in connection with any dealing or proposed dealing (by way of sale mortgage or otherwise) with the Landlord's reversionary interest in the Property
- 3.4.5 (in circumstances only where the Landlord may have a liability under Law or under this Lease) to carry out such tests inspections and surveys as the Landlord reasonably requires
- 3.4.6 at any time during the Term to fix and retain without interference upon any suitable part or parts of the Property one or more notice boards for reletting (but in the case of reletting only within six months before the Termination Date) or selling at any time the Landlord's reversionary interest in the Property
- 3.4.7 at any time during the Term to exercise any rights reserved by this Lease or the Project Agreement and to comply with any obligations of the Landlord (whether arising under this Lease the Project Agreement or otherwise)
- 3.4.8 at reasonable intervals during the Term in order to determine whether the Tenant has complied with all its obligations in this Lease (save that, for the avoidance of doubt, the Landlord shall not be entitled to inspect the financial records of the Tenant)

Provided that any exercise of the above rights by the Landlord does not constitute an action for forfeiture by the Landlord or evidence an intention to accept or effect the surrender of the Term and provided further that the exercise of the above rights by the Landlord shall (1) whilst the Project Agreement is subsisting be in accordance with the terms and conditions (if any) for the exercise of such rights as are contained in the Project Agreement and shall (2) at all times whilst there is no Project Agreement subsisting not be in such a manner as materially to restrict or interrupt the operation of the School on the Property by the Tenant, shall cause as little damage as reasonably practicable and shall (save in relation to emergency access) be in

accordance with the reasonable requirements of the Tenant in relation to the security of the Property and the health and safety of the students and others at the Property or School, and the Landlord shall make good any damage caused to the Property as soon as reasonably practicable

3.5 **Alterations and Additions**

Whilst there is no Project Agreement subsisting Clauses 3.5.1 to 3.5.7 shall apply:-

3.5.1 Not to commit any act of waste

3.5.2 Not to erect any buildings or other structures on the Property nor make any structural or external alterations additions or variations to any structures for the time being on the Property without the Landlord's prior written consent (such consent not to be unreasonably withheld or delayed) save that the Landlord can only refuse such consent if:-

- (a) such erection alteration addition or variation will adversely affect the Landlord's statutory obligations as a landlord or as a local authority and/or
- (b) such erection alteration addition or variation will have an adverse effect on the structural integrity of any structures on the Property or any part or parts of any structures on the Property and/or
- (c) such erection alteration addition or variation will adversely affect the value of the Landlord's reversionary interest in the Property

3.5.3 As part of the application to the Landlord for its consent pursuant to Clause 3.5.2 the Tenant shall:-

- (a) submit to the Landlord adequate plans and specifications describing the proposed erection alteration addition or variation and shall consult with the Landlord on the proposed erection alteration addition or variation and shall take into account any representations that the Landlord may reasonably make in relation to the matters referred to at Clause 3.5.2 (a) (b) and (c)
- (b) make any necessary variations or alterations to the plans and specifications in accordance with the reasonable representations of the Landlord pursuant to sub-clause (a) above
- (c) covenant with the Landlord as to the execution and (if it is agreed between the parties before the works are carried out that they will be reinstated at the determination of the Term) the reinstatement of any of the works as the Landlord may reasonably require

3.5.4 In relation to any works permitted pursuant to Clauses 3.5.2 and 3.5.3 above to carry out all such works only in accordance with such plans and specifications as have been provided to and approved by the Landlord in writing or as have been subsequently varied in accordance with any representations of the Landlord

3.5.5 After commencing any works of erection alteration addition or variation as permitted pursuant to Clauses 3.5.2 and 3.5.3 above to complete such works as soon as reasonably practicable and in any event no later than by the end of the Term

3.5.6 To carry out any works permitted by this Lease in a good and workmanlike manner as soon as reasonably practicable with good quality materials strictly in accordance with all relevant British Standards including codes of practice and the requirements and regulations of all utility companies affected by such works and so that any easements rights privileges or liberties which third parties enjoy in over or under the Property are not interfered with and that no nuisance is caused to the Landlord or any occupiers of any part or parts of the Retained Land

3.5.7 Not to carry out any erection alteration addition or variation which hinders access to a Conduit

3.5.8 During the period that the Project Agreement subsists the Tenant shall not make any or procure any alterations or addition to the Property save in accordance with the provisions of Clause of the Schools Agreement

3.6 **Signs and Advertisements**

3.6.1 To notify the Landlord of the affixing or display on the boundaries of the Property or on the outside of the buildings on the Property of any sign (which expression includes any signboard advertisement hoarding fascia poster placard bill notice or other notification) other than signs which:-

- (a) are required by law to be affixed or displayed or
- (b) do not require planning permission or
- (c) are necessary or usual for the authorised use of the Property

3.6.2 To display and maintain upon the Property notices required in relation to the Premises Acts and the Environment Acts

3.7 **Statutory Obligations**

3.7.1 To comply with all Laws (including the Premises Acts) affecting the Property the physical condition or the user of them or the use of any Fixtures and Fittings in them

3.7.2 As soon as reasonably practicable to give written notice to the Landlord of anything arising or being in the Property which may endanger or adversely affect health or safety and which might give rise to a duty of care imposed by common law or statute on the Landlord in favour of the Tenant or any other person

3.7.3 The Tenant shall comply with its obligations, requirements and duties under the Construction (Design and Management) Regulations 2007 ("CDM Regulations") in relation to any works carried out at the Property, including all requirements in relation to the provision and maintenance of a health and safety file for the Property, which the Tenant shall maintain and shall give to the Landlord on the Termination Date

3.7.4 The Tenant shall elect to be treated as the only client as defined under the CDM Regulations in respect of any works carried out at the Property pursuant to Regulation 8 of the CDM Regulations

3.7.5 The Tenant shall supply all information to the Landlord that the Landlord reasonably requires from time to time to comply with the Landlord's obligations under the CDM Regulations



3.8 Yield Up

3.8.1 Subject to Clause 3.8.2 on the Termination Date quietly to yield up the Property to the Landlord with vacant possession (subject only to any lease granted to a statutory undertaker) in accordance with the proper performance of the Tenant's covenants contained in this Lease and with all refuse and (unless the Landlord notifies the Tenant to the contrary prior to the Termination Date) all Tenant's fixtures and fittings lettering and signs put up by the Tenant duly removed

3.8.2 The Tenant may give written notice to the Landlord not less than six months before the Termination Date of its intention to demolish all Buildings The Tenant shall at its own cost:

- (a) obtain all Necessary Consents before commencing any such works
- (b) observe and perform any conditions attached to the Necessary Consents in carrying out the demolition works
- (c) demolish all Buildings and make good all damage to the property (including the clearance and removal of all rubble) to the reasonable satisfaction of the Landlord

PROVIDED THAT the Landlord may within 20 working days of receipt of a notice served pursuant to this clause indicate to the Tenant that it requires the Tenant to leave the Property in situ and comply with the covenant in Clause 3.8.1

3.9 Use

3.9.1 Not to carry on upon the Property any noisy noxious offensive or dangerous trade or occupation provided that the proper use of the Property for the purposes permitted by clause 3.9.3 shall not be a breach of this Clause

3.9.2 Not to use the Property for any illegal or immoral purpose

3.9.3 Without prejudice to the preceding covenants in this Clause not to use the Property otherwise than:-

- (a) for the purposes of the provision of educational services by the Tenant (as set out in any charitable objects of and in accordance with the memorandum and articles of association of the Tenant from time to time); and
- (b) for community, fundraising and recreational purposes which are ancillary to the use permitted under Clause 3.9.3 (a)
- (c) whilst the Project Agreement is subsisting the Tenant's use of the Property in accordance with this clause 3.9.3 shall be in accordance with the terms and conditions of the Schools Agreement

3.10 Planning and Environmental Matters

3.10.1 To provide to the Landlord copies of any plans specifications applications consents and permissions relating to applications under the Planning Acts and to deal with any queries that the Landlord acting reasonably may raise

3.10.2 So often as occasion requires to obtain all consents and permissions required to authorise the use from time to time of the Property and the carrying out of any development (within the meaning of the Planning Acts) on the Property

3.10.3 To pay and satisfy any charges that may hereafter be imposed under the Planning Acts in respect of the carrying out or maintenance of any such development

3.10.4 To give written notice to the Landlord of the granting or refusal of any planning permission within twenty days after its receipt by the Tenant

3.10.5 If the Tenant receives any compensation because of any restriction placed upon the use of the Property under or by virtue of the Planning Acts then if this Lease is determined by surrender or re-entry immediately to make such provision as is just and equitable for the Landlord to receive due benefit from such compensation

3.11 Notices

As soon as reasonably practicable following receipt to provide to the Landlord a copy of any communication or notice which may give rise to a liability on the part of the Landlord or which may adversely affect the value or nature of the Landlord's interest in the Property

3.12 Dealings

3.12.1 Not to part with or share the possession or occupation of the whole or any part or parts of the Property Provided that the Tenant may share occupation of part of the Property with a body or individual providing services or facilities which are ancillary to and within the uses referred to in clause 3.9.3 where no relationship of landlord and tenant arises as a result of such occupation

3.12.2 Not to hold the Property or any part or parts of the Property or this Lease on trust for another

3.12.3 Subject to sub-clause 3.12.4 and 3.12.5 not to assign or transfer any part or parts or the whole of the Property

3.12.4 The Tenant is permitted to assign or transfer the whole of the Property to a successor charitable or public body where the Secretary of State has given approval in writing to such an assignment or transfer

3.12.5 During the subsistence of the Schools Agreement where the Tenant's interest in the Schools Agreement is assigned in accordance with Clause of the Schools Agreement the Tenant shall simultaneously assign the benefit of this Lease to the assignee of the Tenant's interest in the School's Agreement

3.12.6 During any period when there is no Project Agreement subsisting:

(a) not to underlet the whole Property and

(b) not to underlet any part or parts of the Property for a term (including any option to renew) in excess of 10 years provided that no more than three underleases are subsisting at the Property at any one time during the Term



3.12.7 During the subsistence of the Project Agreement not to underlet the whole of the Property

3.12.8 During the subsistence of the Project Agreement not to underlet any part or parts of the Property without the prior written consent of the Landlord and the parties agree that:

- (a) the Landlord may not unreasonably withhold or delay its consent to a proposed underletting where the underlease is in a form which is not inconsistent with the terms of this Lease or of the Project Agreement
- (b) the maximum term (including any option to renew) of any underlease granted pursuant to this Clause 3.12.8 will be 10 years
- (c) the Tenant shall not underlet any part or parts of the Property unless, before the underlease in question is granted, the Tenant has given the Landlord:
 - (i) a certified copy of the notice served on the undertenant, as required by section 38(A)(3)(a) of the 1954 Act, applying to the tenancy to be created by the underlease
 - (ii) a certified copy of the declaration or statutory declaration made by the undertenant in accordance with the requirements of section 38(A)(3)(b) of the 1954 Act and
 - (iii) a direct deed of covenant from the undertenant in a form approved by the Landlord (acting reasonably) in favour of the Landlord whereby the undertenant covenants to comply with the tenant's covenants contained in the underlease
- (d) any underletting by the Tenant shall be by deed and shall include an agreement between the Tenant and the undertenant that the provisions of section 24 to 28 of the 1954 Act are excluded from applying to the tenancy created by the underlease
- (e) the Tenant shall not grant any lease or rights to a telecommunication company or operator where the use of any equipment to be installed on the Property is intended to be used or made available for use by the general public

3.12.9 Not to charge the whole or any part or parts of the Property without the Landlord's written consent

3.13 Rights of Light and Encroachments

Not to obstruct any windows or lights belonging to the Property nor to permit any encroachment upon the Property which might be or become a detriment to the Landlord and in case any encroachment is made or attempted to be made to give immediate notice of it to the Landlord

3.14 Indemnity

3.14.1 To keep the Landlord indemnified against all actions proceedings costs claims demands and expenses in respect of any liability or alleged liability in respect of any injury to or the death of any person (however the same may be caused) damage to any property moveable or immovable Laws (including the Premises Acts the Planning Acts and the Environment Acts) the infringement disturbance or destruction of any right easement or privilege and every other liability arising directly or indirectly out of any defect in or the condition or use of the Property or anything done or omitted to be done on them or any breach of the Tenant's obligations in this Lease



- 3.14.2 To notify the Landlord in writing immediately upon any of the events or matters referred to in sub-clause 3.14.1 occurring or arising

3.15 Costs

To pay to the Landlord on demand all reasonable and proper costs charges and expenses (including legal costs and surveyors' fees and other professional fees and any charges and/or commission payable to a bailiff) losses and liabilities which may be incurred by the Landlord:-

- 3.15.1 in connection with the preparation and service of any notice (including any schedule of dilapidations) served under this Lease relating to the repair or condition of the Property whether during the Term or within three months after the Termination Date
- 3.15.2 in connection with any application by the Tenant for any licence approval permission or consent required under the terms of this Lease whether or not the application is withdrawn or the licence approval permission or consent is refused (save where refused unreasonably contrary to the terms of this Lease) or is granted (save where granted subject to conditions declared by a court of competent jurisdiction to be unreasonable)
- 3.15.3 in or in contemplation of claiming or recovering any arrears of Rent or rents or in connection with or arising out of any breach by the Tenant of any of the Tenant's obligations hereunder whether or not the Landlord proves such matters by proceedings in any Court

3.16 VAT

- 3.16.1 To pay VAT upon the Rent and upon any other sums payable by the Tenant under this Lease and in relation to any other supply of goods or services (within the meaning of section 5 and schedule 4 of the Value Added Tax Act 1994) made by the Landlord to the Tenant under this Lease so far as such tax is from time to time properly chargeable upon the same and in relation to taxable supplies made by the Landlord to the Tenant the Landlord must deliver to the Tenant a VAT invoice addressed to the Tenant
- 3.16.2 Where the Tenant has agreed to reimburse or indemnify the Landlord in respect of any payment made by the Landlord under the terms of or in connection with this Lease also to reimburse any VAT paid by the Landlord on such payment unless the VAT is actually recovered by the Landlord as an input in relation to supplies to the Landlord

3.17 Interest on Arrears

If any sums from time to time payable by the Tenant to the Landlord under this Lease are not paid to the Landlord within 21 days of the date when such sums became due (whether demanded or not) or are tendered to the Landlord but the Landlord reasonably refuses to accept them so as to preserve any rights the Landlord has to pay to the Landlord (without prejudice to any other right remedy or power available to the Landlord) interest on such sums (both before and after any judgement) from the date when such sums first became due until the date of actual payment inclusive of both dates at the Interest Rate

4. Landlord's Covenants

The Landlord covenants with the Tenant:-

4.1 Quiet Enjoyment

That the Tenant may peaceably and quietly hold and enjoy the Property during the Term without any interruption or disturbance by the Landlord or any person rightfully claiming through or under the Landlord

4.2 Where there is no Project Agreement subsisting the Landlord shall:

4.2.1 not do or omit anything as a result of which any policy of insurance of the Property may become void or voidable or otherwise prejudice or the payment of any policy money may be withheld, nor (unless the Landlord has previously notified the Tenant and has paid any increased or additional premium) anything as a result of which any increased or additional insurance premium may become payable

4.2.2 pay the Tenant an amount equal to any insurance money that the insurers of the Property refuse to pay by reason of any act or omission of the Landlord or any undertenant their workers contractors or agents or any person at the Property with the actual or implied authority of any of them in payment of the costs and expenses incurred by the Tenant in complying with its rebuilding and reinstatement obligations at Clause 5.1.3 of this Lease within 14 days of receipt of a written demand for payment from the Tenant

5. Insurance

5.1 Where there is no Project Agreement subsisting the Tenant covenants with the Landlord:-

5.1.1 to keep the Property insured on a composite co-insured basis with the Tenant and the Landlord named as co-insured with a reputable insurance office against loss or damage by the Insured Risks in the sum the Tenant is advised represents the Reinstatement Value of the Property from time to time

5.1.2 to pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Property

5.1.3 following the incidence of damage to or destruction of the Property and subject to receipt of all necessary consents licences permissions and the like to apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Property (provided that this covenant should be satisfied if the Tenant provides premises not necessarily identical to the Property as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable provided that in case it shall be impossible or impracticable to reinstate the Property in accordance with the provisions of this Clause 5 within 3 years of the date of damage or destruction occurring either party may serve written notice on the other to terminate this Lease and upon service of such notice this Lease shall immediately cease and determine but without prejudice to the rights of either party against the other in respect of any prior breach of any obligation contained in this Lease and any monies received under the said policy of insurance whether before or after the termination of this Lease shall be paid by the Tenant on receipt to the Landlord and shall as between the Landlord and the Tenant belong to the Landlord absolutely

- 5.1.4 to produce to the Landlord a copy of the insurance policy whenever reasonably requested and the receipt for the last or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases)
- 5.1.5 not to knowingly do anything whereby any policy of insurance relating to the Property may become void or voidable
- 5.2 The Tenant further covenants with the Landlord to insure against liability in respect of property owners' and third party risks
- 5.3 The Landlord confirms that Project Co is responsible for taking out and maintaining the Project Insurances and the parties agree that during the subsistence of the Project Agreement the Landlord shall procure that the Property is kept insured by Project Co in accordance with the Project Insurances or is otherwise insured on a substantially similar basis by the Landlord Provided that the Landlord shall not be obliged to insure or procure to be insured any part of the Property installed by the Tenant
- 5.4 During the subsistence of the Project Agreement the Tenant may terminate this Lease by giving notice to the Landlord if, following damage or destruction by an Insured Risk, the Property has not been reinstated so as to be fit for occupation and use within three years after the date of damage or destruction On giving this notice this Lease shall determine but this shall be without prejudice to any right or remedy of the Landlord in respect of any breach of the Tenant's covenants of this Lease Any proceeds of the insurance shall belong to the Landlord

6. **Provisos**

6.1 **Re-Entry**

Where there occurs a breach by the Tenant of Clause 3.9 and/or 5.1.3 of this Lease and the Landlord has served written notice specifying such breach and the remedial action required by the Tenant and if within a reasonable period (taking account of the breach complained of) the Tenant has not taken steps to remedy such breach or the Tenant is dissolved or struck off or removed from the Register of Companies or otherwise ceases to exist then it is lawful for the Landlord or any person authorised by the Landlord at any time afterwards to re-enter upon the Property or any part of it in the name of the whole and thereupon the Term absolutely determines without prejudice to any right of action of the Landlord in respect of any breach of the Tenant's obligations contained in this Lease

6.2 **Landlord's Rights on Forfeiture**

The Landlord's right to forfeit this Lease is not affected by any acceptance of or demand for rent or any action which would affirm this Lease by the Landlord with knowledge of a breach of any of the Tenant's covenants contained in this Lease and the Tenant is not in any proceedings for forfeiture or otherwise entitled to rely upon any such acceptance demand or affirmation as aforesaid as a defence provided that this provision only applies to any acceptance of or demand for rent or affirmation of this Lease made during such period as may in all the circumstances be reasonable for enabling the Landlord to conduct negotiations with the Tenant for remedying the breach



6.3

Service of Notices

Section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 applies to all notices which may

- 6.3.1 the final words of section 196(4) "and that service be delivered" are deleted and there is substituted "and that service is deemed to have been made on the third working day after the registered letter has been posted" and "working day" means any day from Monday to Friday (inclusive) other than Christmas Day Good Friday and any statutory or bank holiday
- 6.3.2 any notice or document is also sufficiently served if sent by telephonic facsimile transmission to the party to be served and that service is deemed to be made on the day of transmission if transmitted before 4.00 pm on a working day but otherwise on the next following working day
- 6.3.3 if the party to whom any notice to be served consists of more than one person the service of notice upon one of such persons constitutes service upon all of them
- 6.3.4 any notice to be given by a party may be given by that party's solicitor or agent and when addressed to a party is not rendered invalid by reason of that party having died become insolvent or changed name whether or not the party serving notice is aware of the fact

6.4 **Exclusion of S.62 L.P.A.**

The operation of section 62 of the Law of Property Act 1925 is excluded from this Lease and the only rights granted to the Tenant are those expressly set out in this Lease and the Tenant is not by virtue of this Lease deemed to have acquired or be entitled by any means whatsoever (other than express grant) to any easement from or over the Retained Land or affecting any other land or premises now or at any time after the date of this Lease belonging to the Landlord and not comprised in this Lease

6.5 **Governance**

- 6.5.1 This Lease is governed by English law
- 6.5.2 The parties submit to the exclusive jurisdiction of the High Court of Justice in England

6.6 **Agreement to Exclude Sections 24 to 28 of the 1954 Act**

- 6.6.1 The Landlord and the Tenant agree pursuant to section 38A(1) of the 1954 Act that the provisions of sections 24 to 28 (inclusive) of the 1954 Act are excluded in relation to the tenancy created by this Lease
- 6.6.2 The Tenant confirms that:-
 - (a) the Landlord served on the Tenant a notice ("the Notice") applicable to the tenancy created by this Lease on the day of 2012 in accordance with section 38A(3)(a) of the 1954 Act and
 - (b) the Tenant or a person duly authorised by the Tenant made a declaration or a statutory declaration in relation to the Notice on the day of 2012 in accordance with the requirements of section 38A(3)(b) of the 1954 Act



6.7 Termination

- 6.7.1 This Lease shall automatically determine on the termination of the Funding Agreement in circumstances where there is no other Funding Agreement in existence
- 6.7.2 The Tenant shall give written notice to the Landlord as soon as possible after becoming aware that the Funding Agreement may be liable to termination including where a notice terminating the Funding Agreement is served on the Tenant and the notice served on the Landlord shall specify the date (or likely date) of termination of the Funding Agreement
- 6.7.3 The Tenant shall give written notice to the Landlord at the same time as the Tenant serves any notice terminating the Funding Agreement and such notice shall specify the date (or likely date) of termination of the Funding Agreement
- 6.7.4 On the termination of this Lease under Clause 6.7.1 everything contained in the Lease ceases and determines but without prejudice to any claim by either party against the other in respect of any antecedent breach of any obligation contained in this Lease
- 6.7.5 In the event that the Project Agreement terminates prior to the Expiry Date as a result of Authority Default (as both terms are defined in the Project Agreement) and
- (a) a breach by the Tenant of the School Agreement is the substantial cause of the Authority Default in question and
 - (b) the Secretary of State makes a material payment to the Landlord as a result of the Project Agreement termination pursuant to its obligation at Clause 5 of the Principal Agreement

then the Landlord may give to the Tenant a notice in writing expiring on the 31 August which next follows after the date of service of such notice and then on the termination of this Lease under this Clause 6.7.5 this Lease and everything contained in the Lease ceases and determines but without prejudice to any claim by either party against the other in respect of any antecedent breach of any obligation contained in the Lease

7. Landlord's Powers

- 7.1 The Landlord enters into this Lease pursuant to its powers under sections 111 120 122 and 123 of the Local Government Act 1972 the Education Act 1996 Section 2 of the Local Government Act 2000 and all other powers so enabling and warrants that it has full power to enter into this Lease and to perform all obligations on its part herein contained
- 7.2 Nothing in this Lease shall fetter the Landlord in the proper performance of its statutory functions

8. New Tenancy

This Lease is a new tenancy for the purposes of the 1995 Act

9. **Contracts (Rights of Third Parties) Act**

A person who is not a party to this Lease has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Lease but this does not affect any right or remedy of a third party which exists or is available apart from that Act

10. **Charity**

The Property will as a result of this Lease be held by [] an exempt charity

11. **Arbitration**

Any disputes or differences arising as between the Landlord and the Tenant as to its respective rights duties or obligations or as to any other matter arising out of or in connection with this Lease shall (unless hereinbefore provided to the contrary) be referred to an independent surveyor to be agreed between the parties hereto and in default of agreement to be appointed (upon application by either party to the President or his deputy for the time being of the Royal Institute of Chartered Surveyors) PROVIDED THAT where any dispute or difference involves a legal interpretation as to any matter arising out of or in connection with this Lease then the parties may agree (acting reasonably) a solicitor or barrister who is an expert in the field of property law to determine the matter such expert to be agreed between the parties hereto or in default of agreement to be appointed by the President or his deputy for the time being of the Law Society or the successors of that body the expert to act as a single arbitrator in accordance with the provisions of the Arbitration Act 1996

EXECUTED AS A DEED by the parties on the date which first appears in this Lease.

EXECUTED (but not delivered until the date hereof) **AS A DEED** by affixing the Common Seal of **THE COUNCIL OF THE CITY OF COVENTRY** in the presence of:-

Authorised Signatory



EXECUTED (but not delivered until the date hereof) AS A DEED by **CALUDON CASTLE SCHOOL** acting by a Director in the presence of:

Director

Witness Signature:

Witness Name: (Print)

Witness Address:

.....

Witness Occupation:

Caludon Castle School-12-js



The Property

ALL THAT land and buildings situate at the Caludon Castle School situated in Axholme Road Wyken in the City of Coventry shown edged red on the Plan and include the following so far as the same may exist at any time during the Term:-

- (a) all Conduits exclusively serving such Property and
- (b) all Fixtures and Fittings (save for those that belong to the Tenant)

BUT EXCLUDING

- (c) the Extended Learning Centre and Youth Centre



Rights Granted**1. Services**

The right in common with the Landlord and all others from time to time so entitled and with the prior written consent of the Landlord (such consent not to be unreasonably withheld or delayed save as provided below) for the Tenant to connect into (in so far as there are no connections) and to pass Amenities to and from the Property through Conduits now or at any time during the Term laid in under or upon the Retained Land of the Landlord **PROVIDED** that the Landlord has the right at any time or times during the Term:-

- 1.1 to refuse consent for the Tenant to connect into any Conduits if in the reasonable opinion of the Landlord the Conduits are insufficient to bear the extra load which would be likely to result from the proposed connection by the Tenant and
- 1.2 to divert or vary the positions of the Conduits upon giving reasonable prior notice to the Tenant (except in case of emergency) (which interruption the Landlord must however seek to minimise so far as is reasonably possible)

2. Support

A right of support and protection to the Property from the Landlord's adjoining land

3. Access to Retained Land

The right upon giving reasonable prior written notice (except in case of emergency) to the Landlord and all others from time to time so entitled to enter only so far as is strictly necessary upon the Retained Land for the purpose of inspecting and executing repairs to or on the Property subject to the Tenant:-

- 3.1 causing as little damage disturbance or inconvenience as possible to the Landlord and all others from time to time so entitled and
- 3.2 making good as soon as reasonably practicable to the reasonable satisfaction of the Landlord and to all others from time to time so entitled all damage caused by the exercise of this right

Rights Excepted and Reserved

1. The full and free right for the Landlord and their successors in title to build upon alter add to extend redevelop or otherwise use any part of the Retained Land notwithstanding that such buildings or user may affect the access of light or air coming to the Property
2. The free flow of water soil gas electricity and other supplies to and from the Retained Land through the sewers drains pipes and channels now or in future existing in or under the Property and the right to make connections with such sewers drains pipes and channels or any of them for the purpose of exercising such right provided that such connections do not overload the capacity of the Conduits in on or under the Property and subject first to obtaining the approval of the Tenant to the points of connection (such consent not to be unreasonably withheld or delayed
3. The right for the Landlord and their licensees and tenants for the time being of adjoining property belonging to the Landlord if so authorised in writing by the Landlord and their servants agents and workmen at all reasonable times after reasonable notice (of not less than 5 days notice in writing save in the case of emergency where no notice is required) to enter on the Property for the purpose of executing any work on or in connection with such adjoining property which otherwise cannot be conveniently executed the person or persons exercising such right causing as little interference or damage to the Property as is reasonably practicable and making good all damage caused thereby
4. The right at any time throughout the Term (upon giving to the Tenant no less than five (5) days prior notice in writing save in the case of an emergency where no notice is required) to enter the Property to:-
 - 4.1 inspect cleanse connect lay repair remove relay replace with other alter or execute any works whatever in connection with the conduits referred to in Clause 2 of this Schedule
 - 4.2 carry out any work or do anything whatsoever comprised within the Landlord's obligations in this Lease or under any legislation whether or not the Tenant is obliged or liable to make a contribution
 - 4.3 exercise any of the rights granted to the Landlord by this Lease
 - 4.4 view the state and condition and repair of the Property
5. The right of support and protection by the Property for such other parts of the adjoining land and property of the Landlord as requires such support and protection

Subject to the Landlord in the exercise of the aforesaid rights causing as little damage and inconvenience to the Property as reasonably possible and making good to the reasonable satisfaction of the Tenant all damage caused to the Property

6. From time to time during the Term the right (upon giving to the Lessee no less than two (2) months notice in writing) the right for the Landlord and its employees and visitors to use the whole or part of the Property as a polling station on dates and times as are necessary for the purposes of facilitating public voting during local general or European elections

7. From time to time during the Term the right for the Landlord to use the Property as an "Emergency Centre" in the event that there is a major incident in the City of Coventry that requires the use of buildings in cases of emergency provided that in such an event the Lessee will co-operate with the Landlord and use every effort to assist the Landlord's use of the Property notwithstanding any hiring arrangements that are in place for use of the Property at that time
8. The right to enter the Property to exercise any of the Landlord's rights or discharge any of the Landlord's obligations pursuant to the Project Agreement
9. The right for the Council (in common with all others entitled to the like rights) over across and through the Property (as reasonably necessary) to gain access and egress to and from the Extended Learning Centre and Youth Centre for all proper purposes for the use enjoyment repair and maintenance of the same TOGETHER WITH the right for visitors to use the car parking facilities within the Property
10. The right for the Council (in common with members of the public and all others entitled to the like right) over across and through the Property (as reasonably necessary) to gain access to and from the Library TOGETHER WITH the right for visitors to the Library to use the car parking facilities within the Property

Caludon Castle School-12-js

APPENDIX 4

Dated

2012

- (1) Coventry City Council**
- (2) The Governing Body of
Caludon Castle School
and Business and
Enterprise
College**
- (3) Caludon Castle School**

Transfer Agreement

Re: Caludon Castle School

Ref: L/RL



Coventry City Council

BETWEEN:

- (1) **THE COUNCIL OF THE CITY OF COVENTRY** of The Council House Earl Street Coventry CV1 5RR (the "Council");
- (2) **THE GOVERNING BODY OF CALUDON CASTLE SCHOOL AND BUSINESS AND ENTERPRISE COLLEGE** of Axholme Road Wyken Coventry CV2 5BD (the "Governing Body");
- (3) **CALUDON CASTLE SCHOOL** a company limited by guarantee registered in England and Wales (company number [●]) whose registered office is at Axholme Road Wyken Coventry CV2 5BD (the "Company").

WHEREAS

- (A) The School will close and the Company will, from the Transfer Date, operate the Academy on the same site as the School.
- (B) The freehold of the site of the School is owned by the Council and on the Transfer Date the Council will grant a lease to the Company of the site currently occupied by the School.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words shall have the following meanings:-

“Academy”	means the academy to be run by the Company on the site of the School under the proposed name Caludon Castle School;
“Assets”	means all property, undertaking, rights and assets, whether tangible or intangible, of whatever nature used or held by the Council and/or the Governing Body (as the case may be) for the purposes of the School including but not limited to those listed in Schedule 3, but excluding the Excluded Assets;
“Contractor”	means a contractor providing services to the Company to whom the contract of employment of any Transferring Employee is transferred pursuant to the Regulations on or after the Transfer Date;
“Contracts”	means the contracts entered into by the Council and/or the Governing Body (as the case may be) for the purpose of operating the School in the ordinary course of business which are still in force at the Transfer Date, including but not limited to those contracts listed in Schedule 2 (true and accurate copies of which have been disclosed to the Company prior to the Transfer Date), and where such contract was entered into by the Council and relates to other schools operated by the Council as well as the School then only such part of the contract that relates to the School, in each case excluding the Excluded Contracts;
“Data Protection Legislation”	means the Data Protection Act 1998 ("DPA"), and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable, the

! To be added once Company is incorporated.

	guidance and codes of practice issued by the Information Commissioner;
“Directive”	means the Safeguarding of Employees Directive (2001/23/EC) (as amended, re-enacted or extended from time to time)
“Eligible Employees”	means the Transferring Employees who are active members of or eligible to join either the LGPS or the TPS immediately before the Transfer Date;
“Employee Liability Information”	means the information which a transferor is obliged to notify to a transferee pursuant to Regulation 11(2) of the Regulations
“Employee Schedule”	means a list of all School Employees as at the date that the list is provided to the Company;
“Encumbrance”	means any mortgage, charge, pledge, lien, equity, option, restriction, right of refusal, right of pre-emption, third party right or interest, any other encumbrance or security interest of any kind, and any other type of preferential arrangement (including title transfer and retention arrangements) having a similar effect;
“Excluded Assets”	means the assets described in Schedule 4 which are excluded from the transfer effected by this Agreement;
“Excluded Contracts”	means the contracts described in Schedule 5 which are excluded from the transfer effected by this Agreement;
“Final Employee Schedule”	means a list of all School Employees as at the Transfer Date;
“Funding Agreement”	means a funding agreement to be entered into between the Secretary of State for Education and the Company with regard to funding arrangements for the Academy;
“Loss”	means all costs, claims, liabilities and expenses (including reasonable legal expenses) and “Losses” shall be construed accordingly;
“the LGPS”	means a Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under Sections 7 and 12 of the Superannuation Act 1972 as from time to time amended;
“the Personnel Files”	means in respect of the Transferring Employees copies of all personnel files or records relating to their employment at the School and any previous period of continuous employment with the Council and/or the Governing Body, including without limitation a copy of any contractual documentation, any documentation relating to job description, pay information, training records, information relating to sickness absence, a copy of any disciplinary warnings and a copy of any grievances;
“the Pupil Records”	means the following records and information in respect of the pupils at the School who will or who are likely to become pupils at the Academy: all electronic records and paper files in respect of pupils;

“the Regulations”	means The Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or re-enacted from time to time);
“the School”	means Caludon Castle School and Business and Enterprise College;
“School Fund”	means the money which has accumulated in one or more separate school accounts arising from (a) voluntary donations and (b) staff contributions in respect of leaving gifts and other collections;
“School Employees”	means any employees of the Council or of the Governing Body or of any other persons who are assigned to the School or to services provided in connection with the School;
“Staffing Information”	means, in respect of the School Employees, the information listed in Schedule 1;
“the TPS”	means the Teachers’ Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 9 and 12 of and Schedule 3 to the Superannuation Act 1972 as from time to time amended;
“Transfer Date”	means the date specified in the Funding Agreement on which the Academy will open;
“Transferring Employees”	means any School Employees whose employment transfers to the Company or to a Contractor on the Transfer Date pursuant to the Regulations and who are listed in the Employee Schedule;

- 1.2 In this Agreement (except where the context otherwise requires):
- 1.2.1 use of the singular includes the plural (and *vice versa*) and use of any gender includes the other genders;
- 1.2.2 a reference to a party is to a party to this Agreement and shall include that party's personal representatives, successors or permitted assignees;
- 1.2.3 a reference to persons includes natural persons, firms, partnerships, bodies corporate and corporations, and associations, organisations, governments, states, foundations, trusts and other unincorporated bodies (in each case whether or not having separate legal personality and irrespective of their jurisdiction of origin, incorporation or residence); and
- 1.2.4 a reference to a Clause or Schedule is to the relevant clause of or schedule to this Agreement; a reference to a sub-clause or paragraph is to the relevant sub-clause or paragraph of the Clause or Schedule in which it appears.
- 1.3 The Schedules form an integral part of this Agreement and have effect as if set out in full in the body of this Agreement. A reference to this Agreement includes the Schedules.
- 1.4 In the event of any conflict or inconsistency between the Clauses and the Schedules of this Agreement, the Clauses shall prevail.
- 1.5 General words are not to be given a restrictive meaning because they are followed by particular examples, and any words introduced by the terms "including", "include", "in particular" or any similar expression will be construed as illustrative and the words following any of those terms will not limit the sense of the words preceding those terms.

- 1.6 Any reference to a statute, statutory provision or statutory instrument includes a reference to that statute, statutory provision or statutory instrument together with all rules and regulations made under it as from time to time amended, consolidated or re-enacted.

1. **CONDITION PRECEDENT**

This Agreement is conditional upon the Funding Agreement being signed by the Company and the Secretary of State on or before 1 2013. In the event that the Funding Agreement is not signed by such date, this Agreement shall cease to have effect on the day following such date.

2 **OPERATION OF THE REGULATIONS**

The Parties intend and acknowledge that the closing of the School and the opening of the Academy shall constitute a transfer to which the Directive and the Regulations apply and agree that as a consequence that the contracts of employment made between the current employer and the Transferring Employees (save insofar as such contracts relate to benefits for old age, invalidity or survivors under any occupational pension scheme) shall have effect from and after the Transfer Date as if originally made between the Company or (as the case may be) a Contractor and the Transferring Employees.

3 **PROVISION OF STAFFING INFORMATION AND WARRANTIES**

- 3.1 Without prejudice to its obligation pursuant to the Regulations to provide the Employee Liability Information, the Council shall on or before 10 December 2012 to the extent lawfully permitted provide the Company with the Employee Schedule and Staffing Information.
- 3.2 The Council shall notify the Company of any material change to the Employee Schedule and the Staffing Information prior to the Transfer Date as soon as is reasonably practicable, and shall upon request by the Company meet the Company to discuss the information disclosed.
- 3.3 The Council warrants:
- 3.3.1 that the information in the Employee Schedule and the Staffing Information shall be complete and accurate and kept up-to-date;
- 3.3.2 that neither it (nor any other employer of a School Employee) is in material breach of the contract of employment of any of the School Employees nor is any School Employee in material breach of his contract of employment;
- 3.3.3 that none of the School Employees have given or received notice of termination of employment nor are any of the School Employees the subject of any material disciplinary action nor is any School Employee engaged in any grievance procedure;
- 3.3.4 that neither it (nor any other employer of a School Employee) is engaged in relation to any School Employee in any dispute, claim or legal proceedings, arising under contract or common law or arising out of or relating to any statute including the provisions of the Regulations and any claim or allegation of unlawful discrimination;
- 3.3.5 that all School Employees who carry out teaching are eligible to do so in accordance with the Education (Specified Work and Registration) (England) Regulations 2003; and
- 3.3.6 that by the Transfer Date all Transferring Employees will have been checked against List 99 or the Children's Barred List (as appropriate) and checked through the Criminal Records Bureau and all other checks required by law.
- 3.4 The Council undertakes to the Company that during the period from the date of this Agreement up to and including the Transfer Date:

- 3.4.1 the Council and the Governing Body shall enable and assist the Company and such other persons as the Company may determine to communicate with and meet the School Employees and their trade union or other employee representatives;
- 3.4.2 the Council and the Governing Body, shall not, and shall procure that any other employer of the School Employees shall not, without the prior written consent of the Company:
- 3.4.2.1 amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay and job description) of any School Employees (other than where such amendment or variation has previously been agreed between the Council and the School Employees in the normal course of business, and where any such amendment or variation is not in any way related to the transfer to the Company);
 - 3.4.2.2 terminate or give notice to terminate the employment or engagement of any School Employees (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
 - 3.4.2.3 employ or assign any person to the School who would or might as a consequence of such employment or assignment become a Transferring Employee;

and the Council shall indemnify the Company from and against all Losses incurred by the Company in connection with or as a result of a breach of their obligations under this clause.

4 APPORTIONMENTS

- 4.1 The Council shall be responsible for all emoluments and outgoings in respect of the School Employees (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the Transfer Date, and will indemnify the Company (both for itself and any Contractor) against all Losses incurred by the Company or any Contractor in respect of the same.
- 4.2 The Company shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period after the Transfer Date, and will indemnify the Council against Losses in respect of the same.

5 INFORMATION AND CONSULTATION

- 5.1 The Company shall comply (and shall procure that any Contractor complies) with its obligations under Regulation 13 of the Regulations during the period prior to the Transfer Date.
- 5.2 The Council shall comply with its obligations under Regulations 13 and 14 of the Regulations during the period prior to the Transfer Date, save where the Council is unable to do so as a result of the failure of the Company and/or any Contractor to comply with their duties under Regulation 13 of the Regulations.

6 INDEMNITIES

- 6.1 The Council shall indemnify the Company (either for itself or for or on behalf of any other person to whom the Transferring Employee or any liability relating to them has transferred or is alleged to have transferred) against all Losses incurred by the Company in connection with or as a result of:

- 6.1.1 any claim or demand by any School Employee or former School Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) including any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, age, sexual orientation, religion or religious belief, personal injury, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of the employer in respect of any School Employee or former School Employee, or any claim relating to the period on and before the Transfer Date (and for the avoidance of doubt, this indemnity shall apply in respect of all Losses incurred by the beneficiary of this indemnity in respect of the period after the Transfer Date where the claim (such as, without limitation, a claim for equal pay) arises out of circumstances which arose on or before the Transfer Date);
- 6.1.2 any failure by the Council or any other employer of the School Employees to comply with its obligations under Regulations 13 and 14 of the Regulations, or any award of compensation under Regulation 15 of the Regulations, save where such failure arises from the failure of the Company or any Contractor to comply with its duties under Regulation 13 of the Regulations;
- 6.1.3 any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing the School Employees (or other employees of the Council or Governing Body) arising from or connected with any failure by the Council or any other employer of the School Employees to comply with any legal obligation to such trade union, body or person; and/or
- 6.1.4 any claim by any person (other than a Transferring Employee) in respect of which the Company or any Contractor incurs or is alleged to incur responsibility or liability as a result of the operation of the Regulations.
- 6.2 If in connection with the closing of the School and the opening of the Academy it is found or alleged that the employment of any person other than the Transferring Employees has transferred to the Company or a Contractor pursuant to the Directive or the Regulations:
- 6.2.1 the Company (or, where applicable, the Contractor) may by 4pm on the fifteenth (15th) working day following but excluding the day upon which it becomes aware of that allegation or finding, dismiss the employee with immediate effect; and
- 6.2.2 the Council shall indemnify and keep indemnified the Company (both for itself and any Contractor) against all Losses which the Company (or, where applicable, the Contractor) may suffer or incur in respect of that dismissal and the employment of that person up to the date of the dismissal and any other claim brought by or on behalf of that person.
- 6.3 The Company shall (in respect of Transferring Employees employed by the Company), and shall use reasonable endeavours to procure that any Contractor shall (in respect of Transferring Employees employed by the Contractor), indemnify the Council against all Losses incurred by that party in connection with or as a result of:
- 6.3.1 any claim or demand by any Transferring Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) including any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, age, sexual orientation, religion or religious belief, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of the Company or the Contractor, as the case may be, in respect of any Transferring Employee on or after the Transfer Date;
- 6.3.2 any failure by the Company or the Contractor, as the case may be, to comply with its obligations under Regulation 13 of the Regulations; and/or

- 6.3.3 any claim or demand by any School Employee arising out of any change or proposed change in the terms and conditions of employment or working conditions of that person on or after their transfer to the Company or the Contractor, as the case may be, on the Transfer Date, where that School Employee would have been a Transferring Employee but for their resignation or decision to treat their employment as terminated under Regulation 4 (9) of the Regulations on or before the Transfer Date as a result of any such changes.

7 PENSIONS

- 7.1 The parties acknowledge that the Academy is a “scheme employer” for the purposes of the Local Government Pension Scheme (Administration) Regulations 2008 (“the LGPS Regulations” which expression shall include any regulations amending or replacing the regulations from time to time) and that the LGPS Regulations shall apply to the Company (as the person carrying on the business of the Academy).
- 7.2 The parties acknowledge that the Academy is an “employer” for the purposes of the Teachers’ Pension Scheme Regulations 1997 SI 1997/3001 (“the TPS Regulations” which expression shall include any regulations amending or replacing the regulations from time to time) and that the TPS Regulations shall apply to the Company (as the person carrying on the business of the Academy).
- 7.3 The Company acknowledges that the Eligible Employees shall be, or as the case may be, remain eligible for membership of the LGPS or the TPS (as the case may be) while employed at the Academy following the Transfer Date subject to the terms of the LGPS Regulations and the TPS Regulations.
- 7.4 The Company shall be responsible for any LGPS deficit relating to the Eligible Employees’ membership of the LGPS referable to service up to and including the Transfer Date.
- 7.5 The Company shall be responsible for all employer contributions payable to the LGPS and the TPS in respect of the Eligible Employees and any other sum due to the LGPS and the TPS in respect of the Eligible Employees.
- 7.6 The Company shall:
- 7.6.1 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any of the Eligible Employees;
- 7.6.2 promptly provide to the Council such documents and information which the Council may reasonably request in advance of any onward transfer of any person engaged or employed by the Company; and
- 7.6.3 fully co-operate with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Company.

8 THE ASSETS AND THE CONTRACTS

- 8.1 On the Transfer Date the Council and/or the Governing Body (as applicable) will transfer (or to the extent that it is not the owner thereof shall procure the transfer of) the legal and beneficial interest in the Assets, free of charge and free from any Encumbrance, to the Company, save for any Encumbrance which has been fully and accurately disclosed to the Company prior to the Transfer Date.
- 8.2 The Excluded Assets shall be excluded from the transfer under this Agreement.

- 8.3 The Council, the Governing Body and the Company shall work together in good faith to achieve a smooth transfer which best meets the needs of students transferring from the School to the Academy.
- 8.4 Such right of title as the Governing Body or the Council have to the Assets and risk in the Assets shall pass to the Company on the Transfer Date provided always that the Council and the Governing Body will have no liability to the Company in relation to the condition of such Assets.
- 8.5 The Council and/or Governing Body (as applicable) undertakes with effect from the Transfer Date to assign to the Company or to procure the assignment to the Company all the Contracts:
- 1.1.1 which are capable of assignment without the consent of other parties to those contracts; and
- 1.1.2 where consent is required to assignment and such consent has been received.
- 8.6 If any of the Contracts cannot be transferred to the Company except by an assignment made with the consent of another party or by an agreement of novation:
- 8.6.1 this Agreement shall not constitute an assignment or an attempted assignment of the Contract if the assignment or attempted assignment would constitute a breach of the Contract;
- 8.6.2 after the Transfer Date the parties shall use their respective reasonable endeavours to obtain the consent of the other party to the assignment, and then to assign or to procure the novation, of the Contract; and
- 8.6.3 until the consent or novation is obtained:
- 8.6.3.1 the Council or the Governing Body (as the case may be) shall hold the same on trust for the Company and shall (at its cost) do all such acts and things as the Company may reasonably require to enable due performance of the Contract and to provide for the Company the benefits of the Contract (including enforcement of any right of the Council or the Governing Body (as the case may be) against the other party to the Contract arising out of its termination by the other party or otherwise);
- 8.6.3.2 the Company shall (if sub-contracting is permissible and lawful under the Contract in question), as the Council's or Governing Body's (as appropriate) sub-contractor, perform all the obligations of the Council (or Governing Body) under such Contract and where sub-contracting is not permissible, the Company shall perform such obligations as agent for the Council or Governing Body (as appropriate); and
- 8.6.3.3 unless and until any such Contract is assigned or novated, the Council or Governing Body (as appropriate) shall (so far as it lawfully may) at the Company's cost give all such assistance as the Company may reasonably require to enable the Company to enforce its rights under such Contract, including, providing access to all relevant books, documents and other information in relation to such Contract as the Company may reasonably require from time to time.
- 8.7 Pending the Transfer Date, possession of the Assets shall be retained by the Council and/or the Governing Body (as the case may be).
- 8.8 All receipts relating to the Assets and the Contracts and all Losses and outgoings incurred or payable in relation to the Assets and the Contracts up to the Transfer Date (“**Historic**

Liabilities”) shall belong to, and be paid and discharged by, the Council or, as the case may be, the Governing Body (whichever is currently responsible) in the ordinary course of business and the Council undertakes to indemnify and keep the Company and the Governing Body indemnified against any Historic Liabilities.

- 8.9 All receipts relating to the Assets and the Contracts and all Losses and outgoings relating to the Assets and the Contracts incurred or payable as from and including the Transfer Date (“**Future Liabilities**”) shall belong to, and be paid and discharged by the Company and the Company undertakes to indemnify and keep the Council and the Governing Body indemnified against any Future Liabilities.
- 8.10 (a) The Company and the Council acknowledge that there is an ongoing joint claim by the Governing Body and the Council against Computer Systems in Education Limited in relation to a number of school desks (court claim number: 2CV90005) (the “**Claim**”). The Governing Body agrees to and does hereby assign all its rights in respect of the Claim and the related court action to the Company and the Company hereby agrees to keep the Governing Body indemnified in respect of all claims proceedings costs demands and expenses in respect of the Claim and the related court action.
- (b) The Company and the Council hereby agree that the burden of legal costs incurred or ordered to be paid in respect of the Claim and the related court action and of storage/transport costs incurred in respect of the school desks and also the benefit of any damages/compensation/costs recovered in relation to the Claim/related court action / school desks, shall be shared equally between them. In the event that monies received in relation to the Claim/related court action/ desks are paid directly to the Council, the Council agrees to procure the prompt payment of the appropriate sum to the Company (and vice versa if monies are paid directly to the Company) after any necessary adjustment in relation to the proper apportionment of costs incurred.
- 8.11 The Company agrees that, following the Transfer Date, it shall provide the Council with sufficient information, as reasonably requested by the Council, to enable the Council to accurately determine and discharge any Historic Liabilities (including, without limitation, any payments relating to the School's accounts). In the event that the Council makes an underpayment or overpayment in relation to any Historic Liabilities (including, without limitation, any payments relating to the School's accounts), the Council and the Company agree to repay any such sums to the other (as appropriate). In the event that the Council has made no payment in relation to any Historic Liabilities but has received payment from the Secretary of State in respect of these, and this amount is an underpayment or an overpayment, the Council and the Company agree to repay any such sums to the other (as appropriate).
- 8.12 The Council and the Governing Body shall on or before the Transfer Date deliver to the Company the Personnel Files and the Pupil Records, to the extent that they are permitted to do so by Data Protection Legislation (and both the Council and the Governing Body shall use reasonable endeavours to ensure that they are permitted by Data Protection Legislation to deliver such information to the Company).
- 8.13 The Company undertakes not to use the Personnel Files or the Pupil Records for any purposes unconnected with the operation and management of the Academy, the purposes for which such information was originally collected or any other lawful purposes.
2. The parties shall work together in a spirit of co-operation and partnership to attempt to achieve the aims and objectives set out in schedule 6 (Memorandum of Understanding)

9 CONDUCT OF CLAIMS

9.1 In respect of the indemnities given in this Agreement:

- 9.1.1 the indemnified party shall give written notice to the indemnifying party as soon as is practicable of the details of any claim or proceedings brought or threatened against it by a third party in respect of which a claim will or may be made under the relevant indemnity;
- 9.1.2 the indemnifying party shall at its own expense have the exclusive right to defend, conduct and/or settle all claims and proceedings which may be brought by a third party to the extent that such claims or proceedings may be covered by the relevant indemnity provided that where there is an impact on the indemnified party, the indemnifying party shall consult with the indemnified party and shall at all times keep the indemnified party informed of all material matters ; and
- 9.1.3 the indemnified party shall, at the indemnifying party's expense, provide all reasonable assistance and documentation required by the indemnifying party in connection with, and act as or be joined as a defendant in, any claim or proceedings brought by a third party. The indemnifying party shall reimburse the indemnified party for all reasonable costs and expenses (including legal costs and disbursements) incurred in providing such cooperation and/or arising as a result of the indemnifying party's failure to defend, conduct and/or settle such claims and proceedings.

10 CONFIDENTIALITY

Each party undertakes to the other that they will keep the contents of this Agreement confidential as between the parties, except to the extent that disclosure is required by law.

11 THIRD PARTIES

No person who is not a party to this Agreement is intended to reserve a benefit under, or be entitled to enforce, this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 (the "**Act**") save that any Contractor may enjoy the benefit and enforce the terms of this Agreement in accordance with the Act. Notwithstanding this, neither the Council nor the Governing Body nor the Company require the consent of any Contractor to rescind or vary this Agreement at any time, even if that variation or rescission affects the benefits conferred on such Contractor.

12 FORCE MAJEURE

Neither party will be liable to the other for any delay or non-performance of its obligations under this Agreement arising from any cause or causes beyond its reasonable control.

13 GENERAL

- 13.1 No forbearance or delay by either party in enforcing its rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.
- 13.2 No variation of this Agreement will be valid unless recorded in writing and signed by or on behalf of each of the parties to this Agreement.
- 13.3 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be unenforceable or illegal, the other provisions will remain unaffected and in force.
- 13.4 Nothing in this Agreement will be construed as constituting or evidencing any partnership, contract of employment or joint venture of any kind between either of the parties or as authorising either party to act as agent for the other. Neither party will have authority to

make representations for, act in the name or on behalf of or otherwise to bind the other party in any way.

- 13.5 Neither party will make any announcement relating to this Agreement or its subject matter without the prior written approval of the other party (such approval not to be unreasonably withheld or delayed).
- 13.6 Each party will, at the request of the other party and its own cost, do (or procure others to do) everything necessary to give the other party the full benefit of this Agreement.
- 13.7 Any notice required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first class or recorded delivery or by commercial courier, to each party required to receive the notice at the addresses specified by the relevant party by written notice to the other (and if no such address is specified), the address set out at the front of this Agreement.
- 13.8 Any notice shall be deemed to have been duly received:
 - 13.8.1 if delivered personally, when left at the address and for the contract referred to in this Clause; or
 - 13.8.2 if sent by pre-paid first class post or recorded delivery, at 9.00 a.m. on the second business day after posting; or
 - 13.8.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 13.9 A notice required to be given under this Agreement shall not be validly given if sent by email.
- 13.10 This Agreement may be executed in any number of counterparts, each of which will be an original and all of which will together constitute a single agreement.
- 13.11 Each party shall bear its own costs and expenses (including legal fees) in relation to the preparation and execution of this Agreement.
- 13.12 This Agreement constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in and supersedes any previous agreement between the parties.
- 13.13 Each of the parties acknowledge and agrees that in entering into this Agreement it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.

14 **GOVERNING LAW AND JURISDICTION**

- 14.1 This Agreement will be governed by and interpreted in accordance with the law of England and Wales.
- 14.2 Each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with this Agreement.

IN WITNESS of which the parties or their duly authorised representatives have executed this agreement as a Deed on the date first written above.

**THE COMMON SEAL of
COVENTRY CITY COUNCIL**

Was here to affixed in the presence of
)

.....
Authorised signatory

SIGNED as a **DEED** by
_____,and

**GOVERNING BODY OF CALUDON
CASTLE SCHOOL AND BUSINESS
AND ENTERPRISE COLLEGE**

.....
Head Teacher

in the presence of:

.....
Chair of Governors for and on behalf of the

Signature of witness:

Witness' name:

Witness' address:)

SIGNED as a DEED by **CALUDON
CASTLE SCHOOL** acting by
_____, a director)

.....

in the presence of:

Director

Signature of witness:

Witness' name:

Witness' address:

SCHEDULE 1

STAFFING INFORMATION

1. Individual terms and conditions

- 1.1 Copies of all current employment contracts, and all other terms and conditions of employment.
- 1.2 A schedule comprising in respect of each employee, the following particulars:-
- (a) full name;
 - (b) post;
 - (c) whether the employment is full or part time;
 - (d) sex;
 - (e) date of birth;
 - (f) date of commencement of service;
 - (g) notice period;
 - (h) normal retirement age;
 - (i) remuneration;
 - (j) pension;
 - (k) in respect of teachers:
 - (i) scale point or leadership group spine point;
 - (ii) assimilation point for the head teacher;
 - (iii) whether the employee is a post-threshold teacher;
 - (iv) whether the employee is a good honours graduate;
 - (v) management, recruitment, retention and/or any other allowances payable;
 - (vi) any applicable assimilation safeguarding,
- and all other benefits whether contractual or otherwise.
- 1.3 Details of any recent changes of terms and conditions in relation to any employee.
- 1.4 Copies of any employee handbooks, rules and other policies, procedures, arrangements or agreements in relation to:-
- (a) redundancy procedures and payments;
 - (b) redeployment procedures;
 - (c) sickness absence and sick pay entitlements;
 - (d) equal opportunities;

(e) disciplinary matters;

(f) maternity rights;

and details of whether or not each of the above are discretionary or contractual.

1.5 Copies of any job descriptions.

1.6 Details of any practices or customs which although not written down form part of employees' terms and conditions of employment.

2. **Collective bargaining**

2.1 Details of the names of all trade union and other employee representatives, with the name of the trade union, the position held and how long the position was held.

2.2 Details of any trade union recognised by the Council / Governing Body, giving the date and details of the recognition agreement (and a copy if available), with brief details of current and historic labour relations and any pending negotiations.

2.3 Details of any other agreement, whether school, local or national, with any trade union or other body of employee representatives (and copies if available) including any informal recognition and procedure arrangements and other arrangements honoured by "custom and practice".

2.4 Details of which, if any, of the terms of any collective agreement form part of individuals' terms and conditions of employment.

3. **Disputes**

3.1 Details of any dispute with any employee whether brought under the Council / Governing Body's disciplinary or grievance procedure or otherwise and any matters which might give rise to such.

3.2 Details of any litigation threatened or pending against the Council / Governing Body, including any court, employment tribunal or arbitration claims or any matters which might give rise to such.

3.3 Details of any enquiry, correspondence or contact between the Council / Governing Body and the Commission for Racial Equality, the Equal Opportunities Commission, the Health and Safety Inspector and the Inland Revenue concerning employees.

3.4 Details of any court judgment or current employment tribunal award in respect of any employee dispute.

3.5 Details, and, if available, copies, of any warnings given to employees under the Council / Governing Body's disciplinary or capability procedures.

4. **Dismissals**

4.1 Details of all dismissals/resignations within the last 12 months including reasons for the dismissal/resignation.

4.2 Details of all employees recruited within the last 12 months.

5. **Working Time Regulations 1998**

5.1 Copies of any individual, collective and workforce agreements entered into pursuant to the Working Time Regulations.

- 6. **Health and Safety**
 - 6.1 Details of any health and safety committees/representatives.
 - 6.2 Details of any health and safety complaints or recommendations or claims within the last 5 years.
- 7. **Trainees/Consultants**
 - 7.1 Details of all individuals in the undertaking working on training, work experience or similar schemes.
 - 7.2 Details of all consultancy agreements or self-employed personnel who are or may actually be employees.
- 8. **Absent employees**
 - 8.1 Details of all employees who have notified the Council / Governing Body that they are pregnant or who are currently absent on maternity leave.
 - 8.2 Details of all employees on long term sick leave together with confirmation of the nature of their illness and the duration and dates of their absence(s) due to that condition.
- 9. **Job Evaluation Scheme**
 - 9.1 A copy of any job evaluation scheme.
- 10. **Contractor Employees**
 - 10.1 Details of any individuals employed by contractors working in the school.
- 11. **Pension**
 - 11.1 A list of all pension schemes (both occupational and personal) applicable to the employees.
 - 11.2 Details of any current or pending applications for early retirement.

SCHEDULE 2

THE CONTRACTS

<u>Party</u>		<u>Date of Contract</u>	<u>Provision</u>
European Electronique	01 April 2011 – 31 March 2013	On-site Managed IT Service	
Complete Vending Services Machine		24 May 2011 – 23 May 2014	Coffee
Neopost Finance Ltd	01 Feb 2007 – 31 Jan 2013	Franking Machine	
Ricoh UK Ltd	01 July 2009 – 30 June 2012	Photocopier Machines and Servicing (21661784)	
Ricoh UK Ltd	01 July 2009 – 30 June 2012	Photocopier Machines and Servicing (21661785)	
Ricoh UK Ltd	01 July 2009 – 30 June 2012	Photocopier Machines and Servicing (21661777)	
Ricoh UK Ltd	01 August 2009 – 31 July 2012	Photocopier Machines and Servicing (21661785)	
Ricoh UK Ltd	01 August 2009 – 31 July 2012	Photocopier Machines and Servicing (21661800)	
Ricoh UK Ltd	01 August 2009 – 31 July 2012	Photocopier Machines and Servicing (21661795)	
Ricoh UK Ltd	01 August 2009 – 31 July 2012	Photocopier Machines and Servicing (21661793)	

SCHEDULE 3

THE ASSETS

1. All equipment, furniture, fixtures and fittings on the site of the School (“the loose plant and equipment”), and any school desks forming part of the Claim stored elsewhere subject to all contractual obligations in respect of any part of the loose plant and equipment which is the subject of any leasing, hire or hire purchase agreements except, for the avoidance of doubt, the Excluded Assets.
2. All rights to use the name of the School and all logos and domain names used exclusively by the School. All copyrights, database rights and other intellectual property rights owned by the Council or Governing Body (as appropriate) and used exclusively by the School.
3. All rights of the Council or Governing Body (as appropriate) in respect of computer software used by the School whether granted by licence or otherwise.
4. Any balance remaining from the School's budget following completion of due accounting procedures.
5. The School Fund.

SCHEDULE 4

THE EXCLUDED ASSETS

PART 1

The following assets are excluded from this transfer:

1. The freehold or leasehold titles to the site of the School which are dealt with by separate agreement.
2. Cash in hand or at bank (other than any surpluses transferred to the Company from the Council and the Governing Body pursuant to the Academy Conversions (Transfer of School Surpluses) Regulation 2010).
3. The benefit of any grants made to the School in respect of periods before the Transfer Date.
4. All equipment furniture fixtures and fittings on the site of the School (the loose plant and equipment) which is set out in Part II of this Schedule)

PART 2

[EXCLUDED ASSETS LIST TO BE INSERTED]

SCHEDULE 5

THE EXCLUDED CONTRACTS

THE PFI CONTRACT BETWEEN THE COUNCIL AND CEP LIMITED DATED 7TH DECEMBER 2004 WILL BE EXCLUDED

SCHEDULE 6

MEMORANDUM OF UNDERSTANDING

Caludon Castle School's role in Educational Improvement across the City

1. Caludon Castle is an outstanding school (Ofsted November 2011) and recognised nationally as a National Lead School with the Headteacher a National Leader of Education. The school has a strong history of partnership working with the Local Authority and secondary and primary schools across the City. The School's Headteacher, Senior Leaders and Governors are committed to the Academy working in a way that maintains a commitment to partnership and collaboration between schools and with the Local Authority within Coventry family of schools.
2. The school's vision is to strengthen and develop its work and relationship with other schools in the City, both informally and formally, for example through targeted support arrangements, shared appointments, federated arrangements and as a future Academy Sponsor. The school has an excellent track record of providing effective support to other schools within and outside Coventry. The quality of the work has been very highly regarded and made a significant contribution to improvement.
3. Caludon Castle is a strategic partner in Coventry's Teaching School Alliance and is leading one of three Leadership Hubs in the City. The Headteacher makes a significant contribution to the City's Over-coming Barriers to Learning Strategy and the priority to improve Primary School performance. The school is building capacity and infrastructure now to be ready to take on a role across a number of schools in the future.
4. The Academy will support the delivery of the City Council's Education Improvement Strategy as detailed in the table below following discussion between the Local Authority and school. It is expected that the detailed support programme will be reviewed and agreed in July annually for the next academic year. The review will be undertaken by the Headteacher of the Academy and the Assistant Director: Education and Learning at Coventry City Council.

City Wide School Improvement Role

Secondary School Improvement

Support City wide teaching and learning development

- Learning and teaching consultant to provide expertise and resources for outstanding teaching and learning.
- Initial teacher training provider – Caludon has an enhanced partnership with Warwick University to provide much of training for PGCE trainee teachers in the City.
- Sponsorship of GTP placements (currently 6 sponsorship placements offered for 2012 – 2013 of which 3 are for maths). The intention is to specialise in training English and Mathematics teachers. The majority of trainees at Caludon Centre are awarded outstanding for their placements. This supplies high quality teachers to Coventry schools.
- Action researchers publish their findings to all schools in the City and all schools have access to appropriate resources.

Support City wide Leadership and Management Development:

- Leadership facilitators will provide opportunities for shadowing leaders (including those seeking headship/senior leadership through the NPQH programme); offering leadership

surgeries to raise standards in schools; spend time within facilities to observe outstanding practice and to receive a range of excellent and proven subject resources.

- Subsidised bespoke professional development offered through a range of leadership development programmes including National College Middle leader development programme.
- Provide of high quality senior leadership support based on a track record of outstanding leadership and school to school support. This includes specific improvement strategies, in particular coaching and mentoring and improving teaching from satisfactory to good.
- Caludon will be applying to become a Teaching school in September. This will strengthen the partnership with Swan Teaching School Alliance and increase the capacity for school to school support.
- Provision of leadership specialists to support Swan Teaching School Alliance and deliver a City wide primary leadership and management development programme.

Primary School Improvement

Provision of targeted support to Coventry Primary Schools:

- Caludon Castle will provide high level school improvement support in up to 3 primary schools. This could include providing leaders and managers to the schools, teachers to improve the quality of teaching and learning and a professional development programme for all school staff.

Provision of additional posts to support curriculum transition and improvement in primary schools:

- Strategic leader of inclusive literacy with a cross phase brief.
- Leader for curriculum transition with a specific focus on the Expressive Arts (Art, Music and Drama) and learning beyond the classroom.
- Leader for maths with a role to support primary maths. These roles enable cross phase teaching: subject specialist advice and guidance; cross phase moderation of literacy and numeracy.

Cross Phase and Inclusion:

- Subsidised family link worker to work cross phase with identified vulnerable families.
- Subscription to the Citizenship Advice Bureau – staff trained as ‘satellite advisers’ for the Wyken Community sited in Caludon Community Library.

Dated

2012

**(1) The Council of
The City of Coventry**

(2)

Draft /

School Agreement

relating to
[] Academy

Ref. L/RL

Coventry School Agreement-12-rl



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CLAUSE

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THIS AGREEMENT is made on

2012

BETWEEN

(1) **THE COUNCIL OF THE CITY OF COVENTRY** of the Council House Earl Street Coventry CV1_5RR (the "**Authority**") and

(2) [] (the "**Company**")

BACKGROUND

- (A) The Company is a company incorporated in England and Wales limited by guarantee with charitable objects
- (B) The Existing School is in an area in respect of which the Authority is the local education authority pursuant to Section 12 of the Education Act 1996
- (C) The Authority has entered into the Project Documents with a view amongst other things to procuring accommodation and related services at the Existing School
- (D) The Authority is proposing to enter into the Academy Contracts with a view to the Company operating an academy from the Site of the Existing School
- (E) The Company and the Authority have agreed the terms and conditions of this Agreement
- (F) The Company agrees that it is in the interests of the Company that it should enter into this Agreement which amongst other matters commits the Company to pay to the Authority a proportion of its budget and confirms to the Authority that some matters concerning the provision of the Services under the Project Agreement at the Existing School and subsequently the Academy shall be managed by the Authority in liaison with the Company as provided for in this Agreement and the Principal Agreement

IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:-

"**1954 Act**" means the Landlord and Tenant Act 1954

"**Academic Year**" as defined in clause 1.1 of the Project Agreement

"**Academy**" means the academy to be operated by the Company from the Commencement Date on the Site which expression shall include the Site and the Facility on the Site

"**Academy Contracts**" means this Agreement, the Principal Agreement and the Project Agreement Deed of Variation

"**Academy Direct Losses**" means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis, proceedings demands and charges whether arising under statute contract or at common law provided always that this shall not include Indirect Losses)

"**Additional Sessions**" as defined in clause 1.1 of the Project Agreement

"Company Utilities Saving" means for any month the amount by which the Actual Utilities Payment (as defined in the Project Agreement) payable by the Authority in that month is less than the Estimated Utilities Payment (as defined in the Project Agreement) in that month.

"Compensation Event" as defined in clause 1.1 of the Project Agreement

"Company Assets" means without limitation, any items of equipment and/or chattels brought onto the Site by the Company or Company Related Parties

"Company Related Party" means:-

- (a) an officer agent or employee of the Company acting in the course of his office or employment including without limitation any director of the Company or any member of the local governing body of the Academy
- (b) in relation to the Academy during the School Day any student of the Academy or any person visiting the Academy at the invitation (whether express or implied) of the Company and
- (c) in relation to the Academy during any period of Community Use any person using the Academy for that purpose at the invitation whether express or implied of the Company
- (d) in relation to the Academy during any Additional Session any student of the Academy or any person visiting the Academy at the invitation (whether express or implied) of the Company
- (e) in relation to the Academy those times and in respect of those parts of the Site as set out in schedule 14 of the Project Agreement for which responsibility is stated to be that of the Authority any student of the Academy
- (f) any contractors and their officers, employees and agents involved in the operation and/or maintenance of works or services at the Site procured by the Company

but excluding in each case the Authority, Authority Related Parties, the Provider and Provider Related Parties

"Company Representative" means the representative appointed by the Company pursuant to Clause 7.2

"Dedicated Schools Grant or DSG" has the meaning given to it in the Principal Agreement

"Deductions" in respect of the Academy any Unavailability Deductions, Unavailable but Used Deductions, Alternative Accommodation Deduction and/or Performance Deductions calculated pursuant to schedule 4 (Payment Mechanism) of the Project Agreement which reduces any monthly payment of the Unitary Charge by the Authority

"Dispute Resolution Procedure" means the procedure for resolution of disputes set out in Clause 23 (Dispute Resolution)

"DFE" means the Department for Education

"Educational Services" as defined in clause 1.1 of the Project Agreement

"Emergency" as defined in clause 1.1 of the Project Agreement

"Existing School" means Caludon Castle School and Business and Enterprise College

"Expiry Date" as defined in clause 1.1 of the Project Agreement

"Extended Use Contractor" as defined in clause 1.1 of the Project Agreement

"Facility" means the facilities edged green on the Site Plan

"FM Contractor" as defined in clause 1.1 of the Project Agreement

"Funder Direct Agreement" means the direct agreement dated on or about the date of this Agreement and made between the Authority and the Provider and Sumitomo Mitsui Banking Corporation Limited

"Funding Agreement" means the agreement entered into by the Company and the DFE dated on or about the date of this Agreement relating to the funding of the Academy and any agreement in writing which supersedes replaces or amends/varies that agreement;

"Helpdesk" means the helpdesk provided by the Provider pursuant to the Project Agreement

"ICT" means information and communications technology

"Indirect Losses" means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity or any claim for consequential loss or for indirect loss of any nature but excluding any of the same that relate to loss of revenue in each case arising under this Agreement or loss of revenue in respect of Third Party Use

"ICT Services" means services related to the delivery maintenance and management of ICT

"Information" means all information, materials, documents and data relating to the Project including:-

- (i) the design or construction of the Existing School (including the Construction Phasing Proposals and the Construction Programme), the operation and maintenance of the Existing School and/or the Academy or other matters in connection with the Existing School under the Project Agreement
- (ii) all property matters referred to or otherwise identified in this Agreement and
- (iii) all changes and updates of any such information, material, document and data

"Information Protocol" the obligations on the parties to provide and share Information contained in Schedule 6

"Intellectual Property Rights" any and all patents, trade marks, service marks, copyright, moral rights, rights in a design know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto

"Lease" the lease referred to in Clause 8 and in the form set out in Schedule 4 with such amendments as are agreed by the Authority and the Company (both acting reasonably)

"Legislation" means:-

- (a) any Act of Parliament
- (b) any subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978
- (c) any exercise of the Royal Prerogative and

(d) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972

in each case in the United Kingdom

"Maintenance Programme" means the maintenance programme provided by the Provider to the Authority pursuant to clause 24.4 of the Project Agreement

"New Facility" as defined in clause 1.1 of the Project Agreement

"Payment Date" means five (5) Business Days before the Unitary Charge becomes due and owing by the Authority to the Provider in each Contract Month in accordance with schedule 4 of the Project Agreement

"Performance Deductions" as defined in clause 1.1 of the Project Agreement

"PFI Provider Assets" means those Assets (as defined in the Project Agreement) provided by the Provider to the Authority in accordance with the Project Agreement

"Principal Agreement" means the agreement between the Authority DFE and the Company known as the Principal Agreement dated on or about the date of this Agreement

"Project" the provision of Works and Services by the Provider to the Authority in relation to the Academy as contemplated in the Project Agreement

"Project Agreement Deed of Variation" means the deed dated on or about the date of this Agreement between the Authority and the Provider to vary the terms of the Project Agreement to reflect the closure of the Existing School as a community school on the day immediately preceding the Commencement Date and the opening of the Academy on the Commencement Date

"Project Agreement" the agreement dated 7th December 2004 between the Authority and the Provider relating to the provision of the Works and Services at the Existing School made under a Private Finance Initiative arrangement (as amended from time to time)

"Project Documents" the Project Agreement and the Funder Direct Agreement

"Project Insurances" the insurance policies described in schedule 9 of the Project Agreement taken out and maintained by the Provider under clause 62 of the Project Agreement

"Provider" means Coventry Education Partnership Limited (Company No. 5188350) being the counterparty of the Authority to the Project Agreement

"Provider Default" as defined in clause 1.1 of the Project Agreement

"Provider Related Party" as defined in clause 1.1 of the Project Agreement

"Provider Variation" means a Variation proposed by the Provider accordance with clause 58.3 of the Project Agreement

"Relevant Proportion" for the period from the Commencement Date until the earlier to occur of the Termination Date or the Expiry Date 9.5 % of the Revised Adjusted Schools Budget

"Relief Event" as defined in clause 1.1 of the Project Agreement

"Revised Adjusted Schools Budget" has the meaning given to it as calculated in accordance with paragraph 1 of Schedule 2 to this Agreement

"**Schedule**" means a schedule to this Agreement

"**School Day**" means 07.30 to 18.00 each Monday to Friday during any of the Terms for each year (including days set aside for teacher training)

"**School Liaison Procedure**" means the procedure set out in Schedule 1 to this Agreement

"**Services**" means the services to be delivered by the Provider to the Authority pursuant to the Project Agreement

"**Site**" means the area edged red on the Site Plan

"**Site Plan**" the plans of the Site as attached to the Lease

"**Small Works Change**" means a request for Small Works to be carried out to the Academy in accordance with clause 58.2 of the Project Agreement

"**Sub-Contractor**" as defined in clause 1.1 of the Project Agreement

"**Sub-Contractor Direct Agreement**" means the collateral warranties provided for the benefit of the Authority from each of the Building Contractor, FM Contractor and Professional Team in accordance with clause 4 and part 1 of schedule 1 of the Project Agreement

"**Term**" in relation to the Academy any of the terms notified to the Authority in accordance with Clause 20.3.1(c) of this Agreement

"**Termination Date**" the date of early termination of the Project Agreement in accordance with its terms or the date of early termination of this Agreement in accordance with its terms whichever the earlier

"**Third Party Use**" means use of the New Facility facilitated by the Provider or the Extended Use Contractor other than at the invitation of the Authority

"**Unavailability**" as defined in schedule 4 (Payment Mechanism) of the Project Agreement

"**Unavailability Deductions**" as defined in clause 1.1 of the Project Agreement

"**Unitary Charge**" as defined in clause 1.1 of the Project Agreement

"**Variation**" as defined in clause 1.1 of the Project Agreement

"**VAT**" means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994

"**Works**" means the works delivered by the Provider to the Authority pursuant to the Project Agreement.

1.2 Interpretation

In this Agreement unless the context otherwise requires:-

- 1.2.1 capitalised terms defined in the Project Agreement as the context requires (unless otherwise defined in this Agreement) have the same meaning in this Agreement;
- 1.2.2 headings and sub-headings are for ease of reference only and shall not be taken into account in the interpretation or construction of this Agreement;
- 1.2.3 all references to Clauses and Schedules are references to the clauses of and the schedules to this Agreement unless otherwise stated;

- 1.2.4 the Schedules form part of this Agreement;
- 1.2.5 all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or other instrument as amended supplemented substituted novated or assigned from time to time;
- 1.2.6 all references to any statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders regulations codes of practice instruments or other sub-ordinate legislation made under the relevant statute or statutory provision;
- 1.2.7 words importing the singular include the plural and vice versa;
- 1.2.8 words importing a gender include all genders;
- 1.2.9 "person" includes an individual, partnership, firm, trust, body, corporate, government, governmental body, authority, agency or unincorporated body of persons or association;
- 1.2.10 the words "include" and "including" are to be construed without limitation;
- 1.2.11 references to sub-contractors shall be to sub-contractors of any tier;
- 1.2.12 a requirement not to unreasonably withhold consent includes a requirement not to unreasonably delay the giving or withholding of that consent;
- 1.2.13 in relation to the parties references to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation
- 1.2.14 References to other persons shall include their successors and assignees;
- 1.2.15 reference to "parties" means the parties to this Agreement and reference to "a party" means one of the parties to this Agreement; and
- 1.2.16 in the event that the provisions of this Agreement are inconsistent with the terms of the Principal Agreement, the terms of the Principal Agreement prevail to the extent of any inconsistency.
- 1.3 For the avoidance of doubt, the terms of this Agreement operate as between the Authority and the Company and are not intended to effect an assignment, novation or other transfer by the Authority to the Company of any of the rights and obligations of the Authority under the Project Agreement.

2. **COMMENCEMENT AND DURATION**

- 2.1 This Agreement shall come into force on the date of hereof and subject to clause 27 (Termination) and clause 2.2 shall continue in force until the earlier to occur of the Termination Date and the Expiry Date.
- 2.2 The termination of this Agreement howsoever arising is without prejudice to the rights, duties and liabilities of relevant parties accrued prior to termination. The clauses of this Agreement which expressly or by implication have effect after termination will continue to be enforceable notwithstanding termination.

3. **CONSENT PROJECT DOCUMENTS AND ACADEMY CONTRACTS**

3.1 **Entering the Project Documents**

Without prejudice to the rights and obligations of the parties under or in connection with this Agreement the Company acknowledges that the Authority has entered into the Project Documents.

3.2 **Compliance with Programme and Project Documents**

The Company shall not take any action or fail to take any action or (insofar as it is reasonably within its power) permit anything to occur which would cause the Authority to be in breach of its obligations under the Academy Contracts and the Project Documents.

3.3 **Performance of Authority's Obligations**

The Authority owes obligations to the Provider under the Project Documents. To the extent that these obligations relate to the Academy the Authority undertakes to perform its obligations in a timely manner and acting reasonably and to consult with the Company and take due regard of any comments made by the Company.

3.4 **Amendments to Project Documents**

3.4.1 Save as set out in clause 3.4.2 the Authority shall notify the DFE and the Company of any proposed changes to the Project Documents that:-

(a) may materially affect the operation of the Academy; and/or

(b) may result in additional costs for the Company ("**Proposed Material Changes**");

3.4.2 Any proposal for Authority Variations or Provider Variations under clause 58 of the Project Agreement shall be dealt with in accordance with Clause 26 and shall not constitute a Proposed Material Change;

3.4.3 The Authority shall consult with the Company and shall have due regard to any representations made by the Company in respect of the Proposed Material Changes. The Authority shall act reasonably in light of the Company's representations when deciding whether or not to continue with a Proposed Material Change;

3.4.4 The Authority shall as soon as reasonably practicable following any amendment described in Clause 3.4.1 and/or described in Clause 3.4.2 provide to the Company copies of each amended Project Document.

3.5 **Copies of Project Documents**

The Authority has provided to the Company copies of each of the relevant Project Documents and the Company confirms that it has conducted its own analysis of the Information supplied to the Company or any of its nominees and advisers before the date of this Agreement.

3.6 **Due Diligence**

Neither the Authority, nor any of its agents servants or advisers shall be liable to the Company (whether in contract, tort or otherwise and whether or not arising out of any negligence on the part of the Authority or any of its agents, servants or advisers) in respect of any inadequacy of any kind whatsoever in the Information and except as provided in Clause 6.3 and Schedule 3 the Authority gives no warranty or undertaking that the Information represents all of the information in its possession or power relevant or material to the Project nor in respect of any failure to disclose or make available to the Company any information, documents or data or to keep the Information up to date or to inform the Company of any inaccuracy, error, omission, unfitness for purpose, defects or inadequacy in the Information.

3.7 **Information Share**

The parties and their representatives shall co-operate to share Information which may be relevant concerning the operation of the Academy without limitation:-

3.7.1 the parties shall comply with the Information Protocol;

3.7.2 under the terms of the Project Documents the Authority is required to provide certain Information to the Provider which is in the possession or control of the Company. The Company will provide such Information to the Authority within such time period as the Authority may reasonably require Without limitation to the foregoing the Company shall notify the Authority promptly in writing when it becomes aware of any of the following events:-

3.7.2.1 plans to erect any new structures on the Site (other than pursuant to the Project Documents);

3.7.2.2 any applications for planning consent for the Site;

3.7.2.3 not used; and

3.7.2.4 any contract for the purchase lease or licence of any ICT (including software) or equipment or ICT Services proposed to be entered into by the Company which impacts on the Services at the Academy.

3.8 The parties agree that where and to the extent that the Authority or the Company fails to supply or make available to the other (the "**Uninformed Party**") any information provided in accordance with Clause 3.7 or pursuant to the Information Protocol (an "**Information Default**") and this affects the Uninformed Party's ability to comply with any obligation provided in or discharge any liability in connection with this Agreement or gives rise to any additional or operates to increase any existing liability for the Uninformed Party under this Agreement, the Uninformed Party shall (subject to it taking all reasonable steps to mitigate the effects of such Information Default) be relieved of any such obligation and/or liability to the extent that reasonably reflects the impact of the relevant Information Default.

4. **ENFORCEMENT OF THE PROJECT AGREEMENT**

4.1 Where in relation to the Site:-

4.1.1 there is a breach of the Project Agreement by the Provider;

4.1.2 there is an act or omission of the Provider which entitles the Authority to make a claim under the Project Agreement;

4.1.3 there is damage to the Site that is the liability of the Provider under the Project Agreement;

4.1.4 a dispute arises under Clause 23 of this Agreement; and/or

- 4.1.5 the Company is a co-insured party under a Project Insurance and wishes to pursue a claim against insurers under a relevant Project Insurance,
- the Authority and the Company shall promptly liaise to consider whether and upon what basis the Authority should exercise any of the rights available to it under the Project Documents in respect of such breach, act or omission or whether and upon what basis the Company would intend to exercise its right to make a claim against a relevant Project Insurance (as the case may be) provided that with the exception of any claims which may prejudice the operation of clauses 62 to 64 of the Project Agreement nothing in this Clause 4 shall be construed as preventing the Company from making a claim under a relevant Project Insurance where it is a co-insured party.
- 4.2 If the Authority and the Company cannot reach agreement on an issue raised pursuant to Clause 4.1, DFE shall adjudicate promptly on that issue taking into account:-
- 4.2.1 any time period required to take action in accordance with the Project Agreement and relevant circumstances;
- 4.2.2 the views of both parties; and
- 4.2.3 any matter reasonably deemed relevant by DFE.
- 4.3 In the event that it is agreed by the parties or determined by DFE that:-
- 4.3.1 the Authority should exercise its rights and remedies in respect of the relevant breach, act or omission, the Authority shall promptly use its best endeavours to do so; or
- 4.3.2 a relevant party should pursue a claim against an insurer under a Project Insurance the relevant party shall (subject to any existing claim arrangements) endeavour to pursue such a claim.
- 4.4
- 4.4.1 The Authority shall use all reasonable endeavours to procure compliance by the Provider with its obligations under the Project Agreement for the benefit of the Academy and the Company;
- 4.4.2 Where in this Agreement the Authority purports to limit its liability to the Company to the equivalent benefit it receives under the Project Agreement (as appropriate) such limitation shall be subject always to the Authority complying with Clause 4.4.1;
- 4.4.3 In its monitoring of the Provider, the Authority shall have regard (so far as is reasonable and practicable to do so) to any matter that the Company (acting reasonably) considers should be enforced against the Provider pursuant to the Project Agreement provided that the Company shall notify the Authority of any such matters as soon as reasonably practicable.
- 4.5 **Payment of Claims Following Provider Default**
- 4.5.1 Subject to Clause 4.5.2 the Authority shall promptly pay to the Company any amounts it recovers under the Project Documents (which it is not obliged to pay out to the Provider pursuant to the terms of the Project Agreement) following a Provider Default to the extent they relate to the Academy;
- 4.5.2 Where the losses referred to in Clause 4.5.1 are suffered by the Company and the Authority arising from the same matter and the amount recovered does not cover the total losses incurred, the Authority shall only be liable to the Company under this Clause 4.5.2 for a proportionate amount of the amounts recovered taking into account the parties' respective claims. The Authority shall not be liable to the Company under this Clause 4.5 for any amounts in excess of those recovered pursuant to the Project Documents or in respect of amounts it is obliged to pay to the Provider under such Project Documents.

- 4.6 During the subsistence of the Project Agreement, the Authority shall provide to those pupils at the Academy from time to time entitled to free meals such free meals as a maintained school is required under Legislation from time to time in force to provide and the provisions of Clause 12A shall apply in respect of payment for the same. It is acknowledged that the Authority has delegated the provision of such meals to the Provider under the Project Agreement.
- 4.7 The Authority will hold for the benefit of the Company and will, where permitted to do so by the Project Documents if so required by the Company use reasonable endeavours to enforce in accordance with the terms thereof each Sub-Contractor's Direct Agreement to the extent that the protections afforded by each such Sub-Contractor's Direct Agreement relate to the Academy. The Company will indemnify the Authority for the proportion of its costs of taking such action as relates to the proportion of the benefit of enforcement of such Sub-Contractor's Direct Agreement accruing to the Company or which would have accrued to the Company had the Authority's action against the counterparty of the Sub-Contractor's Direct Agreement been successful.
- 4.8 The Company shall be entitled in any action or proceedings brought by the Authority in connection with this Agreement (which arises from a claim by the Provider against the Authority under the Project Agreement) to rely on any right in defence of liability available to the Authority in the Project Agreement and to raise an equivalent right in defence of liability (save for set off and counterclaim) as would be available to the Authority in the Project Agreement and to raise an equivalent right in defence of liability (save for set off and counterclaim) as would be available in connection with a similar course of action by the Provider against the Authority pursuant to the Project Agreement.
- 4.9 In the event of an Emergency to which clause 26 of the Project Agreement applies upon the request of the Company the Authority will instruct the Provider to use its best endeavours to procure that such additional or alternative services (of a similar nature to the Services) shall be undertaken by the Provider to ensure that the Emergency is dealt with and normal operation of the Academy resumes as soon as reasonably practicable and the Company will bear and pay any costs payable by the Authority to the Provider under clause 26 of the Project Agreement in those circumstances.

5. **COMPENSATION EVENTS AND RELIEF EVENTS**

- 5.1 If:-
- 5.1.1 either party has reason to believe that a Compensation Event has arisen whether the same is also a breach of this Agreement or otherwise or that a Relief Event has arisen; or
- 5.1.2 the Authority is notified by the Provider that circumstances constituting a Compensation Event whether the same is also a breach of this Agreement or otherwise or that a Relief Event has or may have arisen,
- in either case having or with the potential to have an impact on the Academy then the parties shall promptly consult regarding circumstances that give rise to the claim or potential claim and shall discuss whether there has been or may have been a Compensation Event or Relief Event and shall meet frequently thereafter to review information received from the Provider in connection with the circumstances that give rise to any claim made by the Provider with a view to considering the evidence provided.
- 5.2 In the event that a claim is made by the Provider to which Clause 5.1 applies the Authority shall take due account of all information provided by the Company where the Company may be in whole or in part responsible for the circumstances that give rise to the Compensation Event and the Authority shall use all reasonable endeavours to resist such claim and to require mitigation of the claim where it ought reasonably to do so.

6. COMPANY ACKNOWLEDGEMENT UNDERTAKINGS AND WARRANTIES

6.1 The Company:

6.1.1 warrants and represents to the Authority that the information set out in Schedule 3 Part 1 (Corporate Warranties) is true and accurate in all respects; and

6.1.2 acknowledges that the Provider shall be entitled to provide the Services described in the Project Agreement at the Academy.

6.2 Authority Consents

The parties agree that in relation to the Project Agreement:-

6.2.1 the Authority shall not give any consent approval or authorisation of matters concerning the Academy without the prior operation of the procedures set out in this Clause 6.2;

6.2.2 the Authority shall inform the Company of the decision it requires by when and shall provide any relevant information at its disposal to inform such a decision following which the Company will give any consent approval or other necessary response in accordance with the timescales within which the Authority has advised it is required to act; and

6.2.3 where the Company:-

(a) does not respond to the Authority in accordance with Clause 6.2.2 the Authority has discharged all obligations under this Clause 6.2 in respect of the relevant consent, approval or authorisation and shall be entitled to give such consent, approval or authorisation; or

(b) does not give consent the Company will provide full written details of its objections to the Authority within such time period as the Authority has advised it is required to act to enable the Authority to comply with its obligations under the Project Documents;

6.2.4 Without prejudice to Clause 26.3.4 the Company shall not be required to give any consent or approval sought by the Authority under Clause 6 or otherwise and the Company may withhold or give such consent or approval in its absolute discretion save where the Authority can demonstrate that the failure to give such consent or approval would have the effect of increasing the Authority's liabilities under the Project Documents and/or have a material adverse effect on the Project;

6.2.5 Subject to Clause 6.2.4 the Authority shall not give any consent or approval to which this Clause 6 applies if the Company shall in accordance with this Clause 6 have notified the Authority that it is withholding its consent or approval.

6.3 The Authority warrants and represents that the information set out in Schedule 3 Part 2 is correct in all material respects.

6.4 Nothing in this Agreement shall be construed as a fetter or restriction on the exercise of the Authority's statutory functions and/or related rights including planning education or highways functions.

7. REPRESENTATIVES

7.1 The Authority shall from time to time appoint a representative to exercise the functions and powers of the Authority in relation to the performance of this Agreement notifying the Company and DFE promptly of the identity of the relevant person. The Authority shall be entitled from time to time to amend the identity of its appointed representative by notice in writing to the Company and to DFE.

7.2 The Company shall from time to time appoint a representative to exercise the functions and powers of the Company in relation to this Agreement notifying the Authority and DFE promptly of the identity of the relevant person. The Company shall be entitled from time to

time to amend the identity of its appointed representative by notice in writing to the Authority and to DFE.

8. GRANT OF LEASE

8.1 The Authority shall and subject to schedule 4 (Grant of the Lease) grant and the Company shall accept a lease of the Site pursuant to the terms set out in schedule 4 (Lease) of this Agreement as and from the Commencement Date.

8.2 The Authority as Landlord has served on the Company as tenant a notice in relation to the Lease in the form set out in schedule 7 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 ("Order").

8.3 The Company (or a person duly authorised by the Company) has made a statutory declaration in the form or substantially in the form set out in paragraph 8 of schedule 2 to the Order.

8.4 The Authority and the Company agree that the provisions of sections 24 to 28 of the 1954 Act be excluded in relation to the Lease.

8.5 The Company is not entitled to any compensation under section 37 of the 1954 Act when the Lease ends.

8.7 Authority and Provider to Enter School Premises

The Company acknowledges that the Lease remains subject to the licence granted to the Provider under the Project Agreement and acknowledges that the Authority, Authority Related Parties, the Provider and Provider Related Parties have sufficient authority to enter the Site from time to time for the purpose of carrying out their obligations under the Project Documents and shall not withhold such access.

8.8 The Company shall procure that in occupying the Site there shall be no act or omission by the Company or Company Related Parties which shall give rise to a right for any person to obtain title to or any right or interest over the Site or any part of it and/or cause any material disruption to the provision of the Works (if any) and/or the Services.

9. COMPANY ASSETS

9.1 The Company is entitled to use its own equipment and assets so as to facilitate the provision of education services by the Company at the Academy.

9.2 The Company acknowledges that Company Assets are and shall remain the responsibility of the Company and the Services provided by the Provider do not (unless otherwise agreed in writing by the Authority after receiving consent from the Provider) extend to any of the Company Assets.

9.3 The Company is responsible for any costs incurred by the Company in relation to the Company Assets.

9.4 For the avoidance of doubt the Existing School and any fixtures fittings or equipment provided under the Project Documents or in respect of which the Authority is the legal or beneficial owner shall (unless transferred in accordance with Clause 9.5) remain owned by the Authority.

9.5 Immediately upon termination or expiry of the Project Agreement (howsoever arising) if the Company shall at that time be operating the Academy the Authority shall transfer or procure the transfer to the Company of the PFI Provider Assets (at no cost to the Company).

10. FIRE REGULATIONS

The Company and Authority shall each act reasonably and in good faith to procure that an up to date fire folder is maintained for the Academy in accordance with the government guidance referring to the Fire Precautions Workplace Regulations 1997 amended 1999. In particular the Company shall:-

- 10.1.1 prepare risk assessments for emergency events including fires;
- 10.1.2 prepare and communicate the evacuation procedures including instruction to staff and pupils at the Academy on the correct action when discovering a fire and on the correct action when the fire alarm is sounded;
- 10.1.3 prepare notices/signs reinforcing the evacuation procedures; and
- 10.1.4 ensure and maintain discipline of occupants of the Academy to prevent fires and deliberate and/or accidental activation of the system.

11. PLANNED MAINTENANCE

- 11.1 Where the Provider proposes to carry out the Maintenance Programme which may impact on the Educational Services at the Academy the Authority will not authorise the carrying out of such maintenance by the Provider without prior consultation with the Company Representative (and the Authority shall have due regard to any representations made) Where the Maintenance Programme would if implemented have a material and adverse effect on the Educational Services at the Academy the Authority will not authorise the carrying out of such maintenance without the prior consent of the Company.
- 11.2 The Authority shall provide the Company with a copy of the Provider's Maintenance Programme (insofar as it relates to the Academy) in each year of this Agreement. The Authority shall act reasonably and shall take the Company's comments on the Maintenance Programme into account when making submissions to the Provider. Without prejudice to the generality of the foregoing:-
 - 11.2.1 the Company shall be entitled to raise comments on the Maintenance Programme and the Authority shall act reasonably and shall take the Company's comments on the Maintenance Programme into account when making submissions to the Provider in respect of the Maintenance Programme under clause 24.4.1 of the Project Agreement; and
 - 11.2.2 the Company shall at any time be entitled to request that the Authority require the Provider to accelerate or defer any Programmed Maintenance as an Authority Change in accordance with Clause 26 provided that the Company acknowledges that the Authority has no absolute right under the Project Agreement to require the acceleration or deferral of such maintenance;
 - 11.2.3 where the Maintenance Programme contains proposals which would if implemented have a material and adverse effect on the Educational Services at the Academy the Authority shall make submissions to the Provider for variations to be made to the Maintenance Programme as reasonably requested by the Company.

12. PAYMENT OF CONTRIBUTION

12.1 Contribution

In consideration for the provision of the Services to the Academy the Company shall with effect from the Commencement Date pay to the Authority the Relevant Proportion (as adjusted from time to time) in monthly instalments on each Payment Date occurring after the commencement of this Agreement.

12.1A Affordability Gap

The Company undertakes to pay to the Authority in addition to the Relevant Proportion due under clause 12.1, any sum received by it from the Secretary of State for Education or his agent in respect of the Affordability Gap (as defined in the Principal Agreement) whether received as part of General Annual Grant or as an Earmarked Annual Grant. The Company shall make such payment to the Authority at the same time as the DFE is required to pay the DSG for the relevant year to the Authority.

12.2 **VAT**

If any supply made or referred to in this Agreement is or becomes chargeable to VAT then the person receiving the supply (the "**Recipient**") shall in addition pay the person making the supply (the "**Supplier**") the amount of that VAT against receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply.

12.3 **Adjustment for Part Years**

Where:

- 12.3.1 this Agreement commences part way through the accounting year (being each year commencing 1 April or as otherwise agreed); or
- 12.3.2 this Agreement and/or the Project Agreement is terminated or expires part way through the accounting year,

then the amount to be paid by the Company in respect of that year will be adjusted pro rata by reference to the number of days in that year in which services are provided under the Project Agreement as the case may be compared to the number of days in that year and in the case of Clause 12.3.2 the Authority shall repay the Company any excess paid to the Authority by the Company within twenty (20) Business Days of such termination.

12.4 **Flooding**

For the avoidance of doubt this Agreement will continue in full force and effect notwithstanding that DFE may have exercised its powers under the Articles of Association to require the appointment of additional members of the local governing body of the Academy.

12.5 Utilities

12.5.1 The Company acknowledges that in accordance with the terms of schedule 4 (Payment Mechanism) of the Project Agreement the Unitary Charge contains the costs of supply of heating fuels, gas, water, sewerage and electricity consumed at the Academy and that the Authority is responsible for payment of the Unitary Charge until expiry or earlier termination of and subject to the terms of the Project Agreement and that the Unitary Charge is adjusted depending on the volume of utilities consumed and the price of such utilities.

12.5.2

12.5.2.1 To the extent that in any month there is a Company Utilities Payment, the Company shall make an adjustment to the next instalment of the Relevant Proportion of the amount of the Company Utilities Payment to ensure that the Authority is left in a no better and no worse position as a result of the Company Utilities Payment.

12.5.2.2 To the extent that in any month there is a Company Utilities Saving then the Company shall make an adjustment to the next instalment of the Relevant Proportion of the amount of the Companies Utilities Saving to the credit of the Company .

12.5.2.3 To the extent the Authority has any increased liability for costs pursuant to Part 8 of Schedule 4 of the Project Agreement (Payment Mechanism) then the Company shall make an adjustment to the Relevant Proportion to ensure that the Authority is left in a no better and no worse position as a result.

12.5.2.4 To the extent that the Authority has the benefit of a saving pursuant to Part 8 of Schedule 4 of the Project Agreement (Payment Mechanism) then the Company shall make an adjustment to the Relevant Proportion of the amount of such saving to the credit of the Company .

12.5.3 Following the expiry or earlier termination of the Project Agreement, the Company shall be responsible for procuring and maintaining the supply of relevant utilities consumed on the Site necessary to operate the Academy and the Site.

12.6 Interest on Late Payment

Save where otherwise specifically provided where any payment or sum of money due from one party to another party under any provision of this Agreement is not paid on or before the due date it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgement) until actual payment and it is agreed between the parties that the Prescribed Rate provides a substantial remedy pursuant to Sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

12.7 Adjustment of Contribution

12.7.1 Subject to Clause 12.7.2, the Relevant Proportion shall be adjusted for the following pass through costs as set out below:-

12.7.1.1 not used

12.7.1.2 on the occurrence of the circumstances referred to in Clause 12.5.2 of this Agreement (Utilities),

12.7.1.3 on the occurrence of the circumstances referred to in Clause 16.5 of this Agreement (Sharing of Insurance Cost Differentials);

12.7.1.4 on the occurrence of the circumstances referred to in Clause 18 of this Agreement (Benchmarking and Market Testing);

12.7.1.4 on the occurrence of the circumstances referred to in Clause 26.3 of this Agreement (Payment for Variations);

12.7.1.5 on the occurrence of the circumstances referred to in Clause 26A of this Agreement (Change in Law);

and otherwise as specifically provided for elsewhere in this Agreement;

12.7.2 Where the Relevant Proportion is to be adjusted in accordance with the terms of this Agreement (subject always to any provisions in this Agreement specifying the manner or basis of the relevant adjustment) the adjustment shall be proportionate having regard to all relevant matters including but not limited to:-

12.7.2.1 any change to the Unitary Charge;

12.7.2.2 the proportion of the Unitary Charge represented by the Relevant Proportion;

12.7.2.3 the effect on the Academy and the Company;

12.7.2.4 the effect on the Authority,

and shall be reasonable in all the circumstances.

12A **CATERING AND NNDR**

12A.1 The Company requests and authorises the Authority to procure that the Provider shall act as the agent for the [Academy] for the purpose of serving school meals to Category A Consumers Category B Consumers and Category C Consumers pursuant to Part 9 of Schedule 4 of the Project Agreement.

12A.2 The Authority shall supply to the Company on a monthly basis evidence of the number of Free School Meals served at the Academy in the preceding month and which the Authority is liable for under the Project Agreement. The Company shall be liable to pay to the Authority all amounts required to discharge such liability within five (5) Business Days of receipt of such evidence.

12A.3 The Company shall be directly liable to the relevant authority for National Non Domestic Rates.

13. **PERFORMANCE REGIME**

13.1 **Deductions**

The Authority is entitled under the Project Documents to inter alia make Deductions. The provisions of this Clause 13 shall apply to the administration of and accounting for such Deductions in respect of the Academy. The Authority shall make reasonable endeavours to pursue Deductions which may be available under the Project Documents.

13.2 **Reporting**

The Company shall procure that the principal of the Academy (or a person authorised by the Company) shall in relation to the Academy:-

13.2.1 use the Helpdesk established under the Project Agreement to report any service failures eligible for Deductions;

13.2.2 promptly report any apparent Unavailability of relevant areas to the Helpdesk in relation to the Project Agreement and to the Authority's Representative;

13.2.3 promptly review any report of the performance of the Provider provided by the Authority and promptly notify any inaccuracies relating to the Academy to the Authority's Representative; and

13.2.4 promptly report and notify to the Authority's Representative any acts or omissions of the Provider which the Company believes may reasonably constitute a breach by the Provider of the Project Agreement.

13.3 Attribution of Deductions

13.3.1 Any deductions made by the Authority pursuant to the Project Agreement solely in relation to the Academy shall be credited to the Company as a proportional reduction of monthly instalments of the Relevant Proportion pursuant to Schedule 2 (Calculation of the Company's Contribution).

14. SURVEYS

14.1 The Authority and the Company shall liaise throughout the term of this Agreement on matters relating to the condition of the buildings and any other structures, cabling services and of the grounds which comprise the Site.

14.2 The Authority in exercising its rights to survey the Site and buildings on the Site under the Project Agreement shall liaise with the Company Representative and shall have regard to the views of the Company in setting times for a surveyor to assist the Authority in the undertaking of any such survey.

14.3 In the event that the Company requests the Authority to exercise its rights to survey the Academy under clause 24.2 of the Project Agreement and the outcome of such survey results in the Authority being responsible for the costs of the survey, then the Company shall reimburse the costs of such survey to the Authority within five Business Days of receipt of evidence of the costs payable by the Authority.

15. INDEMNITIES

Where any party (the "**Indemnified Party**") wishes to make a claim under this Agreement against the other (the "**Indemnifying Party**") whether in relation to a claim made against it by a third party (a "**Third Party Claim**") or otherwise then any and all claims by the Indemnified Party shall be made in accordance with clause 4 of the Principal Agreement.

16. INSURANCE

16.1 The Company acknowledges that it is responsible for procuring and maintaining insurances which:-

16.1.1 cover the risk of any and all damages losses claims actions costs expenses proceedings demands charges physical loss theft and/or indirect loss to the Company and Company Assets; and

16.1.2 are otherwise required by Legislation in relation to risks relevant to the operation of the Academy and the provision of Educational Services at the Academy.

16.2 Company Insurance Requirements

The Company shall not take any action or fail to take any reasonable action or (insofar as it is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any Project Insurance to which it is an insured a co-insured or an additional insured person or noted on the policy.

16.3 **Authority Insurance Obligations**

The Authority shall use all reasonable endeavours to procure due compliance by the Provider of its obligations under clause 62 (Insurance) of the Project Agreement to procure the existence of insurances and shall in particular procure that such insurances:-

- 16.3.1 where requested by the Company name the Company as co insureds; and
 - 16.3.2 where the Company is co insured include within the terms of such insurances:
 - 16.3.2.1 non vitiation protection; and
 - 16.3.2.2 a waiver of subrogation rights (except in the event of the Company, its employees and agents having caused or contributed to the occurrence or claim through committing fraud, deliberate misrepresentation, deliberate non disclosure or breach of a material policy condition); and
 - 16.3.3 are in terms that comply with the other provisions of clause 62 (Insurance) of the Project Agreement;
- and shall exercise its rights and/or remedies under the Project Agreement to such ends.

16.4 **Evidence of Policies**

The Authority shall provide to the Company on reasonable notice:-

- 16.4.1 copies of the material damage insurance policy relating to the Site; and
- 16.4.2 evidence that the premiums payable under the insurances referred to in Clause 16.3 have been paid and that the insurances are in full force and effect in accordance with clause 62 of the Project Agreement.
- 16.4A Without prejudice to Clause 16.3, the Authority shall forward to the Company copies of any renewal policy received from the Provider pursuant to clause 62.5 of the Project Agreement.

16.5 **Sharing of Insurance Cost Differentials**

If pursuant to clause 88.2 or 92 of Part 4 of Schedule 9 of the Project Agreement it is agreed or determined that the Authority is responsible for meeting the costs of insurance policy premium variations:-

- 16.5.1 the Authority shall forthwith notify the Company of the same;
 - 16.5.2 the Company shall make an appropriate adjustment to the Relevant Proportion to ensure the Authority is in no better and no worse position than before the premium variation occurred within ten (10) Business Days of receipt of notice; and
 - 16.5.3 on the next immediate and subsequent Payment Date payments of the Relevant Proportion shall be adjusted so as to ensure the Authority is in no better and no worse position than before the premium variation occurred.
- 16.6 If pursuant to clause 88.3 of Part 4 of Schedule 9 of the Project Agreement it is agreed or determined that the Authority is to receive the benefit of any insurance policy premium variations:-
- 16.6.1 the Authority shall forthwith notify the Company of the same;
 - 16.6.2 the Company shall make an appropriate adjustment to the Relevant Proportion to reflect the benefit of any insurance policy premium variation within ten (10) Business Days of receipt of notice.

16.6.3 On the next immediate and subsequent Payment Date payments of the Relevant Proportion shall be adjusted to reflect the benefit of any insurance policy premium variation in accordance with clause 16.6.2 to the credit of the Company

17. DAMAGE AND VANDALISM

17.1 Reporting of Damage

Under the terms of clause 61.10 (Procedure following discovery of damage) of the Project Agreement the Provider has agreed that it shall as soon as practicable inform the Company of the discovery of any damage to any part of the Site or any furniture fittings and equipment within the Academy. The Company shall co operate with the Provider at all times in the performance by the Provider of its obligations to identify and report any damage.

17.2 Authority Damage to the Facility

17.2.1 In order to facilitate the Provider's responsibility to report damage on a timely basis (which in turn will facilitate the correct allocation of responsibility under the Project Agreement as between the Authority and the Provider) the Company shall procure that the Company Representative and the principal co operate with the Provider in agreeing whether or not any damage is Qualifying Vandalism (under the Project Agreement) and that the Provider is kept informed of the principal's alternate as required by clause 61.10.1 of the Project Agreement.

17.2.2 Any Qualifying Vandalism which is occasioned by the Company and/or Company Related Parties shall (except to the extent covered by any relevant Project Insurance) be the responsibility of the Company to the extent it is the responsibility of the Authority under the Project Agreement.

17.2.3 The Company shall reimburse the Authority for any damages, costs, claims, liabilities and/or expenses properly incurred by the Authority, Provider or any Provider Related Parties arising from such Qualifying Vandalism within ten (10) Business Days of receipt of an invoice for the same from the Authority (including, for the avoidance of doubt, any increases in excess or deductible which occurs as a direct result of claims made under the Project Insurances due to Qualifying Vandalism).

18. BENCHMARKING AND MARKET TESTING

18.1 In exercising its rights pursuant to clause 28 (Market Testing and Benchmarking) of the Project Agreement the Authority shall consult with the Company Representative and all matters affecting the Academy which arise pursuant to any benchmarking or market testing exercise shall so far as is compatible with the programme for the undertaking of the benchmarking exercise and any subsequent market testing be referred to the School Liaison Procedure for consideration.

18.2 Where, as a result of the benchmarking and market testing procedures referred to in Clause 18.1, there is an adjustment to the Unitary Charge, the Relevant Proportion paid by the Company shall be adjusted to take account of the outcome of the benchmarking and market testing procedures so that any such adjustment of the Relevant Proportion coincides with an adjustment of the Unitary Charge pursuant to clause 28 of the Project Agreement and leaves the Authority in a no better and no worse position than before the benchmarking and market testing procedures were undertaken in accordance with the Project Agreement.

18.3 Where as a result of the benchmarking and market testing procedures under clause 28A of the Project Agreement there is an adjustment to the Unitary Charge or the Minimum Net Income the Relevant Proportion paid by the Company shall not be adjusted to take account of the outcome of such benchmarking and market testing procedures

19. **CONSULTATION AND LIAISON**

The Authority shall convene a meeting of the School Liaison Committee in accordance with the procedures provided for in Schedule 1 no less frequently than quarterly.

20. **USE AND CONTROL OF THE SCHOOL**

20.1 The Company acknowledges that pursuant to the Project Agreement and this Agreement:

20.1.1 variations to a School Day and Additional Sessions may be agreed between the Authority and the Provider which may involve the operation of the change procedure under the Project Agreement and additional costs incurred by the Company;

20.1.2 the Existing School is entitled to a maximum of 200 hours of Community Use in aggregate per Academic Year without incurring additional costs. The Company shall be entitled to 100 of such hours provided that the Company's use of the Academy for Community Use is subject to any existing arrangements for Community Use as at the date of this Agreement. Particulars of such use are set out at schedule 20 of the Project Agreement.

20.1.3 variations to the Community Use allocated hours may be agreed by the Authority and the Provider which may involve the operation of the change procedure under the Project Agreement and additional cost to the Company;

20.1.4 the Authority does not have the right to levy deductions under the Payment Mechanism set out in schedule 4 of the Project Agreement in relation to the Provider's obligation to provide access for Community Use;

20.1.5 the Company's use of the Academy for Community Use is subject to any existing arrangements for Third Party Use as at the date of this Agreement, particulars of which are set out at Schedule 6;

20.1.6 the Existing School is entitled to a maximum of 200 hours for Additional Sessions per Academic Year without incurring additional costs. The Company shall be entitled to 200 of such hours for Additional Sessions provided that the Company's use of the Academy for Additional Sessions is subject to any existing arrangements for Community Use set out in Schedule 20 of the Project Assessment and Third Party Use as set out in Schedule 6.

20.2 Outside of the above periods the Provider is entitled to require the Site and any facilities on the Site (other than Company Assets equipment or consumables owned by the Company or for which it is responsible which are not provided under the Project Agreement) for purposes of third party income generation in accordance with clause 29 of the Project Agreement.

20.2A In the event that the Authority incurs a liability to the Provider under clause 29.7.7 of the Project Agreement arising out of the Community Use entitlement of the Company as a result of:

(i) the Company not attending a Community Use session without having given the period of notice advised to it (which the Company acknowledges will cause the Provider to incur abortive costs) or

(ii) the Company not paying any fees owing to the Provider or the Extended Use Contractor in respect of a Community Use session

the Company shall reimburse the amount of such liability to the Authority within five (5) Business Days of receipt of evidence of the same :

20.3 **Requests for School Periods**

20.3.1 The Company shall notify the Authority as follows in relation to Additional Sessions, Terms and Community Use:-

- (a) the Company shall notify the Authority no less than twenty (20) Business Days prior to the last day of each Academic Year of any proposed Additional Sessions for the following Academic Year;
- (b) in relation to Additional Sessions not notified to the Authority pursuant to (a) above as soon as is reasonably practicable and at least four (4) months in advance of each proposed Additional Session together with details of the intended use, the dates and times of such use the areas of the Academy and Services to be provided;
- (c) **Terms**

No later than 28th February in each year the Company shall notify the Authority of the dates for Terms (including any half-term holidays) in the period 1st September to 31st August following that notice. The Company acknowledges the importance to the Authority of the dates for and length of Terms and half term holidays. Where the Company requires Terms to have an aggregate yearly duration in excess of 195 days or where the Company requires a variation in the number of Terms it shall propose an Authority Change pursuant to this Agreement. For the purposes of the year ending 31 August 2013 the Terms will be as follows:-

Autumn Term: Tuesday 4th September 2012 to Friday 21st December 2012

Spring Term: Monday 7th January 2013 to Thursday 28th March 2013

Summer Term: Monday 15th April 2013 to Tuesday 23rd July 2013

- (c) **Community Use**

- (i) In the event that the Company requires its Community Use of the Academy to be increased which results in the Community Use to have an aggregate duration in each School Year in excess of 200 hours it shall propose an Authority Change pursuant to this Agreement.
- (ii) Unless the parties agree in accordance with the terms of this Agreement and further the Provider and the Authority agree in accordance with terms of the Project Agreement Community Use for the Academy may not exceed 100 hours in aggregate in any School Year.

21. **AUTHORITY INDEMNITY**

21.1 **Indemnity for acts or omissions of the Contractor**

The Authority shall be responsible for and shall release and indemnify the Company, in respect of all Project Document Losses suffered or incurred by the Company or any servant, agent or representative of the Company to the extent that either:

21.1.1 the Authority recovers such Project Document Losses from the Contractor; or

21.1.2 the Authority would have been entitled to recover such Project Document Losses under the provisions of the Project Agreement save for failures by the Authority to perform its obligations under this Agreement;

whichever is the larger amount.

21.2 **Indemnity for acts or omissions of the Authority and Authority Related Parties**

The Authority shall, subject to clause 21.4 (Authority not Responsible), be responsible for, and shall release and indemnify the Company or any Company Related Party on demand from and against all liability for Academy Direct Losses arising from:

21.2.1 death or personal injury;

21.2.2 loss of or damage to property (including property belonging to the Company or for which it is responsible) but excluding the, land, buildings, plant, equipment and other assets which are the responsibility of the Contractor to provide under the Project Agreement and which form part of the Academy; and

21.2.3 third party actions, claims and/or demands (other than any which are the subject of the indemnity in clause 21.3) brought against the Company or any Company Related Party,

which may arise out of, or in consequence of the performance or non-performance by the Authority of its obligations under this Agreement or the presence on the Site of the Authority or any Authority Related Party.

21.3 The Authority shall, subject to clause 21.4 (Authority not Responsible), be responsible for, and shall release and indemnify the Company or any Company Related Party, on demand from and against all liability for Academy Direct Losses and Indirect Losses arising from third party actions, claims or demands (as described in clause 21.2.3) brought against the Company or any Company Related Party for breach of statutory duty which may arise out of, or in consequence of a breach by the Authority of its obligations under this Agreement to the extent that there are no other remedies available to the Company under this Agreement.

21.4 **Authority not Responsible**

The Authority shall not be responsible or be obliged to indemnify the Company:

21.4.1 for any matter referred to in clause 21.2 or 21.3 that arises as a direct result of the Authority acting on a written notice issued by the Company:

21.4.2 for any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Company or any Company Related Party (other than to the extent such negligence or wilful misconduct would not have occurred but for a breach by the Authority of its obligations under this Agreement) or by the breach of the Company of its obligations under this Agreement; or

21.4.3 to the extent that any cost and expense related to any injury, loss or damage, is the responsibility of the Company pursuant to clause 17 (Damage).

21.5 **Authority Compensation**

Without prejudice to any rights of the Company at common law or in equity, where the Company suffers or incurs Academy Direct Losses or Indirect Losses in connection with a breach by the Authority or an Authority Related Party of the Project Agreement and/or this Agreement or any other liability attributable to the Authority or the Authority Related Party under the Project Agreement or the negligence or wilful misconduct of the Authority or an Authority Related Party, and the indemnities contained in clauses 21.1 to 21.4 (inclusive) do not apply, the Authority shall compensate the Company for all such Academy Direct Losses and Indirect Losses.

22. ADDITIONAL INCOME

22.1 Income Calculation

The Company shall provide all reasonable assistance to the Authority where in accordance with clause 29.10 of the Project Agreement the Authority and Provider seek to agree the Net Income generated from use of the Academy through Third Party Use or Community Use.

22.2 Third Party Use – Approval

The Authority hereby agrees with the Company that where the Company reasonably believes that Third Party Use is not compatible with the use of the Academy for Educational Services the Authority shall at the request of the Company exercise its powers to regulate the use of the Academy under the terms of clause 29.4 of the Project Agreement.

22.3 Existing School Responsibility

For the avoidance of doubt the Company acknowledges that until the Company has taken occupation of the Academy pursuant to the Lease control of the Existing School remains with the Authority.

22.4 Income Share

Any income relating to the Site payable to the Authority under Clause 29.10.5(a) of the Project Agreement shall not be credited to the Company.

23. DISPUTE RESOLUTION

23.1 Dispute Resolution Procedure

Where the Company does not believe that the Provider is undertaking its obligations in accordance with the requirements of the Project Agreement insofar as they relate to the Academy, the Company may (acting reasonably) request the Authority to consider in accordance with Clause 4 whether to submit such a dispute to the Dispute Resolution Procedure contained in the Project Agreement on behalf of the Company. The Authority shall act reasonably when considering any such request.

23.2 If a dispute arises in relation to any aspect of this Agreement the Company and the Authority shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter. If the Authority and the Company fail to resolve the dispute within ten (10) Business Days of the initial consultation between them then either may refer the matter to be resolved by a person nominated by or on behalf of DFE. DFE shall act reasonably in making such nomination including ensuring the impartiality of the nominee regardless of whether there may be any financial benefit to DFE dependant on the nominee's decision. Subject to a decision made by a person nominated by or on behalf of DFE under this Clause each party shall in relation to the Project Agreement bear their own costs arising from a dispute pursuant to this Clause 23.2.

23.3 Should a dispute arise which the Authority would not otherwise pursue other than at the Company's request, the Company shall reimburse the Authority in relation to all reasonable and proper costs incurred by the Authority in submitting the matter to the relevant adjudicator pursuant to the Project Agreement.

24. EMPLOYEES

24.1 Without prejudice to clause 4 the Authority undertakes to duly enforce the provisions of Clause 31 (Employees) of the Project Agreement for the benefit of the Company where requested to do so by the Company (acting reasonably).

24.2 In the event that the Company becomes aware of a breach by the Provider of any obligations under Clause 31 (Employees) of the Project Agreement the Company shall give notice (including reasonable particulars of the alleged breach) to the Authority and the Authority undertakes to promptly take up such matter with the Provider enforcing the terms of the relevant clause to the maximum extent practicable in the circumstances.

24.3 Where the Company considers that any person employed at the Academy (whether in connection with the Works or Services or otherwise) should be removed pursuant to the power available to the Authority under the Project Agreement the Company shall be entitled to serve written notice on the Authority requiring the Authority to exercise its power to procure removal of that person from the Site and the Authority shall promptly do so provided that in the event that the Authority is required to indemnify the Provider pursuant to clause 31.7 of the Project Agreement as a result of such removal, the Company shall indemnify the Authority so that the Authority is in a position no better and no worse provided that the Authority has acted in accordance with the Company's request.

25. **EMPLOYEE TRANSFERS**

The parties shall co-operate and consult with relevant employees as required under TUPE so that the parties may comply with their respective obligations under TUPE in connection with the Project and obligations in the Academy Contracts.

26. **EXERCISE OF AUTHORITY CHANGE AND CHANGE MECHANISM**

26.1 **Changes Not Proposed by the Company**

Where there is any proposal for a Variation under the Project Agreement that is not proposed by the Company:-

26.1.1 the Authority shall notify the Company and the DFE of all relevant information in relation to the proposed Variation including without limitation, the Authority's opinion, the available options, the decision required and time periods for both parties to respond; and

26.1.2 the Authority shall not agree to any proposed Variation which is reasonably likely to have an adverse effect upon the provision of the Services at the Academy or a material adverse financial impact on the Academy without the prior consent of:-

(a) the Company (which shall not be unreasonably withheld or delayed); or

(b) DFE in the event that either:-

(i) the Company has not provided its consent under Clause 26.1.3(a); or

(ii) the proposed Variation would have a material adverse financial impact on the Academy.

26.2 **Changes Proposed by the Company**

26.2.1 The Company may at its own cost acting reasonably request the Authority to request an Authority Variation pursuant to the Project Agreement and shall provide the Authority and DFE with all relevant information in relation to the proposed Authority Variation including so far as it is able all matters set out in clause 58 of the Project Agreement

26.2.2 The Authority may decline to submit an Authority Notice of Variation to the Provider where, if to put forward such a proposed Authority Variation to the Provider would:-

(a) be prejudicial to the Project as a whole ;

(b) Not Used;

- (c) be in breach of the requirements for Authority Variation set out in clause 58 of the Project Agreement;
- (d) result in material additional costs or increased liabilities for the Authority in a manner not adequately compensated for by either the Company and/or DFE; and/or
- (e) not be in the format of an Authority Notice of Variation as required by clause 58 of the Project Agreement.

26.2.3 Where the Authority does not decline the Company's proposed Authority Change pursuant to Clause 26.2.3:-

- (a) the Authority shall submit an Authority Notice of Variation to the Provider as soon as practicable and keep the Company informed as to any information regarding the proposed Authority Variation received from the Provider as well as any revisions, estimates and/or amendments to that proposed Authority Variation;
- (b) the Company shall, at its own cost, provide all assistance to the Authority including procuring additional information to assist the proposed Authority Variation details of proposals for provision of funding for capital expenditure required to implement the Authority Change, attending relevant discussions with the Provider in seeking to agree the contents of the Estimate provided by the Provider in accordance with clause 58 of the Project Agreement;
- (c) the Authority shall promptly provide the Company with a copy of the Estimate (as defined in the Project Agreement) relevant to the Authority Variation (including any revisions to such Estimate) and a copy of the proposed notice confirming the Authority Variation;
- (d) the Company shall provide written notice to the Authority either confirming the relevant Estimate or requesting the Authority withdraw the relevant Authority Notice of Variation within at least ten (10) Business Days before the Authority is required to advise the Provider that either the contents of the relevant Estimate are agreed by the Authority or the Authority Notice of Variation is withdrawn in accordance with clause 58 of the Project Agreement;
- (e) subject to Clause 26.3.4 the Authority shall not confirm with the Provider any Estimate in relation to an Authority Notice of Variation requested by the Company under this Clause 26.2 without the prior written consent of the Company (not to be unreasonably withheld or delayed); and
- (f) subject to Clause 26.3.4 the Authority shall not withdraw an Authority Notice of Variation requested by the Company under this Clause 26.2 without the prior written consent of the Company (not to be unreasonably withheld or delayed).

26.3 **Payment for Variations**

Where any Variation is likely to lead to an adjustment of the Unitary Charge or any payments from the Authority to the Provider of a lump sum:-

26.3.1 where pursuant to Clause 26.2 there is an increase in payments from the Authority to the Provider or the payment to the Provider of a lump sum arising from the implementation of an Authority Notice of Variation requested by the Company, the Company shall, unless agreed otherwise, in writing by the parties, bear the entire increase or reimburse the full amount of the lump sum to the Authority to the extent related to the Company's request;

- 26.3.2 where pursuant to Clause 26.1 there is an increase in payments from the Authority to the Provider or the payment to the Provider of a lump sum arising from the implementation of a Variation under the Project Agreement the Company shall unless agreed otherwise in writing between the parties pay to the Authority such proportion of the Authority's increased liability which relates to the Academy through either:-
- (a) a contribution to payment of a lump sum payable by the Authority to the Provider in relation to the Variation; or
 - (b) an adjustment to the Relevant Proportion,
- so as to ensure the Authority is left in no better and no worse position than if the Variation had not been implemented;
- 26.3.3 where pursuant to either Clause 26.1 or Clause 26.2 there is a decrease in payments from the Authority to the Provider arising from the implementation of the Variation, a proportionate adjustment to the Relevant Proportion to reflect such decrease shall apply as soon as reasonably practicable following the implementation of the relevant Authority Variation so as to ensure the Authority is left in no better and no worse position than if the Variation had not been implemented; and
- 26.3.4 notwithstanding Clause 26.1 and Clause 26.2, where the Company has not responded to the Authority within the time periods reasonably required by the Authority, the Authority may after giving reasonable warning proceed to exercise its rights and/or satisfy its obligations in the Project Documents in relation to the proposed Variation and any decision made by the Authority in respect of such Variation shall be deemed to be approved by the parties pursuant to this Clause 26.

26A. CHANGE IN LAW

- 26A.1 The Authority shall promptly notify the Company and the DFE where it becomes aware of any Qualifying Change in Law which may affect the Academy or any part of it and provide all relevant details, to the extent available.
- 26A.2 The Authority shall promptly provide to the Company any information which it receives in relation to a Qualifying Change in Law.
- 26A.3 The Authority shall consult with the Company and DfE in respect of any Qualifying Change in Law and have regard to any representations made by the Company.
- 26A.4 Subject to the Authority complying with clauses 26A.1 to 26A.3 (inclusive), in the event that the Authority has a liability for a Qualifying Change in Law pursuant to clause 57 of the Project Agreement and the Authority has acted reasonably in disputing such liability (where appropriate), then:
- (a) where the Authority's liability under the Project Agreement consists of an adjustment to the Unitary Charge, the Relevant Proportion shall be adjusted so as to ensure that the Authority is left in a no better and no worse position than if the Qualifying Change in Law had not been implemented; or
 - (b) where the Authority's liability under the Project Agreement consists of a contribution to the payment of a lump sum pursuant to clause 57.4 of the Project Agreement, the Company shall pay the Authority such lump sum on or before the date falling 15 Business Days after the Capital Expenditure has been incurred by the Provider.
- 26A.6 Where there is a decrease in payments from the Authority to the Contractor arising from the implementation of any Qualifying Change in Law, a proportionate adjustment to the Relevant Proportion to reflect such decrease shall apply as soon as reasonably practicable following the implementation of the relevant Qualifying Change in Law so as to ensure the Authority is left in no better and no worse position than if the Qualifying Change in Law had not been implemented.

27. **TERMINATION**

27.1 **Occurrence**

This Agreement shall terminate on the earlier of the:-

- 27.1.1 expiry or termination of the Project Agreement; or
- 27.1.2 closure of the Academy; or
- 27.1.3 termination of the Funding Agreement save where this Agreement is to be or has been novated to a suitable replacement sponsor pursuant to the terms of the Principal Agreement; or
- 27.1.4 termination of the Lease pursuant to the provisions thereof.

28. **ASSIGNMENT ETC**

- 28.1. In the event that the Authority novates assigns or otherwise transfers its rights and obligations under the Project Agreement to another person then the Authority will novate this Agreement and the Lease to that party.
- 28.2. Notwithstanding Clause 28.1 this Agreement and the Lease may be novated in accordance with the terms of the Principal Agreement.
- 28.3. Subject to Clauses 28.1 and 28.2 no party shall otherwise novate, assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party.

29. **GOVERNING LAW**

29.1 **Applicable Law**

This Agreement and any non-contractual obligation arising out of it is subject to the laws of England and Wales.

29.2 **Jurisdiction**

Except as provided in this agreement the parties agree that any disputes between the parties shall be subject to the exclusive jurisdiction of the courts of England and Wales.

30. **THIRD PARTY RIGHTS**

30.1 **Entitlement of Third Parties**

No term of this Agreement is intended to give any entitlement as against any party to any person who is not a party to this Agreement.

30.2 **Exclusion of Contracts (Rights of Third Parties) Act 1999**

No term of this Agreement may be enforced by any person other than a party to this Agreement under the Contracts (Rights of Third Parties) Act 1999.

31. **MISCELLANEOUS PROVISIONS**

31.1 **Provisions to Remain in Force**

If any term, condition or provision of this Agreement shall be held to be invalid, unlawful or unenforceable to any extent such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Agreement.

31.2 **Entire Agreement**

This Agreement and the documents referred to in this Agreement contain all the terms which the parties have agreed in relation to the subject matter of this Agreement.

31.3 **Waiver**

No term or provision of this Agreement shall be considered as waived by a party to this Agreement unless a waiver is given in writing by that party. No waiver shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and only to the extent) expressly stated in that waiver.

31.4 **Counterparts**

This Agreement may be executed and delivered in any number of counterparts, each of which so executed will be an original but together will constitute one and the same instrument.

31.5 **Intellectual Property Rights**

31.5.1 At the request of the Company where required to exercise its rights or perform its obligations under this Agreement and where permitted by the Project Agreement the Authority shall grant to the Company a sub-licence in respect of Intellectual Property Rights licensed to the Authority under or pursuant to the Project Agreement which may only be used by the Company in accordance with the Approved Purposes.

31.5.2 The Company hereby grants to the Authority a non exclusive irrevocable and royalty free licence (carrying the right to grant sub-licences) to use for the duration of this Agreement solely for the purposes of discharging the Authority's obligations in relation to the Facilities and/or the Site under the Project Agreement any Intellectual Property Rights which are created, brought into existence, acquired, used or intended to be used by the Company in relation to the Academy.

31.6 **Confidentiality**

31.6.1 Neither the Company nor the Authority shall publish or cause to be published or communicate to any third party any matter relating to this Agreement except with the prior written consent of the other (such consent not to be unreasonably withheld or delayed).

31.6.2 The parties shall comply with their duties and responsibilities under the Data Protection Act 1998 in the performance of this Agreement and shall not unlawfully process or disclose information subject to that Act.

31.7 **Freedom of Information**

The parties agree that they will each cooperate to the extent they are legally able to do so to enable any party receiving a request for information under the Freedom of Information Act 2000 to respond to that request promptly and within the statutory timescales. This cooperation shall include but not be limited to finding, retrieving and supplying information held, directing requests to other persons as appropriate and responding to any requests by the party receiving a request for comments or other assistance.

31.8 **Amendments**

This Agreement may not be varied except by an agreement in writing signed by duly authorised representatives of the parties.

31.9 **No Agency**

31.9.1 Nothing in this Agreement shall be construed as creating a partnership or as a contract of employment between the parties.

31.9.2 Save as expressly provided otherwise in this Agreement, the Company shall not be, or be deemed to be, an agent of the Authority and the Company shall not hold itself out as having authority or power to bind the Authority in any way.

31.10 **No Double Recovery**

Notwithstanding any other provisions of this Agreement, no party shall be, entitled to recover compensation or to make a claim under this Agreement in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Agreement or otherwise.

31.11 **Further Assurance**

Each party shall do all things and execute all further documents necessary to give full effect to this Agreement.

31.12 **Severability**

If any provision of this Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Agreement.

32. **NOTICES**

32.1 **Form of Notice**

All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post or by hand, leaving the same at:-

If to the Authority: Coventry City Council
Education Capital Team
Civic Centre 1
New Council Offices
Earl Street
Coventry
CV1 5RS

If to the Company: []

32.2 **Communication with Representatives**

Where the information or documentation is to be provided or submitted to the Authority's Representative or the Company Representative it shall be provided or submitted by sending the same by first class post or by hand, leaving the same at:-

If to the Authority's Representative: []

If to the Company Representative: []

32.3 **Change of Address**

Any party to this Agreement (and any Representative) may change its nominated address or facsimile number by prior notice to the other parties.

32.4 **Service**

Notices given by post shall be effective upon the earlier of actual receipt and two (2) Business Days after mailing. Notices delivered by hand shall be effective upon delivery.

32.5 **Accrued Rights**

The parties agree that this Agreement shall be extended if at any time it becomes apparent to any party that any of their obligations or rights accruing to any of them in

respect of this Agreement will not have been carried out or completed by the termination of the Project Agreement.

IN WITNESS whereof the parties have executed this Agreement as a Deed

EXECUTED AS A DEED (but not delivered until the date hereof) by the affixing of the Common Seal of [] in the presence of:-

.....
Authorised Officer

EXECUTED AS A DEED by and on behalf of [] acting by:-

.....
Secretary/Governor

.....
Governor

SCHEDULE 1 – SCHOOL LIAISON PROCEDURE

1 SCHOOL LIAISON COMMITTEE

The Authority and the Company shall establish and maintain for the duration of this Agreement a Liaison Committee for the Academy ("**School Liaison Committee**"), consisting of one person nominated by the Company and one from the Authority (or such other number of members (being equal numbers from each of those parties) as the School Liaison Committee may determine from time to time).

2 FUNCTIONS

The functions of the School Liaison Committee shall be:

- 2.1 to provide a means for the joint review where appropriate of all aspects of the performance of this Agreement;
- 2.2 to provide a forum for joint strategic discussion and consideration of all aspects with regard to this Agreement including ensuring dissemination of information and consideration of the views of all stakeholders connected with the Project Agreement;
- 2.3 jointly to consider any requests for consents or approvals;
- 2.4 review of provision of the Services and the Works;
- 2.5 Changes; and
- 2.6 any other matters relating to this Agreement that any member may refer to it for consideration.

3 ROLE

The role of the School Liaison Committee is to make recommendations to the Authority and to the Academy, which the Authority and the Academy may accept or reject at their complete discretion. Neither the School Liaison Committee itself, nor its members acting in that capacity, shall have any authority to vary any of the provisions of this Agreement or to make any decision binding on the parties. No discussion, review or recommendation by the School Liaison Committee shall relieve the Authority or the Academy of any liability or vary any such liability or any right or benefit.

4 REPRESENTATIVES

The Authority and the Company may appoint their representatives on the School Liaison Committee and remove those representatives and appoint replacements, by written notice delivered to the other at any time.

5 PRACTICES AND PROCEDURES

Subject to the provisions of this schedule, the members of the School Liaison Committee may adopt such procedures and practices for the conduct of the activities of the School Liaison Committee as they consider appropriate, from time to time, provided that the quorum for a meeting of the School Liaison Committee shall be two (with at least one representative of the Authority and one representative of the Company present).

6 **VOTING**

Each member of the School Liaison Committee shall have one vote each.

7 **CHAIRMAN**

The chairman of the School Liaison Committee ("**Chairman**") shall be nominated by the Authority and by the Company alternatively every six months during the term of this Agreement from the members of the School Liaison Committee (commencing with the Authority). In the event of an equality of votes, the Chairman shall not have a casting vote.

8 **FREQUENCY OF MEETINGS**

The School Liaison Committee shall meet at least termly or at such intervals as the School Liaison Committee shall determine, provided that the Chairman of the School Liaison Committee should convene additional meetings in addition to the termly meetings in emergencies only.

9 **CONVENING OF MEETINGS**

The Chairman of the School Liaison Committee may convene a meeting at any time, or a meeting may be convened upon a member of the School Liaison Committee notifying the Chairman that a meeting should be held.

10 **NOTICES OF MEETINGS**

No less than ten (10) Business Days notice (identifying the agenda items to be discussed at the meeting) shall be given to convene a meeting of the School Liaison Committee except that in emergencies, a meeting may be called at any time on such notice as may be reasonable in the circumstances.

11 **ATTENDANCE AT MEETINGS**

Meetings of the School Liaison Committee should normally involve the attendance (in person or by alternate) of representatives at the meeting. Where the representatives of the School Liaison Committee consider it appropriate (by affirmative vote of all those voting on the matter which must include not less than one representative of the Authority and one representative of the Academy) meetings may also be held by telephone or another form of telecommunication by which each participant can hear and speak to all other participants at the same time.

12 **MINUTES**

Minutes of all decision and meetings of the School Liaison Committee shall be prepared and kept by the Authority and copies circulated promptly to the Academy, normally within ten (10) Business Days of the making of the decision or the holding of the meeting

SCHEDULE 2– CALCULATION OF THE COMPANY’S CONTRIBUTION

1 For the financial year 2012/2013, the Adjusted School Budget will be calculated by the Education Funding Agency. The Adjusted Schools Budget will be revised by subtracting the following items to give the Revised Adjusted Schools Budget:

- (A) SEN resources;
- (B) PFI Revenue Costs (referred to as DSG Topslice by the Authority);
- (C) National Non Domestic Rates;
- (D) Former Ethnic Minority Achievement Grant;
- (E) Social Inclusion/Additional Education Needs Funds; and
- (F) Any other specific earmarked funds.

The contribution payable by the Company to the Authority shall therefore be calculated in accordance with the following formula:

$$RP \pm PT - D + \text{DSG Topslice}$$

Where:

RP = Relevant Proportion of the Revised Adjusted School Budget.

PT = Pass Through Costs (identified under clauses 12.7 and 12A)

D = Deductions identified under clause 13.3.1

Worked Example for calculation of the Company’s Contribution (2012/13 Financial Year)

Adjusted School Budget	£7,920,654
Subtractions	
(A) SEN resources;	£ 139,682
(B) PFI Revenue Costs (referred to as DSG Topslice by the Authority);	£ 323,733
(C) National Non Domestic Rates;	£ 320,600
(D) Former Ethnic Minority Achievement Grant;	£ 23,076
(E) Social Inclusion/Additional Education Needs Funds; and	£ 67,315
(F) Any other specific earmarked funds.	£ 0
	£ 874,406
Revised Adjusted Schools Budget	£7,046,248
Relevant proportion (9.5%)	£ 669,394
Plus Assumed Pass Through Costs	£ 100
Less Assumed Deductions	£ 50
Plus DSG Topslice	£ 323,733
Company’s Contribution equals	£ 993,177

2 In financial years subsequent to 2012/2013, the Revised Adjusted School Budget will be calculated annually in accordance with the principles set out in paragraph 1 above,

3 The Company agrees to supply the Authority with the data necessary to undertake the calculation of the Revised Adjusted School Budget and Relevant Proportion when required.

4. In each financial year subsequent to 2012/13, the Company and the Authority shall negotiate in good faith with a view to agreeing any necessary revision or revisions to the Relevant Proportion and/or calculation of the Revised Adjusted Schools Budget, taking into account:

- (i) Factors listed at (A) to (F) in paragraph 1 of this schedule where they can be individually identified in the new funding arrangements;

- ii) Any change in the basis or terms of funding for schools that are maintained by the Authority.
- iii) The financial position of the PFI Scheme and the company's overall contribution to that Scheme.

5 Adjustments to the Company's contribution in accordance with clause 12.7 shall be invoiced on a monthly basis and reconciled at the beginning of the next Financial Year. The Authority will return Deductions to the Company the month after their receipt through deductions to the monthly invoices.

SCHEDULE 3 – CORPORATE WARRANTIES

PART 1 - WARRANTIES BY THE COMPANY

1. DUE INCORPORATION OF THE COMPANY AND ITS CAPACITY

- 1.1 The Company is duly incorporated under the law of England and Wales and has the corporate power to own its assets and to carry on its activities as they are now being conducted.
- 1.2 The Company:-
 - 1.2.1 has the power to enter into and to exercise its rights and perform its obligations under this Agreement; and
 - 1.2.2 has taken all necessary action to authorise the execution of and the performance by it of its obligations under this Agreement.
- 1.3 The Company is not subject to any other statutory or contractual obligation compliance with which will or is likely to have a material adverse effect on the ability of the Company to perform its obligations under this Agreement, the Funding Agreement or the Principal Agreement.
- 1.4 This Agreement constitutes or will when executed constitute legal, valid, binding and enforceable obligations on the Company.
- 1.5 Every consent and approval required by the Company in connection with the execution, delivery, validity or enforceability of this Agreement or the performance by the Company of its obligations under this Agreement have been obtained or made and is in full force and effect and there has been no fault in the observance of the conditions or restrictions (if any) imposed or, in connection with any of the same.

2. NO LITIGATION

No claim is presently being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of the knowledge of the Company, pending or threatened against the Company or any of its assets which will or might have a material adverse effect on the ability of the Company to perform its obligations under this Agreement.

3. SOLVENCY OF THE COMPANY

- 3.1 No proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Company threatened) for its winding-up or dissolution or for the appointment of a receiver administrative receiver, administrator, liquidator or similar officer in relation to any of the Company's assets or revenues.
- 3.2 The Company undertakes to inform the Authority as soon as reasonably practicable of any proposed meetings of creditors which relate to the Company's business.

PART 2 - WARRANTIES BY THE AUTHORITY

1. The Acceptance Certificate has been issued under clause 20 of the Project Agreement
2. The copies of the documents issued to the Company and/or its advisers listed in Part 3 of this Schedule are complete and accurate copies of the documents in question.
3. There have been no changes or amendments to the Project Agreement other than pursuant to the documents listed in Part 3 of this Schedule.
4. There are not now, nor have there been any disputes referred to adjudication pursuant to clause 65 of the Project Agreement.

**PART 3
DOCUMENTS**

1. The Project Agreement and Schedules dated 7th December 2004
2. The Deed of Variation to the Project Agreement dated 5th November 2010
3. A letter documenting certain matters relating to the Project Agreement dated 14th September 2010

SCHEDULE 4 - LEASES

SCHEDULE 5 - INFORMATION PROTOCOL

1. The parties recognise the benefit of cooperation and sharing of Information as part of a prudent risk management strategy. Each party shall notify the other parties of relevant timescales (contractual and non-contractual) to which they are bound or committed, and shall use reasonable endeavours to facilitate exchange of Information in good time to meet such timescales.
2. The Authority shall provide to DFE and the Company (in each case solely in respect of matters affecting the Site):-
 - 2.1 promptly upon becoming aware of the same, details of any actual or potential claim made or potentially to be made against the Authority under the Project Documents which the Authority may seek to recover from the Company or DFE;
 - 2.2 on reasonable request, details of claims that the Authority is progressing under the Project Documents (irrespective of whether the claims are being made at the request of the Company or DFE);
 - 2.3 any notice of termination served on the Authority pursuant to the Project Documents;
 - 2.4 service of any notice by the Authority under a Project Document purporting to terminate that agreement;
 - 2.5 details of any matter which may lead to an increase in the Relevant Proportion including indexation, any benchmarking/market testing, any insurance costs review and any Change in Law; and
 - 2.6 such other information as DFE or Company may reasonably require.
3. The Authority shall provide to the Company (in each case solely in respect of matters affecting the Site):-
 - 3.1 copies of insurance certificates obtained from the Provider and copies of insurance reports provided by the Provider as part of the insurance premia sharing mechanism under the Project Agreement;
 - 3.2 copies of performance reports received from the Provider pursuant to the relevant payment mechanisms;
 - 3.3 quarterly (or more regular by agreement of the parties) reports on instances of Qualifying Vandalism together with details of the costs associated with the same and the proposed or agreed responsibility for such costs;
 - 3.4 copies of any survey reports obtained by the Authority having exercised its rights to require surveys pursuant to the Project Documents;
 - 3.5 copies of the Maintenance Programme provided to the Authority by the Provider from time to time pursuant to the Project Agreement;
 - 3.6 notice of any intention on the part of the Authority to exercise its step in rights pursuant to the Project Documents;
 - 3.7 details of any information given to the Authority by the Provider in relation to the Project Agreement.
 - 3.8 details of any information given by the Authority to the Provider in relation to the Project Agreement.

4. The Company shall provide to the Authority and to DFE, promptly upon becoming aware of the same, details of any actual or potential claim made or potentially to be made against the Authority under the Project Documents.
5. The Company shall provide to the Authority:-
 - 5.1 details of any breaches of the Project Documents by the Provider not addressed by the relevant payment mechanisms of which it is aware;
 - 5.2 details of any grounds to exercise rights or remedies in favour of the Authority under the Project Documents of which it is aware;
 - 5.3 details of any instances of damage to the Site, the Facility or ICT of which it is aware, together with details of any contact with the Provider it has in respect of the same.
6. A party providing information pursuant to this Schedule 5 may require payment of its reasonable costs in providing such information where, acting reasonably, it believes it is appropriate to do so given the nature or volume of the information or requests for information, or any other relevant factors.

SCHEDULE 6 – SCHOOL USE INFORMATION

Third Party use

The School has provided this to the Authority and it will be inserted in the final document

DATED

2012

(1) THE COUNCIL OF THE CITY OF COVENTRY

- and -

(2) THE SECRETARY OF STATE FOR EDUCATION

- and -

(3) [ACADEMY]

DFE PRINCIPAL AGREEMENT

relating to

[Caludon Castle Academy]

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THIS PRINCIPAL AGREEMENT is made on 2012
BETWEEN:

- (1) **THE COUNCIL OF THE CITY OF COVENTRY** whose principal premises are the Council House Earl Street Coventry CV1 5RR (the "**Authority**");
- (2) **THE SECRETARY OF STATE FOR EDUCATION** whose registered office is at Sanctuary Buildings, Great Smith Street, London SW1P 3BT (the "**DFE**"); and
- (3) **[ACADEMY]** (company number [◆]) whose registered office is at **[address]** (the "**Academy**").

WHEREAS

- A The Authority is a children's services authority with duties and powers to provide primary and secondary education under the Education Acts 1996-2005 and the School Standards and Framework Act 1998 and the Education and Inspections Act 2006.
- B The Authority has entered into a PFI project agreement with Coventry Education Partnership Limited on 7 December 2004 pursuant to its powers contained in section 2 of the Local Government Act 2000, section 14 of the Education Act 1996, section 22 of the School Standards and Framework Act 1998 and section 111 of the Local Government Act 1972 in order to enable investment in certain educational services and facilities for which it is responsible at Caludon Castle School, Axholme Road, Wyken, Coventry CV2 5BD.
- C The governing body and the parties have agreed that Caludon Castle School shall close and henceforth the Academy shall deliver educational services at the School as the **[full name of new Academy]**.
- D The Authority and the Academy intend to enter into a School Agreement on or around the date of this Agreement. The Academy and the DFE have entered into a funding agreement dated on or around the date of this Agreement.
- E The parties agree to the terms and conditions of this Agreement.

15 DEFINITIONS AND INTERPRETATION

15.1 Definitions

In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

"Academy Contribution" means the sum payable by the Academy to the Authority, by way of contribution to the Unitary Charge pursuant to, and calculated in accordance with, the School Agreement;

"Academy Related Party" means:

- (a) an officer agent or employee of the Company acting in the course of his office or employment including without limitation any director of the Company or any member of the local governing body of the Academy;
- (b) in relation to the Academy during the School Day any student of the Academy or any person visiting the Academy at the invitation (whether express or implied) of the Company;
- (c) in relation to the Academy during any period of Community Use any person using the Academy for that purpose at the invitation whether express or implied of the Company;
- (d) in relation to the Academy during any Additional Session any student of the Academy or any person visiting the Academy at the invitation (whether express or implied) of the Company;

(e) in relation to the Academy those times and in respect of those parts of the Site as set out in schedule 14 of the Project Agreement for which responsibility is stated to be that of the Authority any student of the Academy; and

(f) any contractors and their officers, employees and agents involved in the operation and/or maintenance of works or services at the Site procured by the Company,

(g) but not including any of the Authority, the Provider, the DFE or any of their respective Related Parties;

"Affordability Gap" means the sum of money being the shortfall between (i) the aggregate of the Unitary Charge net of deductions and any amounts received under the Payment Mechanism and (ii) the aggregate of the amounts received by the Authority in a relevant Financial Year pursuant to:

(a) the Promissory Note;

(b) the School Agreement;

(c) the Project Agreement (for the avoidance of doubt this does not include deductions or any amounts received under the Payment Mechanism); and

as may be amended from time to time;

"Agreement" means this agreement, its schedules and any annexures hereto, as may be amended from time to time;

"Approved Suitable Substitute" has the meaning given to it in clause 29.2;

"Area" means the area within which the Authority is statutorily responsible for the provision of educational services;

"Articles of Association" means the articles of association of the Academy (as may be amended from time to time);

"Authority Change" has the meaning given to "Authority Variation" in the Project Agreement;

"Authority Related Party" means:

(a) an officer servant, agent, employee, contractor or sub-contractor of the Authority acting in the course of his office or employment or appointment (as appropriate) at the Site; or

(b) any person visiting or using the Site at the invitation (whether express or implied) of the Authority (which for the avoidance of doubt shall include any person visiting or using the Site for the purpose of Community Use at the invitation of the Authority);

but excluding in each case the Academy, the Provider, the DFE and any of the their Related Parties;

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;

"Community Use" has the meaning given in the School Agreement;

"DFE Related Party" means an officer, employee, agent, representative, contractor or subcontractor (of any tier) of the DFE acting in the course of his office or employment or appointment (as appropriate) but excluding, in each case, the Authority, the Provider, the Academy and any of their respective Related Parties;

"Dedicated Schools Grant" or "DSG" means the grant of that name paid to the Authority by the Department for Education under section 14 of the Education Act 2002 and shall include a reference to any successor grant(s) and/or similar funding arrangements, as may be adjusted in accordance with clause 23 and schedule 2;

"Direct Losses" means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), to the extent that the Authority is obliged to pay such amounts to the Provider under the Project Agreement;

"Earmarked Annual Grant" or "EAG" has the meaning given to it in the Funding Agreement and shall include a reference to any successor grant(s);

"Educational Services" has the meaning given to it in the Project Agreement;

"Event of Default" means the occurrence of any event or circumstance permitting the DFE to terminate the Funding Agreement;

"Extended Use Contractor" has the meaning given in the Project Agreement;

"Financial Year" means the financial year of the Authority being each year commencing on 1 April (or as otherwise notified by the Authority);

"Flooding Rights" means the rights of the DFE specified in the Articles of Association and in accordance with the Funding Agreement permitting it to appoint additional governors to the board of the Academy;

"FM Services" means the facilities management services to be provided by the Provider at the Site;

"Funder's Direct Agreement" means the agreement dated 7 December 2004 made between (1) the Authority (2) the Provider (3) **[the Senior Lenders]; [Authority to complete]**

"Funding Agreement" means the funding agreement made pursuant to section 1 of the Academies Act 2010 between the DFE and the Academy dated on or around the date of this Agreement (as may be amended from time to time);

"General Annual Grant" or "GAG" has the meaning given in the Funding Agreement and shall include a reference to any successor grant(s);

"Guidance" means any applicable guidance or directions with which the parties are bound to comply;

"GAG Funding" shall have the meaning given to it in the Funding Agreement;

"Information Protocol" means the information sharing protocol set out in schedule 1;

"Lease" means the Lease granted from the Authority to the Academy pursuant to the School Agreement;

"Legislation" means any one or more of the following:

- (a) any Act of Parliament;
- (b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (c) any exercise of the Royal Prerogative; and

- (d) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;

in each case in the United Kingdom;

"Local Authority" means a principal council (as defined in Section 270 of the Local Government Act 1972) or any body of government in England established as a successor to principal councils in relation to Educational Services;

"Normal Payment Matters" means:

- (a) any failure of the Academy to pay the Academy Contribution when this is due and payable in accordance with the School Agreement;
- (b) any failure of the Academy to make payments to the Authority of undisputed amounts pursuant to clause 17.2 (Authority Damage to the Facility) of the School Agreement to the extent that these relate to payments due to the Provider under the Project Agreement;
- (c) any failure of the Academy to make payments due to the Authority of undisputed amounts under this Agreement or the School Agreement to the extent that these relate to payments due to the Provider under the Project Agreement and to the extent that the DFE has provided funding to the Academy expressly in respect of such payments due to the Authority;
- (d) any failure of the Academy:
- (i) to make payments of undisputed amounts due to the Authority pursuant to clause 16.5 (Sharing of Insurance Cost Differentials) of the School Agreement to the extent that these relate to payments due to the Provider under the Project Agreement; or
 - (ii) to pay to the Authority any deductible or excess costs in respect of the Project Insurances (as defined in the School Agreement) pursuant to clause 17.2.3 of the School Agreement to the extent that these relate to payments due to the Provider under the Project Agreement; and
- (e) any other liability of the Academy under this Agreement or the School Agreement to the extent that these relate to payments due to the Provider under the Project Agreement and which the DFE reasonably determines should be payable by the Academy to the Authority,

and **"Normal Payment Matter"** shall be construed appropriately;

"Payment Mechanism" means the payment mechanism contained in Schedule 4 of the Project Agreement;

"Prescribed Rate" has the meaning given in the Project Agreement;

"Project" means the provision of serviced accommodation to the Authority in relation to the School by the Provider as contemplated by the Project Agreement;

"Project Agreement" means the PFI project agreement dated 7 December 2004 and entered into by (1) the Authority and (2) the Provider (as may be amended from time to time);

"Project Agreement Termination Notice" has the meaning given to the term Termination Notice in clause 39 of the Project Agreement;

"Project Documents" means the Project Agreement and the Funder Direct Agreement;

"Promissory Note" means the promissory note issued to the Authority by the Department for Education dated on or around the date of the Project Agreement and relating to the Project Agreement;

"Provider" means Coventry Education Partnership Limited a limited company registered in England and Wales and which is the counterparty of the Authority to the Project Agreement;

"Provider Change" means a "Variation" (as defined in the Project Agreement) proposed by the Provider in accordance with clause 58.3 of the Project Agreement;

"Provider Related Party" has the meaning given in the Project Agreement;

"Provider Termination Notice" has the meaning given in clause 39.6 of the Project Agreement;

"Related Party" means any Academy Related Party, Authority Related Party, DFE Related Party, or Provider Related Party (as the case may be);

"Relevant Assets" means:

- (a) assets at any time transferred to the Academy by the Provider, and/or the Authority for nil consideration;
- (b) assets, the acquisition of which by the Academy was wholly or mainly financed through grant payments made by the DFE to the Academy under the Funding Agreement; and
- (c) assets not falling within paragraphs 0 and 0 above and which the DFE and the Academy have agreed prior to the date of termination of the Funding Agreement (in accordance with its terms), will be purchased by the DFE from the Academy on the terms set out in the Funding Agreement;

provided that such assets are transferable as at the date of termination of the Funding Agreement;

"Relevant Notice" means any notice issued under a Project Document which relates to the School (save any issued in accordance with the payment mechanism within the Project Agreement) relating to:

- (a) a breach of that Project Document;
- (b) the occurrence of a Compensation Event, Relief Event or Force Majeure Event Cause (each as defined in the Project Agreement); and/or
- (c) the termination of that Project Document; or
- (d) any other notice which (assessed reasonably) may relate to circumstances which are expected to have a material adverse effect on the Project;

"Representative" means the duly authorised representative of each party (as the case may be) appointed in accordance with clause 26;

"School" means the educational establishment, buildings and facilities located at the Site;

"School Agreement" means the agreement entered into on or about the date hereof between (1) the Authority, (2) the Academy relating to the provision of facilities and services to the Academy;

"Site" means the area shown edged red on the site plans attached to the Lease;

"Suitable Substitute" means a charitable company incorporated in England and Wales limited by guarantee whose objects include power to maintain an academy pursuant to section 1 of the Academies Act 2010, the governing body of a maintained school, or some other legal person not comprising an Unsuitable Third Party and proposed by the DFE as having legal capacity, power, authority, competence and resources (including financial and educational resources) to become a party to and perform the obligations of the Academy under this Agreement, the School Agreement and the Lease;

"Term" means any term in each academic year for the School;

"Transfer Agreement" means an agreement entered into on or about the date hereof between (1) the Authority and (2) the Academy and (3) the governing body of Caludon Castle School in relation to the transfer of assets and staff from the Authority to the Academy;

"Unitary Charge" means the sum payable by the Authority to the Provider in accordance with the Project Agreement; and

"Unsuitable Third Party" means any of: (a) any person who has a material interest in the production, distribution or sale of tobacco products, alcoholic drinks, pornography, arms, weapons and/or gambling or gaming services; (b) any person whose activities are, in the reasonable opinion of the Authority, incompatible with the provision of educational services in the area; or (c) any person whose activities, in the reasonable opinion of the Authority, pose or could pose a threat to national security.

15.2 Interpretation

In this Agreement except where the context otherwise requires:

15.2.1 the masculine includes the feminine and vice-versa;

15.2.2 the singular includes the plural and vice-versa;

15.2.3 a reference to any clause, subclause, paragraph, schedule, recital or annex is, except where expressly stated to the contrary a reference to such clause, subclause, paragraph, schedule, recital or annex of and to this Agreement;

15.2.4 save where otherwise provided in this Agreement any reference to this Agreement or to any other contract, agreement or document shall be to such contract, agreement or document as amended, varied, supplemented, novated or assigned;

15.2.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted;

15.2.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;

15.2.7 headings are for convenience of reference only;

15.2.8 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words;

15.2.9 any obligation on a party to do any act matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done;

15.2.10 subject to any express provisions of this Agreement to the contrary, the obligations of any party are to be performed at that party's own cost and expense.

15.3 **Precedence**

In the event of any conflict between the provisions of this Agreement and the School Agreement, the provisions of this Agreement shall prevail.

15.4 **Schedules**

The schedules to this Agreement form part of this Agreement. In the event of any inconsistency between the provisions of the main body of this Agreement and the schedules, the main body shall take precedence.

16 **ACKNOWLEDGEMENTS**

16.1 The parties acknowledge that the Authority should not suffer, in connection with the Project Agreement, any adverse consequences arising out of the School's status as an academy rather than a school maintained by the Authority and that the aim of this Agreement is to avoid or, if that is not practicable, to mitigate any such effects.

16.2 In particular, the parties acknowledge:

16.2.1 the statutory responsibility of the Authority to provide Educational Services;

16.2.2 that the Academy is obliged to pay the Academy Contribution to the Authority pursuant to the School Agreement;

16.2.3 that the Academy shall be granted the Lease in respect of the Site to enable it to run the School in accordance with the terms of the School Agreement; and

16.2.4 that the acts of Academy Related Parties shall become the responsibility of the Academy with effect from the date of the School Agreement.

16.3 Further, the DFE:

16.3.1 confirms that it shall maintain full revenue support to the Authority for the term of the Project Agreement in accordance with the terms of the Promissory Note; and

16.3.2 intends that schools other than the School maintained by the Authority should not be adversely affected financially by the School's status as an academy rather than a school maintained by the Authority whether initially, on an on-going basis, or in the event of any future closure of the School.

17 **COMMENCEMENT, DURATION AND EXPIRY**

17.1 **The term of the Agreement**

This Agreement will commence on the date hereof and will terminate or expire in accordance with clause 27.

17.2 **Provisions surviving expiry:**

17.2.1 Notwithstanding the expiry or termination of this Agreement, such expiry or termination shall be without prejudice to any accrued rights and obligations under this Agreement as at the date of expiry or termination.

17.2.2 Without limitation to clause 17.2.1, the expiry or termination of this Agreement shall not affect the continuing rights and obligations of the parties under the clauses in the table below and/or under any other provision of this Agreement which is expressed to survive expiry or termination or which is required to give effect to such expiry or termination or the consequences of such expiry or termination:

Clause/Schedule Reference	Description
15	Definitions and interpretation
16	Acknowledgements
17.2	Provisions surviving expiry
18	Normal Payment Matters
20	Authority obligations
21	Information protocol
25	General Assistance and Co-operation
28	Flooding Rights
29	Failure of the Academy
30	Assignment
31	Dispute Resolution
32	Miscellaneous

18 NORMAL PAYMENT MATTERS

18.1 The Academy shall, subject to clauses 18.3, 18.4, 18.5, 18.8 to 18.11 (inclusive), be responsible for and shall release and indemnify the Authority from and against all liability for Direct Losses that arise out of or in connection with any Normal Payment Matters. No claim shall be made under this clause 18.1 unless the Authority has provided to the Academy a valid VAT invoice.

18.2 NOT USED

18.3 The Authority shall promptly upon becoming aware of any claims under clause 18.1 which it intends to pursue serve written notice on the Academy (with a copy provided to the DFE) of such claims (the "Academy Notification") and the Academy shall discharge any liability in full within five (5) Business Days of such notification or, if it disputes the Academy Notification, subject to clause 18.4, within five (5) Business Days following determination of such dispute.

18.4 If the Academy fails to pay any amount detailed in the Academy Notification within five (5) Business Days of the Academy Notification (regardless of whether or not the Academy has disputed the claim) the Authority shall promptly notify the DFE in writing (the "DFE Notification") and the DFE shall, subject to clauses 4.6 and 18.9 to 18.11 (inclusive), pay any such claim to the Authority in full within twenty (20) Business Days of the DFE Notification unless such claim has previously been satisfied by the Academy. In the event that it is later agreed or determined that the Authority was not entitled to either the whole or any part of the amounts claimed (an "Illegitimate Claim"), DFE may set off any Illegitimate

Claims from the DSG or from any other monies due to the Authority whether under this Agreement or otherwise.

- 18.5 Neither the Academy nor the DFE shall be responsible or be obliged to indemnify the Authority pursuant to this clause 18 to the extent that any Normal Payment Matters liabilities are caused by (i) the negligence or wilful misconduct of the Authority, the Provider, or any of their Related Parties or (ii) a breach by the Authority or any Authority Related Party of this Agreement, the School Agreement, the Project Documents and/or the Lease or (iii) any breach of the Project Agreement by the Provider or a Provider Related Party.
- 18.6 The DFE shall not be responsible or be obliged to indemnify the Authority pursuant to clause 18.4 to the extent that the Authority is in breach of its obligations under clause 20 to provide information that is relevant to such claim.
- 18.7 The DFE shall promptly give the Academy written notice of any steps taken by the Authority to enforce its rights pursuant to clause 18.4 including details of amounts which the DFE is proposing to pay to the Authority under clause 18.4.
- 18.8 The Authority and the Academy shall not settle or compromise any claim which may be fully or partially funded by the DFE pursuant to the terms of this Agreement without the prior written consent of the DFE (such consent not to be unreasonably withheld or delayed).
- 18.9 For the avoidance of doubt, the indemnities in clauses 18.1 and 18.4 shall not extend to any Direct Losses incurred by the Authority to the extent caused by any Authority Change or Provider Change which has not been approved or deemed approved in accordance with the School Agreement or, in the event the consent of the DFE is required thereto pursuant to this Agreement, which has not been so consented to.
- 18.10 Where any party (the "**Indemnified Party**") wishes to make a claim under this Agreement against the other (the "**Indemnifying Party**") whether in relation to a claim made against it by a third party (a "**Third Party Claim**") or otherwise, then:
 - 18.10.1 any and all claims by the Indemnified Party shall be made in accordance with clause 18; and
 - 18.10.2 the Indemnified Party shall give notice of the relevant claim as soon as reasonably practicable setting out full particulars of the claim; and
 - 18.10.3 the Indemnifying Party shall, if it wishes to have conduct of any Third Party Claim, give reasonable security to the Indemnified Party for any cost or liability arising out of the conduct of the Third Party Claim by the Indemnifying Party.
- 18.11 Any liability under a claim made pursuant to any indemnity contained in this Agreement shall be reduced to the extent that the Indemnified Party recovers any sums under the terms of any insurance policy for the time being in place.
- 18.12 If the Academy or DFE shall have paid to the Authority any amount in respect of a claim under any indemnity contained in this Agreement and the Authority subsequently receives or recovers from a third party (including an insurer) a sum which is referable to such claim, the Authority shall forthwith repay to the Academy or, as the case may be, DFE the amount so received or recovered less the reasonable costs and expenses incurred in connection with such recovery up to the amount which has been paid by the Academy or DFE in respect of such claim.
- 18.13 Nothing in this Agreement shall make the DFE liable or responsible to the Authority in respect of any failure by the Academy to make a payment due to the Authority under the School Agreement where and to the extent that such payment is not for the purpose of defraying the cost to the Authority of a sum paid or payable by it to the Provider under and in accordance with the terms of the Project Agreement (for the avoidance of doubt, any administration or other fee which may be imposed by the Authority on the Academy in

relation to the relevant cost to the Authority shall not be counted as part of that cost for the purposes of this clause 4.13).

18.14 For the avoidance of doubt, the protections under the terms of this Agreement which are provided by the DFE to the Authority in relation to the performance by the Academy of certain obligations under this Agreement or the School Agreement do not apply in respect of any Separate Agreement. For this purpose, "Separate Agreement" means any agreement (including, without limitation, any management or premises services agreement) which the Authority has entered or may enter into with the Academy where and to the extent that the terms of the said agreement are not set out in this Agreement or in the document which is:

18.14.1 titled "School Agreement";

18.14.2 entered into as a contract by the Authority and the Academy on or about the date of this Agreement; and

18.14.3 in the form approved by or on behalf of the DFE,

as such document may be amended, varied, changed, novated or assigned with the prior written consent of the DFE in accordance with the terms of this Agreement.

19 NOT USED

20 AUTHORITY OBLIGATIONS

The Authority shall:

20.1 NOT USED

20.2 provide the DFE with such information as it may reasonably require on a quarterly basis on the operation of the Project Agreement to the extent that it relates to the School provided that the DFE shall pay the reasonable costs of the Authority for the provision of such information;

20.3 inform the DFE promptly (providing such details as the DFE may reasonably require) on becoming aware of any breach or non-compliance by the Academy with its obligations under the School Agreement or this Agreement or where it is reasonably foreseeable to the Authority that any breach or non-compliance of the School Agreement or this Agreement by the Academy shall occur;

20.4 forthwith inform the DFE whenever any Relevant Notice is served under any Project Document;

20.5 promptly inform the DFE of any proposed changes to the Project Documents or the School Agreement or any other relevant contract which may (assessed objectively) lead to additional potential liabilities for the Academy and/or the DFE under the terms of this Agreement;

20.6 promptly inform the DFE whenever it exercises any rights or remedies under the Project Documents in connection with a breach thereof by any of the counterparties and/or relating to poor performance of obligations under the Project Agreement by the Provider (but not including the making of payment mechanism deductions) where these relate to the School or are relevant to the School Agreement;

20.7 exercise such rights or remedies that the Authority may have available to it under the Project Documents in circumstances where the DFE considers (acting reasonably) that the exercise of the relevant right or remedy shall assist the DFE in mitigating its potential or actual exposure under this Agreement;

- 20.8 promptly pay to the Academy any sums or monies recovered from the Provider and which are properly due to the Academy under the School Agreement.
- 20.9 immediately notify the DFE and the Academy on receipt of a Project Agreement Termination Notice and any Provider Termination Notice and provide all relevant information (including a copy of the relevant notice);
- 20.10 immediately notify the DFE and the Academy following confirmation from the Provider that the breach giving rise to the Provider Termination Notice has been remedied;
- 20.11 following receipt of a Provider Termination Notice, where DFE notifies the Authority that it intends to exercise its Flooding Rights, the Authority shall immediately advise the DFE whether or not the breach has been remedied; and
- 20.12 promptly notify the DFE and the Academy of any breach of the Project Agreement which, if it was repeated or continued, could give rise to the right for the Provider to serve a Provider Termination Notice under the Project Agreement.

21 INFORMATION PROTOCOL

Each of the parties shall comply with the relevant obligations set out in the Information Protocol.

22 PROJECT DOCUMENTS AND SCHOOL AGREEMENT

- 22.1 The Authority shall not agree to any amendment, variation, change, novation or assignment of any Project Document, or give any consent or approval under any Project Document, where the effect of such action shall on the balance of probabilities potentially expose the DFE to greater liabilities by operation of either clause 18.4 or clause 28.5 without the prior written consent of the DFE (not to be unreasonably withheld or delayed). In the event that such action be contemplated by the Authority, the Authority shall take into account the DFE's reasonable comments on any proposals or relevant documentation.
- 22.2 The Authority and the Academy shall not agree to any amendment, variation, change, novation or assignment of the School Agreement without the prior written consent of the DFE (not to be unreasonably withheld or delayed). In the event that such action be contemplated by the Authority and/or the Academy, such parties shall take into account the DFE's reasonable comments on any proposals or relevant documentation.

23 FINANCIAL MATTERS

- 23.1 The DFE shall pay on an annual basis to the Authority the Dedicated Schools Grant adjusted as appropriate in accordance with schedule 2 and in accordance with the DFE's usual policies and procedures.
- 23.2 Where schedule 2 makes provision for the payment of the Affordability Gap, the DFE shall pay to the Authority or the Academy (as the case may be) a sum equal to the Affordability Gap.
- 23.3 The Authority and the Academy shall not agree to any amendment to the basis for calculation of the Academy Contribution without the prior written consent of the DFE (not to be unreasonably withheld or delayed).

24 INSURANCE ARRANGEMENTS

- 24.1 The parties shall use best endeavours to ensure that, from the date hereof the Academy is a named co-insured on any project-specific insurances that the Provider may have taken out pursuant to the Project Agreement with an appropriate waiver of subrogation.

- 24.2 The Academy shall not take or fail to take any reasonable action or (insofar as it is reasonably within its power) permit anything to occur in relation to it which would entitle any reasonable insurer to refuse to pay any claim under any policy taken out pursuant to the Project Documents.
- 24.3 The Academy shall take out and maintain insurances which:
- 24.3.1 cover the risk of physical loss and/or damage to the contents of the School (but this shall in no way extend to the taking out and maintenance of any insurance in respect of any risk covered by any insurance required to be taken out and maintained under the Project Documents); and
 - 24.3.2 are otherwise required by Legislation in relation to the risks relevant to the operation of the School and the provision of Educational Services at the School.

25 GENERAL ASSISTANCE AND COOPERATION

- 25.1 Subject to clause 25.2, each party undertakes to co-operate in good faith with the other parties to facilitate the proper performance of this Agreement and in particular each party shall:
- 25.1.1 use all reasonable endeavours to avoid unnecessary disputes and claims against the other parties;
 - 25.1.2 not unnecessarily interfere with the rights of the other parties and their Related Parties, agents, representatives or subcontractors in performing their obligations under this Agreement or the School Agreement nor in any other way hinder or prevent such other party from performing those obligations; and
 - 25.1.3 assist the other parties and their Related Parties in performing their obligations so far as is reasonably practicable.
- 25.2 Nothing in clause 25.1 shall:
- 25.2.1 interfere with the right of any party to lawfully arrange its affairs in whatever manner it considers fit in order to perform its obligations under this Agreement in the manner in which it considers to be the most effective and efficient;
 - 25.2.2 oblige any party to incur any material additional cost or expense in excess of that required by its proper performance of its obligations under this Agreement;
 - 25.2.3 relieve a party from any obligation under any indemnity contained in this Agreement or the School Agreement or from any obligation to pay any debt due or payable under this Agreement or the School Agreement; or
 - 25.2.4 fetter the discretion of the parties in fulfilling their statutory functions.

26 REPRESENTATIVES

- 26.1 Each party shall from time to time appoint a Representative who shall be authorised to exercise the rights, functions and powers of the relevant nominee party (as the case may be) under this Agreement and the identity of such Representative shall be notified to the other parties in writing.
- 26.2 Each Representative shall be entitled to at any time by written notice to the other parties appoint an alternate who shall for purposes of this clause be regarded as the relevant Representative.

26.3 Each party shall be entitled to treat any act of a Representative as being expressly authorised by the relevant nominee party and shall not be required to determine whether any express authority has in fact been given.

27 TERMINATION

27.1 This Agreement shall terminate on the earlier of:

27.2 expiry or early termination of the Project Agreement; and

27.3 termination of the School Agreement.

28 FLOODING RIGHTS

28.1 The Authority acknowledges that the DFE benefits from the Flooding Rights which it may exercise in respect of the Academy in accordance with the Articles of Association and the Funding Agreement.

28.2 The DFE shall promptly notify the Authority upon exercising any of its Flooding Rights, providing details as may reasonably be required by the Authority. The DFE shall notify the Authority when the exercise of any Flooding Rights ceases.

28.3 In the event that the Academy is in material breach of the Schools Agreement with the consequence that such breach has placed the Authority in breach of the Project Documents, the Authority may request that the DFE:

28.3.1 exercise its Flooding Rights; and/or

28.3.2 take any other reasonable action to the extent that the DFE is permitted to do so (such action to be agreed between the DFE and the Authority, both parties acting reasonably); and/or

28.3.3 compensate the Authority for Direct Losses which the Authority has incurred as a result of such breach.

28.4 Following a request made by the Authority under clause 28.3, the DFE shall consult with the Authority in relation to the course of action which DFE proposes to take. The DFE shall act reasonably when considering any request made by the Authority. The DFE shall retain discretion whether to take the action requested by the Authority or whether to take another course of action, provided always that the DFE acts reasonably when exercising its discretion.

28.5 In the event that the DFE decides to compensate the Authority pursuant to clause 28.3.3, the DFE shall have the right to specify such conditions in relation to such compensation as it sees fit.

29 FAILURE OF THE ACADEMY

29.1 The DFE may, in circumstances where a final notice has been served on relevant parties terminating the Funding Agreement (in accordance with the terms of the Funding Agreement), propose to the Authority a Suitable Substitute to undertake the obligations and rights of the Academy under this Agreement, the School Agreement and the Lease and, if proposed, the DFE shall provide the Authority with all information relating to such proposed Suitable Substitute as the Authority may reasonably require to determine whether the Suitable Substitute is able to comply with the obligations it is proposed to undertake.

29.2 The Authority shall within a reasonable period from receipt of all information provided in accordance with clause 29.1, notify the DFE whether it approves of such proposed Suitable Substitute (such approval not to be unreasonably withheld or delayed) (hereafter referred to as the "**Approved Suitable Substitute**"). If the Authority does not approve the proposed

Suitable Substitute, either the Authority's decision shall be referred to the Dispute Resolution Procedure or the DFE may propose an alternative Suitable Substitute and clauses 29.1 and 29.2 shall apply in respect of such alternative Suitable Substitute.

29.3 Where the Authority notifies the DFE of the Approved Suitable Substitute pursuant to clause 29.2, the parties shall undertake all necessary steps to cooperate to:

29.3.1 (if not already terminated) terminate the Funding Agreement, and ensure that the Approved Suitable Substitute is offered funding on reasonably acceptable terms from the DFE for the operation of an academy at the Site;

29.3.2 novate this Agreement and the School Agreement to the Approved Suitable Substitute;

29.3.3 assign the Lease to the Approved Suitable Substitute as tenant pursuant to the terms of such Lease;

29.3.4 not prevent or frustrate the novation or assignment of any rights and/or liabilities to the Approved Suitable Substitute as envisaged by this clause 29.

29.4 Any transfer, novation and/or assignment pursuant to clause 29.3 shall become effective by a novation of this Agreement, the School Agreement and assignment of the Lease to the Approved Suitable Substitute whereupon the Academy shall be released from any obligations or liabilities under or in connection with this Agreement, the School Agreement and the Lease from that date and the Approved Suitable Substitute shall become liable for such obligations or liabilities.

29.5 Where:

29.5.1 the DFE notifies the Authority that, in circumstances which would permit the DFE to propose a Suitable Substitute, the DFE has chosen not to propose a Suitable Substitute to the Authority pursuant to clause 29.1, and the DFE has provided to the Authority all relevant details of such circumstances and reasons for it not proposing a Suitable Substitute; or

29.5.2 an Approved Suitable Substitute has not been appointed or agreed;

then, the DFE may serve written notice on the Authority that the Funding Agreement shall terminate on a date which is not less than the later of:

29.5.3 one month after the date of receipt of such notice; and

29.5.4 the effective date of termination of the Funding Agreement as set out in a notice issued pursuant to the terms of the Funding Agreement.

29.6 The DFE shall procure that from the date the Authority receives notice under clause 29.5 until the date of termination of the Funding Agreement, the Authority shall continue to receive the DSG and the Academy Contribution in accordance with the terms of this Agreement and the School Agreement.

29.7 Following the issue of a notice by the DFE that the Funding Agreement will terminate, the parties shall co-operate fully to ensure the transfer of the responsibility for delivery of Educational Services to the Authority.

29.8 For the purpose of clause 29.3 and clause 29.7 above, the meaning of the term "**co-operate**" shall include the Academy:

29.8.1 liaising with the DFE, the Authority and/or any Approved Suitable Substitute, and providing reasonable assistance and advice concerning the responsibilities of the Academy under this Agreement, the Project Documents, the School

Agreement and the Lease and their transfer to the Authority or the Approved Suitable Substitute (as relevant);

29.8.2 allowing any Approved Suitable Substitute access (at reasonable times and on reasonable notice) to the School, but not so as to interfere with or impede the provision of the FM Services and/or Educational Services at the School;

29.8.3 providing to the Authority and/or to any Approved Suitable Substitute (as appropriate, but subject to any commercial confidentiality reasons) all and any information concerning the rights, obligations, liabilities, activities and responsibilities of the Academy at and in relation to the School and/or FM Services delivered by the Academy and/or the Provider as is reasonably required for the efficient transfer of rights, obligations, liabilities, activities and responsibilities from the Academy to the Authority or the Approved Suitable Substitute (as appropriate);

29.8.4 transferring its rights, title and interest in and to any Relevant Assets to the Authority immediately upon termination, or (where relevant) to the Approved Suitable Substitute with effect on and from the date the DFE and the Approved Suitable Substitute Academy enter into a funding agreement.

29.9 Where the responsibility for the provision of the Educational Services at the School reverts to the Authority pursuant to clause 29.7, this Agreement and the School Agreement and the Lease shall terminate (subject to any provisions which are expressed to survive termination). The Authority shall at any time after receipt of notice of termination of the Funding Agreement be permitted to apply to the DFE for revenue grant in respect of pupils at the School. The DFE shall (acting reasonably) consider the Authority's application for such funding and any such decision of the DFE shall not be unreasonably withheld or delayed.

30 ASSIGNMENT

30.1 Assignment by DFE

30.1.1 Subject to clause 30.1.2 and 30.2.3, the rights and obligations of DFE under this Agreement and the School Agreement shall not be assigned, novated or otherwise transferred other than to any person (being a single entity) having the legal capacity, power and authority to become a party to and perform the obligations of DFE under this Agreement and the School Agreement being a Minister of the Crown pursuant to an order under the Ministers of the Crown Act 1975.

30.1.2 Any assignment pursuant to clause 30.1.1 may only be to an assignee which has substantially the same responsibilities for education services.

30.2 Assignment by the Authority

30.2.1 Without prejudice to clause 22, and subject to clause 30.2.2 and 30.2.3, the rights and obligations of the Authority under this Agreement, the School Agreement and the Lease shall not be assigned, novated or otherwise transferred (whether by virtue of any legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Agreement, the School Agreement and the Lease being:

30.2.1.1 a Minister of the Crown pursuant to an order under the Ministers of the Crown Act 1975; or

30.2.1.2 any Local Authority which has sufficient financial standing or financial resources to perform the obligations of the Authority under this Agreement, the School Agreement and the Lease.

30.2.2 Any assignment pursuant to clause 30.2.1 may only be to an assignee which has substantially the same responsibilities in the Area for Educational Services.

30.2.3 The Authority shall assign, novate or otherwise transfer its rights and/or obligations under this Agreement to any person to which the Authority assigns, novates or otherwise transfers its rights and/or obligations under the Project Agreement in accordance with clause 68.1 (Restriction on the Authority) of the Project Agreement

30.3 **Assignment by the Academy**

The rights and obligations of the Academy under this Agreement, the School Agreement and the Lease may be novated or assigned in accordance with the terms of this Agreement and the School Agreement but not otherwise.

31 **DISPUTE RESOLUTION**

31.1 **Disputes**

Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause 31.

31.2 **Consultation**

If a dispute arises in relation to any aspect of this Agreement, the relevant parties to the dispute shall first consult in good faith in an attempt to come to an agreement in relation to the disputed matter.

31.3 Any dispute not capable of resolution by the parties to the dispute in accordance with the terms of clause 31.2 shall be escalated so that the matter is considered by senior representatives of the relevant parties.

31.4 If the dispute remains not capable of resolution following escalation pursuant to clause 31.3, it shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution ("**CEDR**") model mediation procedure.

31.5 No party to the dispute may commence any court proceedings/adjudication in relation to any dispute arising out of this Agreement until they have attempted to settle it by mediation, but any such mediation may be terminated by any party to the dispute at any time of such party wishing to commence court proceedings/adjudication.

31.6 The parties to the dispute will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and such parties will pay his costs, as he shall determine.

31.7 **Adjudication**

If the relevant parties to the dispute fail to resolve the dispute through such consultation or mediation, any party to the dispute may refer the matter to an adjudicator selected in accordance with clause 31.8 (Identity of Adjudicator) ("**Adjudicator**").

31.8 Identity of Adjudicator

The Adjudicator nominated to consider a dispute referred to him shall be wholly independent of the relevant parties to the dispute and shall be selected in accordance with the following:

31.8.1 the nominee shall be an expert on matters of schools funding, being a qualified lawyer or accountant with not less than ten (10) years' experience in the field; and

31.8.2 if the relevant parties to the dispute are unable to agree on the identity of the Adjudicator, the President for the time being of the Chartered Institute of Arbitrators shall appoint such Adjudicator within twenty (20) Business Days of any application for such appointment by the relevant party.

31.9 Submission of arguments

Within five (5) Business Days of nomination in relation to a particular dispute, the Adjudicator shall require the parties in dispute to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.

31.10 Adjudicator's decision

In any event, the Adjudicator shall provide to both parties his written decision on the dispute, within twenty (20) Business Days of the Adjudicator's nomination to consider the relevant dispute (or such other period as the parties may agree after the reference) or thirty (30) Business Days from the date of reference if the party which referred the dispute agrees. The Adjudicator's decision shall not state any reasons for his decision. Unless and until revised, cancelled or varied by the English courts, the Adjudicator's decision shall be binding on all parties to the dispute who shall forthwith give effect to the decision.

31.11 Adjudicator's costs

The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the parties to the dispute. Each party to the dispute shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.

31.12 Adjudicator as expert

The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

31.13 Adjudicator's powers

The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement.

31.14 Confidentiality

All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by clause 32.2 (Confidentiality) or clause 32.3 (Freedom of Information), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall

remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator's work.

31.15 Liability of Adjudicator

The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

31.16 Reference to the courts

If:

31.16.1 any party to the dispute is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with clause 31.10 (Adjudicator's decision); or

31.16.2 all relevant parties agree,

then any party to the dispute may (within twenty (20) Business Days of receipt of the Adjudicator's decision), notify the other parties to the dispute of its intention to refer the dispute to the courts.

31.17 Parties' obligations

The parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this clause 31 and shall give effect forthwith to every decision of the Adjudicator and the courts delivered under this clause 31.

32 MISCELLANEOUS

32.1 The Authority's statutory authority

Nothing in this Agreement shall be construed as a fetter or restriction on the exercise of the Authority's planning or highways functions nor, without prejudice to the rights and remedies of the DFE and the Academy under this Agreement, or the exercise of any other statutory function by or on behalf of the Authority.

32.2 Confidentiality

32.2.1 No party to this Agreement shall publish or cause to be published or communicate to any third party any matter relating to this Agreement except with the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed).

32.2.2 Each party shall comply with their duties and responsibilities under the Data Protection Act 1998 in the performance of this Agreement and shall not unlawfully process or disclose information subject to that Act.

32.3 Freedom of Information

The parties agree that they will each cooperate with one another to the extent they are legally entitled to do so to enable any party receiving a request for information under the Freedom of Information Act 2000 to respond to that request promptly and within the statutory timescales. This cooperation shall include but not be limited to finding, retrieving and supplying information held, directing requests to other parties as appropriate and responding to any requests by the party receiving a request for comments or other assistance.

32.4 Notices

32.4.1 All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post, facsimile or by hand, leaving the same at:

If to DFE: Director of Academies;
Academies Group
Department for Education
Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

Fax No. 020 7925 7352

If to the Authority: [address - Authority to confirm]

[Fax No:]

If to the Academy: [address - Academy to confirm]

[Fax No:]

32.4.2 Any party to this Agreement may change its nominated address or facsimile number by prior notice to the other party.

32.4.3 Notices given by post shall be effective upon the earlier of (i) actual receipt, and (ii) five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:

32.4.3.1 within two (2) hours after sending, if sent on a Business Day between the hours of 9.00am and 4.00pm; or

32.4.3.2 by 11.00am on the next following Business Day, if sent after 4.00pm, on a Business Day but before 9.00am on that next following Business Day.

32.5 Amendments

This Agreement may not be varied except by an agreement in writing signed by duly authorised representatives of all the parties to this Agreement.

32.6 Waiver

Any relaxation, forbearance, indulgence or delay (together "**Indulgence**") of any party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any Indulgence constitute a waiver of any other right (whether against that party or any other person).

32.7 No agency

Nothing in this Agreement shall be construed as creating a partnership or as a contract of employment between any of the parties. Save as expressly provided otherwise in this

Agreement, no party shall be, or be deemed to be, an agent of another party and shall not hold itself out as having authority or power to bind another party in any way.

32.8 Entire agreement

32.8.1 Except where expressly provided otherwise in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

32.8.2 Each of the parties acknowledges that it does not enter into this Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this Agreement or not) except those expressly repeated or referred to in this Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Agreement.

32.9 Severability

If any provision of this Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Agreement.

32.10 Counterparts

This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full original of this Agreement for all purposes.

32.11 Costs and expenses

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

32.12 No privity

It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Agreement is not intended to, and does not, give to any person who is not a party to this Agreement any rights to enforce any provisions contained in this Agreement except for any person to whom the benefit of this Agreement is assigned or transferred in accordance with the terms of this Agreement.

32.13 Interest on late payment

Save where otherwise specifically provided, where any payment or sum of money due from one party to another under any provision of this Agreement is not paid on or before the due date, it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgement) until actual payment.

32.14 Mitigation

The parties shall at all times take all reasonable steps to minimise and mitigate any loss for which they are entitled to bring a claim (including but not limited to any indemnity) pursuant to this Agreement and to take all reasonable steps to minimise and mitigate any effects or circumstances and/or events adversely affecting the performance of their obligations under

this Agreement which would otherwise entitle that party to relief and/or to claim compensation hereunder.

32.15 No double recovery

Notwithstanding any other provisions of this Agreement, no party shall be entitled to recover compensation or to make a claim under this Agreement in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Agreement, the School Agreement, the Project Documents or otherwise.

32.16 Further assurance

All parties shall do all things and execute all further documents necessary to give full effect to this Agreement.

32.17 Governing law and jurisdiction

32.17.1 This Agreement and any non-contractual obligation arising out of or in connection with it is subject to the laws of England and Wales.

32.17.2 Subject to the provisions of clause 31 (Dispute Resolution), the parties agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement and irrevocably submit to the jurisdiction of those courts.

IN WITNESS whereof the parties have executed this Agreement the day and year first above written

EXECUTED as a deed (but not delivered until the date hereof) by affixing the common seal of **THE COUNCIL OF THE CITY OF COVENTRY** in the presence of:

Authorised Officer

THE CORPORATE SEAL of the SECRETARY OF STATE FOR EDUCATION hereunto affixed was authenticated by:

Authorised by the Secretary of State for Education

SIGNED as a deed by and on behalf of **[ACADEMY]** acting by:

Authorised Representative

Authorised Representative

SCHEDULE 1: INFORMATION PROTOCOL

1. The parties recognise the benefit of cooperation and sharing of information as part of a prudent risk management strategy. Each Party shall notify the others of relevant timescales (contractual and non-contractual) to which it is bound or committed, and shall use reasonable endeavours to facilitate exchange of information in good time to meet such timescales.
2. The Authority shall provide to the DFE and the Academy (in each case solely in respect of matters affecting the Site and/or the School):
 - 2.1 promptly upon becoming aware of the same, details of any actual or potential claim made or potentially to be made against the Authority under the Project Documents relating to a liability which the Authority may seek to recover from the Academy or the DFE;
 - 2.2 on reasonable request, details of claims that the Authority is progressing under the Project Documents (irrespective of whether the claims are being made at the request of the Academy or the DFE);
 - 2.3 a copy of any Relevant Notice;
 - 2.4 details of any matter which may lead to an increase in the Academy Contribution including indexation, any benchmarking/market testing, any insurance costs review and any change in law; and
 - 2.5 such other information as the DFE or Academy may reasonably require.
3. The Authority shall provide to the Academy (in each case solely in respect of matters affecting the Site or the School):
 - 3.1 copies of insurance certificates obtained from the Provider and copies of insurance reports provided by the Provider as part of the insurance premia sharing mechanism under the Project Agreement;
 - 3.2 copies of performance reports received from the Provider pursuant to the relevant payment mechanisms;
 - 3.3 quarterly (or more regular by agreement of the parties) reports on instances of Authority Damage (as defined in the School Agreement) vandalism costs, together with details of the costs associated with the same and the proposed or agreed responsibility for such costs;
 - 3.4 copies of any survey reports obtained by the Authority having exercised its rights to require surveys pursuant to the Project Documents;
 - 3.5 copies of planned maintenance programmes provided to the Authority by the Provider pursuant to the Project Documents;
 - 3.6 notice of any intention on the part of the Authority to exercise its step in rights pursuant to the Project Documents;
 - 3.7 details of any information given to the Authority by the Provider under clause 5.2.1 of the Project Agreement.
4. The Academy shall provide to the Authority and to the DFE, promptly upon becoming aware of the same, details of any actual or potential claim made or potentially to be made against the Authority under the Project Documents.
5. The Academy shall provide to the Authority:
 - 5.1 details of any breaches of the Project Documents by the Provider not addressed by the relevant payment mechanisms of which it is aware;

- 5.2 details of any grounds to exercise rights or remedies in favour of the Authority under the Project Documents of which it is aware;
 - 5.3 details of any instances of damage to the Site or the School of which it is aware, together with details of any contact with the Provider it has in respect of the same.
6. A party providing information pursuant to this schedule may require payment of its reasonable costs in providing such information where, acting reasonably, it believes it is appropriate to do so given the nature or volume of the information or requests for information, or any other relevant factors.

SCHEDULE 2: AFFORDABILITY GAP AND ADJUSTMENTS RELATING THERETO

Introduction

1. Any payments of sums equal to the Affordability Gap payable by the DFE pursuant to clause 23 shall be calculated in accordance with this schedule 2.

Where the DSG *includes* pupils attending the School - recoupment model applies

2. Where the pupil number baseline of the Authority's allocation of DSG *includes* pupils attending the School (the "recoupment model"), the DSG will be calculated in accordance with the methodology that applies to all local authorities allocated DSG (but with recoupment applying), as determined by the Secretary of State, for the relevant Financial Year.
3. Where the Authority "delegates" the Affordability Gap and such sum is accounted for within the relevant School budget share (and is therefore subject to recoupment), the DFE shall, subject to paragraph 8, pay to the Academy a sum equal to the Affordability Gap as part of the General Annual Grant or Earmarked Annual Grant. The parties agree that the Academy shall promptly pay such sum to the Authority pursuant to the terms of the School Agreement.
4. The parties agree that the recoupment model for calculating DSG shall apply until such time as this practice ends or is amended.

Where the DSG *excludes* pupils attending the School - no recoupment model applies

5. Where the pupil number baseline of the Authority's allocation of DSG *excludes* pupils attending the School (the "no recoupment model"), the DSG will be calculated in accordance with the methodology that applies to all local authorities allocated DSG, as determined by the Secretary of State, for the relevant Financial Year, plus the Affordability Gap as calculated by the Authority (in accordance with paragraph 8) for the Financial Year in question.

General

6. In any Financial Year where the School operated by the Academy is open for less than 12 months the value of the Affordability Gap will be reduced commensurately.
7. The amounts payable under this schedule shall only be payable from the date of this Agreement.
8. The Authority shall act reasonably when undertaking calculations of the Affordability Gap and the Affordability Gap, and shall on request provide in good faith all relevant information in its possession to the DFE necessary to calculate the DSG for the relevant Financial Year which, for the avoidance of doubt, shall include:
 - 8.1 the projected Unitary Charge;
 - 8.2 details of the Affordability Gap and how it is proposed to be apportioned to the School, if applicable;
 - 8.3 the details of any sums received pursuant to the Promissory Note; and
 - 8.4 the projected allocation of the DSG for each school which is the subject of the Project Agreement.
9. DFE shall provide at least one (1) months written notice to the Authority of the proposed date of grant of the DSG and shall provide to the Authority any information reasonably required by the Authority in connection with the DSG.
10. In this schedule, "Financial Year" means a period of 12 months commencing on 1 April provided that the first Financial Year shall be the period commencing on the date of opening of the School operated by the Academy and ending on the immediately following 31 March.

DATED _____ 2012

(1) THE COUNCIL OF THE CITY OF COVENTRY

and

(2) COVENTRY EDUCATION PARTNERSHIP LIMITED

DEED OF VARIATION

relating to the transfer to academy status of Caludon Castle School

THIS DEED is made on

2012

BETWEEN:

- (1) **THE COUNCIL OF THE CITY OF COVENTRY**, Council Offices, Earl Street, Coventry CV1 5RR (the **Authority**); and
- (2) **COVENTRY EDUCATION PARTNERSHIP LIMITED**, a company incorporated in England and Wales (company number 5188350) with its registered address at 3rd floor Braywick Gate, Braywick Road, Maidenhead, Berkshire SL6 1DA (the **Provider**).

WHEREAS:

- (A) By an agreement dated 7 December 2004 between the Authority and the Provider (the "**Project Agreement**"), the Provider was appointed to carry out, *inter alia*, certain works and provide certain services at Caludon Castle school under the Coventry Schools PFI project (the "**Project**").
- (B) The Authority and the Provider agreed an amendment to the Project Agreement dated on or about 5 November 2010 in respect of the construction of an extended learning centre.
- (C) The parties acknowledge Caludon Castle school shall convert to academy status [on or about the date of this Deed][on •] and from the date of such conversion (the **Conversion Date**) an academy known as Caludon Castle School, a company limited by guarantee with company number • and whose registered office is at Axholme Road, Wyken, Coventry CV2 5BD, (the **Academy Trust**) will deliver Educational Services to the relevant School.
- (D) The Authority and the Provider have agreed to amend the provisions of the Project Agreement to document, *inter alia*, the change to the organisational arrangement of the School as specified in Recital (C) on the terms set out herein.
- (E) The document attached as the Schedule to this Deed incorporates the variations which the Authority and the Provider have agreed to make in relation to the Project Agreement
- (F) The parties intend that this Deed be a certified contract for the purposes of the Local Government (Contracts) Act 1997.

NOW THIS DEED WITNESSES as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 All words and expressions as defined in or to be construed in accordance with the Project Agreement shall have the same meaning and construction when used in this Deed unless otherwise defined.

1.2 In this Deed except where the context otherwise requires:

1.2.1 The masculine includes the feminine and vice-versa;

1.2.2 The singular includes the plural and vice versa;

1.2.3 A reference to any clause is, except where expressly stated to the contrary, a reference to such clause of this Deed;

1.2.4 Save where stated to the contrary, any reference to this Deed or to any other document shall include any permitted variation, amendment, supplement, substitution, novation or assignment to such document from time to time;

1.2.5 Headings are for convenience of reference only and are not to be taken into account in the construction or interpretation of the clause to which they refer;

1.2.6 All persons who are not a party to this Deed are third parties.

2. VARIATION OF THE PROJECT AGREEMENT

2.1 This Deed is supplemental to the Project Agreement.

2.2 The Authority and the Provider agree that from and including the Conversion Date the provisions of the Project Agreement shall be varied and/or supplemented on the terms set out in the Schedule to this Deed.

2.3 For the avoidance of doubt, clause 1 above applies to the definitions, the operative provisions in, and the schedules to, this Deed and the Project Agreement.

2.4 Save as expressly varied and/or supplemented by the provisions of this Deed, the Project Agreement shall continue in full force and effect and the terms of the Project Agreement shall have effect as though the provisions contained in this Deed had from the Conversion Date been contained in the Project Agreement (save in the case of the amendment to the definitions of "Core Hours" and "School Day", which shall be deemed to have taken effect from 1 November 2008). In the event of any conflict between the provisions of this Deed and the Project Agreement, the provisions of this Deed shall prevail.

2.5 The Parties do not intend that any term of this Deed should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999 or by any person who is not a party to this

Deed. A person who is not a party to this Deed shall have no right, including under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms, conditions or provisions.

- 2.6 The Certification Requirements are intended to and shall be satisfied by the Authority with respect to this Deed before the end of the period within which the Certification Requirements must be satisfied for this Deed to be a certified contract for the purposes of the Local Government (Contracts) Act 1997.
- 2.7 The Contractor hereby consents to the issue by the Authority of a certificate under Section 3 of the Local Government (Contracts) Act 1997 in respect of this Deed.
- 2.8 The relevant discharge terms within the meaning of section 6 of the Local Government (Contracts) Act 1997 are as set out in clause 2.9 below.
- 2.9 In the event of the making of a determination or order by a court on an application for judicial review or an audit review, the result of which is that:
- 2.9.1 both the Project Agreement and this Deed do not have effect or are otherwise unenforceable, the relevant discharge terms (within the meaning of Section 6 of the Local Government (Contracts) Act 1997) in relation to this Deed shall be the relevant discharge terms under [Schedule [] (Relevant Discharge Terms)] of the Project Agreement (which shall apply without double counting to both this Deed and the Project Agreement); or
- 2.9.2 this Deed does not have effect or is otherwise unenforceable (but the Project Agreement continues to have effect and be enforceable), the relevant discharge terms (within the meaning of Section 6 of the Local Government (Contracts) Act 1997) in relation to this Deed shall be the same as the terms that would apply if section 7(2) of the Local Government (Contracts) Act 1997 had application in respect of this Deed.
- 2.10 The Authority and the Provider agree that:
- 2.10.1 the Authority shall be entitled as from and including the Conversion Date to grant a lease of the Site to the Academy Trust subject always to the rights of access granted to the Provider and the Provider Related Parties under clause 8 of the Project Agreement, and the Provider agrees that such grant shall not of itself constitute a breach by the Authority of the Project Agreement and that such grant is permitted under the Project Agreement;
- 2.10.2 the Academy Trust shall from the beginning of the Conversion Date be included as a co-insured party on the relevant insurance policies procured by the Provider

in accordance with clause 62.1 (Requirement to maintain) and Schedule 9 (Part 2) of the Project Agreement together with the benefit of non-vitiation protection in respect of any claim made by the Academy Trust and the benefit of a waiver of the insurer's subrogation rights against the Academy Trust, its employees and agents in accordance with clause 62.3 (Nature of the insurances) of the Project Agreement; and

- 2.10.3 closure of Caludon Castle school and opening of an academy shall not constitute a breach of the Project Agreement, nor an Authority Default.
- 2.11 The Authority hereby approves the amendments made to the Sub-Contracts that are consequential upon the amendments to the Project Agreement set out in this Deed and waives the obligation pursuant to Clause 7.1 (Ancillary Documents) of the Project Agreement for such amendments to be submitted for review under the Review Procedure.
- 2.12 This Deed may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.
- 2.13 If any term, condition or provision of this Deed shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the other provisions of or any other documents referred to in this Deed.
- 2.14 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by, construed and interpreted in accordance with, English law.

SCHEDULE

PART A - AMENDED TERMS

1. In Clause 1.1 (Definitions) of the Project Agreement the term "**Authority Related Party**" shall be amended to include the following additional sub-paragraph:

 “(f) the Academy Trust and any Academy Trust Related Party.”
2. In Clause 1.1 (Definitions) of the Project Agreement the term "**Core Hours**" shall be amended to read as follows:

 “means the hours from 0730 to 1800 each Monday to Friday during Term”
3. In Clause 1.1 (Definitions) of the Project Agreement the term "**Prohibited Act**" shall be amended to read as follows:

- “(a) offering, giving or agreeing to give to any servant of the Authority or the Academy Trust any gift or consideration of any kind as an inducement or reward:
- (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Authority or the Academy Trust; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Authority or the Academy Trust;
- (b) entering into this Agreement or any other contract with the Authority or the Academy Trust in connection with which commission has been paid or has been agreed to be paid by the Provider or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority;
- (c) committing any offence:
- (i) under the Prevention of Corruption Acts 1889-1916;
 - (ii) under Legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Authority or the Academy Trust; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Authority or the Academy Trust.”

4. In Clause 1.1 (Definitions) of the Project Agreement the term “**School Day**” shall be amended to read as follows:

“means 0730 to 1800 each Monday to Friday during any of the Terms (including days set aside for teacher training)”

5. Amend **clause 61.1** (Provider’s indemnity) to read as follows:

“61.1 Provider’s indemnity

The Provider shall, subject to clause 61.2 (Provider not Responsible), be responsible for, and shall release and indemnify the Authority, the Academy Trust and each of their employees, agents and contractors on demand from and against all liability for:

61.1.1 death or personal injury;

61.1.2 loss of or damage to property excluding the land and buildings (including property belonging to the Authority or the Academy Trust or for which either is responsible);

61.1.4 breach of statutory duty; and

61.1.5 third party actions, claims and/or demands, including costs, charges and expenses (including legal expenses on an indemnity basis) arising as a result thereof,

which may arise out of, or in consequence of, the design, construction, operation, maintenance of the New Facility by the Provider or the performance or non-performance by the Provider of its obligations under this Agreement or the presence on the Authority's and/or the Academy Trust's property of the Provider or any Provider Related Party in connection with the Works or the Services."

6. In **clause 61.2.1** (Provider not Responsible), insert the following after the word "Authority" on the first line:

"or any Authority Related Party"

7. Not used

8. In **clause 61.3** (Authority's Indemnity) insert the following after "Authority" on the eighth line:

"or the Academy Trust"

9. In **clause 62.3.1** (Nature of Insurances) after the words, "the Authority", insert the following:

"or the Academy Trust"

10. In **clause 62.3.2** (Nature of Insurances), delete and replace with the following:

“contain a clause waiving insurers’ subrogation rights against the Authority, the Academy Trust, their employees and agents (except in the event of the Authority, the Academy Trust, their employees and agents having caused or contributed to the occurrence or claim through committing fraud, deliberate misrepresentation, deliberate non-disclosure or breach of a material policy condition)”

11. In **clause 62.4** (Evidence of Policies) after the words, “the Provider shall provide the Authority”, insert the following:

“, the Academy Trust and the Academy Trust Trustees”

12. In **clause 62.5** (Renewal of Certificate) after the words, “forwarded to the Authority”, insert the following:

“, the Academy Trust and the Academy Trust Trustees”

13. In **Schedule 9 (Insurances)**, in the schedule of Insured parties, insert a new limb (i) as follows:

“(i) the Academy Trust.”

14. In section 1 (Property “All Risks” Insurance) of Part 2 (Services Period) of **Schedule 9 (Insurances)** amend “Insured Parties” to read as follows:

“As in sub-paragraphs (a), (b), (e), (g) and (i) of the Schedule of Insured parties.”

15. In section 3 (Public/Products Liability insurance) of Part 2 (Services Period) of **Schedule 9 (Insurances)** amend “Insured Parties” to read as follows:

“As in sub-paragraphs (a), (b), (e), (g), (h) and (i) of the Schedule of Insured parties.”

PART B - NEW TERMS

16. In **Clause 1.1** (Definitions) of the Project Agreement the following new definitions shall be inserted:

“**Academy**” shall mean the academy at which the Academy Trust is to provide Educational Services at the Site of the School know, at the date of this Agreement, as Caludon Castle school;

“**Academy Trust**” shall mean the academy known as Caludon Castle School, a company limited by guarantee with **company number** and whose registered office is at Axholme Road, Wyken, Coventry CV2 5BD;

“**Academy Trust Related Party**” shall mean:

- (a) a member, officer, agent or employee of an Academy Trust acting in the normal course of his/her office or employment;
- (b) any trustee or director of the Academy Trust acting as such, or any person employed by the Academy Trust to work at the Academy acting in the normal course of his/her employment;
- (c) in relation to the Site, at those times in respect of those parts of the Site as set out in Schedule 14 for which the responsibility is stated to be that of the Authority, any pupil registered at the School or any person visiting the School at the invitation (express or implied) of the Academy Trust (which for the avoidance of any doubt shall include any person using that part of the New facility for the purpose of Community Use),

but excluding in each case the Provider and any Provider Related Parties.

“**Academy Trust Trustees**” means the directors and/or members of the Academy Trust.”

17. Insert a new **clause 1.2.11** as follows:

“1.2.11 Any reference to School or equivalent reference shall from **[insert transfer date]** be taken to be a reference to the Academy.”

18. Insert a new **clause 7.1B** as follows:

“7.1A Amendment to the FM Agreement

For the purposes of clause 7.1, the amendments required to the FM Contract as a consequence of the amendments made to the Project Agreement on or about **[insert**

the date of the deed of amendment to the PA] shall be deemed to have been submitted to the Authority's Representative for review under the Review Procedure and there shall be deemed to have been no objection in accordance with paragraph 3 of the Review Procedure within the time prescribed in clause 7.1 of this Agreement."

19. Insert a new **clause 61.12** as follows:

"61.12 Where the Academy Trust is entitled, in respect of an act or omission of the Provider or a Provider Related Party or a risk allocated to the Provider under the Project Agreement, to claim compensation from the Authority under any agreement with it and the Authority subsequently makes a claim against the Provider under the terms of the Project Agreement in respect of the same act or omission or risk, the Provider waives any right to defend the Authority's claim on the ground that the Authority is only required to pay compensation to the Academy Trust under the agreement with it to the extent that the same is recoverable by the Authority from the Provider under the Project Agreement."

20. A provision to cover the PFI provider acting as agent for the academy serving of school meals to pupils and staff at the academy so as to maintain the current VAT position.

IN WITNESS whereof the parties have executed this agreement as a Deed on the date first before written.

THE COMMON SEAL of)
THE COUNCIL OF THE CITY OF)
COVENTRY)
was hereunto affixed)
in the presence of:)

Authorised Officer

EXECUTED as a **DEED** by)
COVENTRY EDUCATION)
PARTNERSHIP LIMITED)
in the presence of:)

Director

Director/Secretary/Witness

Name of witness

Address of witness

CERTIFICATE ISSUED UNDER SECTION 3 OF THE LOCAL GOVERNMENT (CONTRACTS) ACT 1997 (THE "1997 ACT") IN CONNECTION WITH A DEED OF VARIATION TO A PROJECT AGREEMENT

This certificate is issued by the Council of the City of Coventry (the "Authority") under section 3 of the 1997 Act in respect of a deed of variation dated on or around the date of this certificate and entered into between (1) the Authority and (2) Coventry Education Partnership Limited (the "Provider") (the "Deed of Variation"), which relates to a project agreement dated 7th December 2004 between the Authority and the Contractor for the design, construction and financing of Caludon Castle (the "School") and the provision of certain services at that school (as such project agreement may have been varied or amended from time to time) (the "Project Agreement").

1. PERIOD OF CONTRACT – SECTION 3(2)(a) OF THE 1997 ACT

The Deed of Variation is to operate for the period from its date until the Expiry Date as defined in the Project Agreement or (subject to survivorship provisions) the earlier termination of the Project Agreement in accordance with its terms.

2. PURPOSE OF THE CONTRACT – SECTION 3(2)(b) OF THE 1997 ACT

2.1 The purpose of the Deed of Variation is (inter alia) to:
 2.1.1 set out certain acknowledgements by the parties to it; and
 2.1.2 make a number of amendments to the Project Agreement, which are in respect of, or incidental to, the School, or school replacing it, opening as an academy pursuant to the Academies Act 2010 (as amended), such academy to be managed and operated by [] (a company limited by guarantee)] (the "Academy Trust").

2.2 The amendments referred to in paragraph 2.1.2 above include:

2.2.1 making provision for the Academy Trust to be covered by certain of the project insurances provided for in the Project Agreement;

2.2.2 ensuring that the School, the Academy Trust (and relevant entities it is responsible for) are deemed to be Authority Related Parties for the purposes of the Project Agreement.

2.2.3 making provision for the Authority to grant a lease of site to the Academy Trust and that such grant shall not constitute a breach by the Authority of the Project Agreement and that such grant is permitted under the Project Agreement

2.2.4 making provision that the closure of the School and the opening of an Academy shall not constitute a breach of the Project Agreement or an Authority Default

3. CONTRACT TYPE – SECTION 3(2)(c) OF THE 1997 ACT

The Deed of Variation is a contract falling within Section 4(3) of the 1997 Act.

4. POWERS TO ENTER INTO THE CONTRACT – SECTION 3(2)(d) OF THE 1997 ACT

The Authority has power to enter into the Deed of Variation and the statutory provisions conferring the power are:

4.1 sections 16(1)(c) and 579(5) of the Education Act 1996;

4.2 sections 2(1) and 2(4) of the Local Government Act 2000;

4.3 section 1(1) of the 1997 Act; and

4.4 section 111(1) of the Local Government Act 1972.

5. COPIES OF THE CERTIFICATE – SECTION 3(2)(e) OF THE 1997 ACT AND REGULATIONS 3 AND 4 OF THE LOCAL AUTHORITIES (CONTRACTS) REGULATIONS 1997

A copy of the certificate has been or is to be given to the Provider, the monitoring officer of the Authority and the auditor of the Authority under Regulations 3 and 4 of the Local Authorities (Contracts) Regulations 1997.

6. MATTERS TO BE DEALT WITH IN THE CERTIFICATE – SECTION 3(2)(f) OF THE 1997 ACT AND REGULATION 6 OF THE LOCAL AUTHORITIES (CONTRACTS) REGULATIONS 1997

The statutory provisions conferring the main relevant functions which the Deed of Variation is calculated to facilitate, or is conducive or incidental to, the discharge of, are:

- 6.1 section 13(1) of the Education Act 1996;
- 6.2 section 14 of the Education Act 1996;
- 6.3 sections 16(1)(c) and 579(5) of the Education Act 1996; and
- 6.4 sections 2(1) and 2(4) of the Local Government Act 2000.

7. REQUIREMENTS WITH RESPECT TO THE ISSUE OF THE CERTIFICATE – SECTION 3(2)(g) OF THE 1997 ACT

The Authority has complied with or is to comply with any requirement imposed by regulations with respect to the issue of this certificate under section 3 of the 1997 Act (including the requirements of the Local Authorities (Contracts) Regulations 1997 (as amended)).

CONSENT OF THE OTHER PARTIES TO THE CONTRACT – SECTION 3(4) OF THE 1997 ACT
The Authority and the Provider are the only parties to the Deed of Variation and the Contractor has consented to the issue of this certificate under section 3 of the 1997 Act.

8. SIGNATURE – SECTION 3(3) OF THE 1997 ACT AND REGULATION 7 OF THE LOCAL AUTHORITIES (CONTRACTS) REGULATIONS 1997

Signed

Name:

Title:

[]

Dated

Copies to:

- The Contractor
- The Authority's Monitoring Officer
- The Authority's Auditor

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Public report Cabinet

Health, Social Care and Welfare Reform Scrutiny Board (Scrutiny Board 5)
Cabinet
Council

12 December 2012
8 January 2013
15 January 2013

Name of Cabinet Member:

Cabinet Member (Strategic Finance and Resources) - Councillor Duggins

Director Approving Submission of the report:

Director of Finance and Legal Services

Ward(s) affected:

All

Title:

Approval of Community Support Grants Policy.

Is this a key decision?

Yes

The proposals within the report will have financial implications in excess of £500,000 per annum and will have a marked effect on communities living or working in an area of two wards or more.

Executive Summary:

It is proposed to set up a local Community Support Grant Scheme to manage and administer £1.2m of financial assistance to Coventry residents following the abolition of elements of the existing Department of Work and Pensions (DWP) Social Fund from 1 April 2013.

Approval for the policy is sought from Cabinet because the proposals will have financial implications in excess of £500,000 per annum and will have a marked effect on communities living or working in an area of two wards or more.

It is recommended to take a pragmatic approach to service delivery in the short term. The creation of the Council's local policy takes account of the need to have a functional provision in place from 1 April which has the resilience to meet expected demand. The Council can then focus more confidently on years two and beyond to establish a more sophisticated delivery model which fully utilises collaborative working.

There is no requirement to replicate the current crisis loan or community care grant schemes. Individual Local Authorities have been given the funding and the flexibility to redesign the emergency provision for vulnerable groups according to local circumstances, in order to meet severe hardship in the most appropriate way.

Recommendations:

Health, Social Care and Welfare Reform Scrutiny Board (5)

- (1) Health, Social Care and Welfare Reform Scrutiny Board (5) is requested to consider the Community Support Grant Scheme Policy (as detailed at Appendix 1) and pass on any comments to Cabinet.

Cabinet

- (1) Cabinet is requested to consider any recommendations from the Health, Social Care and Welfare Reform Scrutiny Board (5).
- (2) Cabinet is requested to take into account the consultation responses, Equality and Consultation Analysis and other information in this report and recommend that Council approve the proposed Community Support Grant Scheme Policy as set out in Appendix A and delegate authority to the Director of Finance and Legal Services to make final detailed changes to the Scheme and to implement the scheme from 1 April 2013.

Council

- (1) Council is requested to take into account the consultation responses, Equality and Consultation Analysis and other information in this report and approve the proposed Community Support Grant Scheme Policy as set out in Appendix A and delegate authority to the Director of Finance and Legal Services to make final detailed changes to the Scheme and to implement the scheme from 1 April 2013.

List of Appendices included:

Appendix A - Coventry City Council's Community Support Grant Scheme Policy
Appendix B - Community Support Grant Scheme Equality and Consultation Analysis

Background papers:

None

Other useful documents:

In February 2011 the Department for Work and Pensions and the Department for Communities and Local Government published a joint call for evidence on the design and delivery of Local Welfare Assistance in England:

<http://www.dwp.gov.uk/docs/social-fund-localisation-call-for-evidence.pdf>

The Government published its response on 23 June 2011, including local authority level information on the Social Fund which provided a better understanding of how the fund operates in each local area:

<http://www.dwp.gov.uk/docs/social-fund-localisation-response.pdf>

<http://www.dwp.gov.uk/local-authority-staff/social-fund-reform/localisation-data/>

In October 2011 the Department for Work and Pensions published a national Equality Impact Assessment for the locally delivered support to replace Social Fund Community Care Grants and Crisis Loans for general living expenses:

<http://www.dwp.gov.uk/docs/eia-social-fund-localisation-wr2011.pdf>

Further background information is publically available via the following URL:
<http://www.dwp.gov.uk/local-authority-staff/social-fund-reform/>

Has it been or will it be considered by Scrutiny?

Yes

Health, Social Care and Welfare Reform Scrutiny Board (5)

12th December 2012

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

15th January 2013

Report title: Approval of Community Support Grants Policy 2013/14

1. Context (or background)

- 1.1 The December 2010 White Paper – ‘Universal Credit: welfare that works’, sets out the Government's reform plans for the Social Fund. The changes will result in the abolition of the current system of discretionary payments. The Government proposes that there will be a combination of new locally based provision that will replace Community Care Grants and Crisis Loans for general living expenses and a new nationally administered advance of benefit facility that will replace alignment Crisis Loans and Budgeting Loans. The locally based service will be devolved to Local Authorities in England (and to devolved administrations in Scotland and Wales) and will come into effect from 1st April 2013.
- 1.2 The Social Fund was established under the Social Security Act 1986 as part of a wider range of reforms to the social security system. It is currently administered by Jobcentre Plus providing interest free loans, grants and payments through both a regulated scheme and a cash limited discretionary scheme.
- 1.3 Currently Crisis Loans are interest free loans - available to anyone (whether on benefit or not) who cannot meet their immediate short-term needs in an emergency or as a consequence of a disaster. Repayments are made directly from benefit where possible. Separate arrangements are made for people not on benefit. In 2011/12 15,140 Crisis Loans were awarded in Coventry, at a cost of £939,300 with an average award of £62. Applicants may be awarded a Crisis Loan for four separate reasons:
- Items or services;
 - Rent in advance;
 - General living expenses – this is the element that is being localised and this equates to 11,240 applications, 8,390 awards and a total spend of £446,400, or;
 - Alignment payments to cover living expenses up to the first payment of benefit or wages

Crisis Loan Alignment Payments (to remain with DWP)

- 1.4 From April 2013 these will be replaced by a new national scheme, administered by DWP, of Short Term Advances. Short Term Advances will also be available to claimants who have a change of circumstances that will increase the amount of benefit to which they are entitled and where payment cannot be made on due dates.

Budgeting Loans (to remain with DWP)

- 1.5 From 1st April 2013 Budgeting Advances will replace Budgeting Loans for Universal Credit claimants to ensure a continued interest-free alternative to high-cost lending for emergency and unforeseen expenses.
- 1.6 Community Care Grants (CCG) are non-repayable grants awarded for a range of expenses including household equipment. They are intended to support vulnerable people to return to or to remain in the community or to ease exceptional pressure on families. Eligibility is conditional on receipt or imminent receipt of an income related benefit. In 2011/12 in Coventry 1600 non-repayable Community Care Grants were awarded at a cost of £813,300, with the average initial award being £500.
- 1.7 Local Authorities are not expected to recreate Crisis Loans and Community Care Grants. Individual Local Authorities will be given non-ring fenced funding providing flexibility to design emergency provision for vulnerable groups in a way that best meets local need.
- 1.8 From April 2013 the Council will provide Crisis Grants to support those in crisis situations. Support Grants will be provided for those in receipt of certain benefits who require financial

support in order to meet exceptional costs which will support the applicant to live more independently and/or to prevent unnecessary intervention from social services.

2. Options considered and recommended proposal

2.1 The Council has significant flexibility in designing a local policy of discretionary assistance and this presents an opportunity to rationalise existing funding streams and establish a single corporate approach to the assessment of clients needs. There is also the opportunity to explore collaborative working arrangements with partners in the third sector.

2.2 However, the Council needs to establish this new local provision within a challenging timescale: From 1 April 2013 some of Coventry's most vulnerable residents will be looking to the Council to meet exceptional needs that were previously addressed by central government. The creation of the Council's local policy takes account of the need to have a functional provision in place from 1 April which has the resilience to meet expected demand. The Council can then focus more confidently on years two and beyond to establish a more sophisticated delivery model which fully utilises collaborative working.

2.3 There are a range of options available to the Council given that there are no specific legal requirements attached to the responsibility, nor is the funding ring fenced. However, due to the limited data available from the existing scheme and the significant changes facing the scheme it is not possible to generate sophisticated options. The preferred option is for the Council to run the scheme for the first year, during which the scheme will be constantly evaluated in order to inform a longer term model that can be implemented from the second year.

2.4 The following options have been discounted:

No provision

2.5 There is no statutory duty for local authorities to make any provision.

2.6 Given the current demand levels for financial assistance in the form of interest-free Crisis Loans or Community Care Grants in Coventry it would be irresponsible not to provide some form of provision.

2.7 There is a strong likelihood that removing this source of assistance may exacerbate levels of financial exclusion people are experiencing – for example, by resorting to alternative sources of credit such as pay day loans, doorstep lending, illegal money lenders etc.

2.8 This option has been discounted due to the Council's priority to work with partners to reduce financial exclusion and provide improved access to financial services.

Replicate the existing DWP system

2.9 The Social Fund was introduced over two decades ago as part of reforms of the Social Security system. Since then welfare delivery has changed significantly. The DWP cite that the main drivers for the change as:

- decision making is too remote (at regional DWP office level);
- the scheme is expensive to administer, open to abuse and does not lead to improved outcomes for citizens; and
- it does not link with local authority duties and responsibilities to broadly similar groups.

2.10 The existing DWP system provides cash payments for Crisis Loans. Analysis of the increased demand by DWP has shown that it is being driven by young single people on Jobseekers Allowance. Many still live at home, rather than reflecting a more general trend

across all the benefit client groups. There is no discernable evidence to suggest that the increased demand from this group is linked to an increase in need, as it predates the recessionary rise in youth unemployment.

- 2.11 The existing DWP system provides cash payments for Crisis Loans. Analysis of the increased demand by DWP has shown that it is being driven by young single people on Jobseekers Allowance. Many still live at home, rather than reflecting a more general trend across all the benefit client groups. There is no discernable evidence to suggest that the increased demand from this group is linked to an increase in need, as it predates the recessionary rise in youth unemployment.
- 2.12 In 2010, the Department of Work and Pensions commissioned research into customer experiences¹. This found a customer acknowledgement that the current system was open to abuse or misuse by some applicants.
- 2.13 The current scheme has been criticised by both the National Audit Office and the Public Accounts Committee because it is application based and as such may not target support on those in greatest need. There is no mechanism for verifying claims or ensuring that the awards have been spent in the way that they were intended.
- 2.14 For the reasons outlined above it is not recommended to replicate DWP's existing scheme.
- 2.15 **The recommended proposal:**
- 2.16 To use the funding to support vulnerable residents by establishing a local Community Support Grants Scheme delivered within the Council's Benefit Service. The scheme will offer two forms of support: Crisis Grants and Support Grants.
- 2.17 Grants will be based on customer need, avoiding cash where at all possible. Instead non-cash alternatives for goods and services will be provided in order to prevent abuse or misuse of the system and to ensure that the awards have been spent in the way that they were intended:
 - Crisis Grants will provide food and/or utility grants where there is a risk to the health and safety of the applicant and/or their family. Non-cash awards will not be provided as loans as these exacerbate debt and the Council has no power to replicate the current system of deducting repayments from benefits.
 - Support Grants will provide grants to help vulnerable people in receipt of benefit live independently in the community. Non-cash alternatives will be provided for beds, cookers, white goods, household goods and essential clothing to support those moving out of institutional or residential care, those staying in the community or where there is exceptional pressure on an individual or families.
- 2.18 Applicants must be residents of Coventry. This will help prevent people claiming fraudulently across the country but consideration will be given to those fleeing domestic violence or resettling to the City.
- 2.19 Residents will not ordinarily be permitted to make more than two claims a year. Further applications will only be considered in exceptional circumstances. Repeat applicants will be required to engage with money management advice services to address the underlying cause of their financial hardship. Administering the service locally offers opportunities for collaborative working, to ensure that people are assessed and signposted to the right support that enables them to prevent further instances of financial hardship.

¹ www.research.dwp.gov.uk/asd/asd5/rports20092010/rrep625.pdf Researcher: Ashfa Slater

- 2.20 This is a safety net payment and will not be used to replace other obligations. For example, this scheme will not pay people subject to certain disallowances or sanctions to their benefits as DWP is responsible for providing Hardship Payments to them. Any other expense which the Council has a statutory duty must be met through the relevant allocated funds for this duty.
- 2.21 Though the scheme will not fully replicate the DWP's scheme, it is acknowledged that the funding allocation will not be enough to expand the eligibility of the previous scheme and to increase customer expectations. Therefore it is recommended that the current list of excluded persons is maintained in the local scheme. For example, this would mean that persons with 'No Recourse to Public Funds in the UK' would not be eligible for support through this scheme.
- 2.22 Recognising that welfare changes will increasingly impact on low income and nonworking households over the duration of this policy there is a need to ensure the fund is flexible enough to meet changing needs.
- 2.23 There is a finite budget for the scheme and skilled consideration is needed to ensure the budget is allocated fairly, based on need and is not over nor under-spent at year end. Once the fund has been exhausted for the financial year, there will be no further awards.

3. Results of consultation undertaken

- 3.1 The Council has consulted closely with external organisations and internal services that represent the interests of those likely to be impacted by the Community Support Grant Scheme policy during its design. A list of organisations consulted can be found in Appendix B, together with a summary of their comments. A formal public consultation has not been carried out. Such a process would not have been meaningful within the tight timescales permitted or in light of limited existing recipient and associated equality data.
- 3.2 All those consulted had sight of a draft policy document and many of their suggestions have been replicated in the final policy document. Their suggestions cover areas such as:
- Clear eligibility to reflect the distinct nature and very limited parameters of this funding stream.
 - Specific wording around residency requirements for victims fleeing domestic violence and for those resettling from institutions outside of Coventry (Rehab, Prison etc).
 - The recognition of the Council's duty to those leaving the Armed Forces.
 - Recognising that a single person facing exceptional circumstances could qualify for a grant and identifying clear referral routes to other services.
- 3.3 A minority of suggestions are not reflected in the final policy documents. These cover areas such as:
- Cash should be provided instead of vouchers. Stakeholders who promoted this view did so because they felt it would better equip people with the necessary budgeting skills and would prevent repeat applications. People would be able to make cash go further than vouchers. However the majority of stakeholders felt that moving away from cash was a positive thing as it would remove the illegitimate usage.
 - Stakeholders were keen to replicate the external review service that currently exists in the DWP scheme. Unfortunately no funding is transferring for this provision and therefore the City Council will offer an internal review of decisions as requested.

4. Timetable for implementing this decision

- 4.1 The provision and policy for the Community Support Grant Scheme needs to be implemented from April 2013.
- 4.2 The scheme will be closely monitored to understand customer access, reasons and effectiveness. The scheme will be reviewed on an ongoing basis in response to evidence data.

5. Comments from Director of Finance and Legal Services

5.1 Financial implications

DWP have provisionally allocated Coventry City Council initial set up costs amounting to £11,900.

The Council has been allocated £1.2 million of funding to provide support to local people and £250,000 in 2013/14 to administer this funding. This administrative funding will reduce to £230,000 in 2014/15.

This funding allocation is provisional; final allocations will be based on DWP spending in 2012/13. Confirmation is expected early 2013.

The scheme will be delivered within the allocated resources. The costs associated with the project include staffing, an IT system, accommodation and the means to meet the demands on the scheme. These costs are currently being finalised, which are subject to approval by the Project Board, chaired by the Director of Finance and Legal Services.

5.2 Legal implications

Changes contained in the Welfare Reform Act 2012 mean that certain elements of the discretionary Social Fund scheme will be replaced by new locally based provision delivered by local authorities. There are no specific legal requirements attached to the operation of the new local schemes.

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 mainly contribute to the core aim of citizens living longer, healthier, independent lives; ensuring that children and young people are safe, achieve and make a positive contribution; and developing a more equal city with cohesive communities. The scheme will encourage financial independence and support people to live independently where it is appropriate to do so. The scheme will respond to instances where a serious risk to the health and safety of the individual or family can be resolved with by limited financial assistance and thereby will ensure that children and young people are safe. Ultimately the scheme aims to reduce financial exclusion and provide improved access to sustainable money and debt advice and improved access to financial services.

6.2 How is risk being managed?

Operational and strategic risk is being monitored and reviewed by the Welfare Reform Programme Board. This Board is made up of senior representatives across Council departments; this means that it can also provide the necessary strategic oversight.

6.3 What is the impact on the organisation?

The requirement to administer a new service from the City Council means that new posts will be needed to meet the expected demand. The new posts will be managed within the existing Revenues and Benefits structure. Existing accommodation will be used to host staff and to administer vouchers to residents. An IT system is required to record and monitor applications as well as spend. Following approval from IT Strategy Group a procurement exercise will be undertaken in order to secure a suitable provider.

6.4 Equalities / EIA

An Equality and Consultation Analysis has been carried out to inform this decision and the detailed design and implementation of the scheme. Because the scheme is new the analysis is heavily reliant upon national data provided by the DWP.

The specific groups that have been identified as potentially experiencing adverse affects are women (due to them being more likely to be out of work and not claiming benefits, and therefore ineligible for Support Grants) and asylum seekers and refugees (due to them being more likely to have No Recourse to Public Funds and therefore ineligible for any support).

These impacts will be addressed by regularly reviewing the eligibility criteria in relation to benefits to ensure that they aren't precluding certain protected groups from being able to access the scheme unfairly. Those with 'No Recourse to Public Funds' will not be eligible for the scheme, however officers will 'signpost' them to other available support.

The scheme will work to reduce the risk of repeat crisis situations by ensuring and encouraging customers to access budgeting and money management advice. This, together with the initial intervention, means that it is therefore expected that this scheme will have a positive impact on deprivation.

6.5 Implications for (or impact on) the environment

There have been no identified environmental impacts.

Opportunities to make use of furniture and household electrical equipment re-use networks will be explored for year 2. These options may enable the Council to reduce its carbon footprint by purchasing second hand goods instead of new ones and to comply with the Waste Electrical & Electronic Equipment Directive (WEEE).

6.6 Implications for partner organisations?

It is anticipated that the introduction of a local scheme has a positive impact on partner organisations, mainly voluntary organisations and advice agencies. This is because the Scheme will be clear and transparent and is committed to communicating with partner organisations where appropriate.

There are significant opportunities for partner organisations to get involved with customer access points, supporting applications and provision of vouchers in the longer term. Their expertise also provides an opportunity to provide information and advice to applicants to help prevent the risk of individuals and families repeatedly finding themselves in crisis situations.

Report author(s):**Name and job title: Tim Savill – Head of Benefits****Directorate: Finance and Legal****Tel and email contact: 0247683 2607**

Enquiries should be directed to the above person.

Contributor/approver name	Title	Directorate or organisation	Date doc sent out	Date response received or approved
Contributors:				
Helen Harding	Assistant Director Revenues and Benefits	Finance & legal	22.11.2012	28.11.12
Barrie Strain	Policy and Performance Manager	Finance & legal	22.11.2012	29.11.12
Glenda Cowley	Operational Manager, Benefits Support	Finance & legal	22.11.2012	26.11.12
Clare Storey	Business & Continuous Improvement Officer	Community Services	22.11.2012	29.11.12
Sara Roach	Assistant Director Public Safety & Housing	Community Services	22.11.2012	27.11.12
Stephen Mangan	Audit & Risk Manager	Finance & legal	22.11.2012	28.11.12
Names of approvers for submission: (officers and members)				
Finance: Neil Chamberlain	Central Services Finance	Finance & legal	22.11.2012	28.11.12
Legal: John Scarborough	Corporate Governance and Litigation Manager	Finance & legal	22.11.2012	28.11.12
Director: Chris West	Director of Finance and Legal Services	Finance & legal	29.11.12	30.11.12
Members: Cllr Duggins	Cabinet Member Strategic Finance and Resources		29.11.12	30.11.12

This report is published on the council's website:

www.coventry.gov.uk/councilmeetings

Appendices

Appendix A - Coventry City Council's Community Support Grant Scheme Policy

Appendix B - Community Support Grant Scheme Equality and Consultation Analysis

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Coventry City Council Benefits Service

Community Support Grant Scheme

DRAFT Policy

November 2012

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DRAFT

1. Background

- 1.1. The December 2010 White Paper – ‘Universal Credit: welfare that works’, sets out the Government's reform plans for the Social Fund. The changes will result in the abolition of the current system of discretionary payments. In their place will be a combination of a new locally based scheme which will replace crisis loans and community care grants, and a new nationally administered advance of benefit facility that will replace alignment crisis loans and budgeting loans.
- 1.2. The locally based scheme will be devolved to the Local Authority and will come into effect from 1st April 2013. There is no requirement to replicate the current crisis loan or community care grant schemes. Individual Local Authorities will be given the funding and the flexibility to redesign the emergency provision for vulnerable groups according to local circumstances, in order to meet severe hardship in the most appropriate way.

2. Funding

- 2.1. The Council will be awarded an annual government grant to make payments. For 2013/14 the Council has received an indicative grant figure of £1,195,974. This is subject to adjustment once final spend figures for 12/13 have been calculated. Once the fund has been exhausted for the respective financial year, there will be no further awards.

3. The main features of Community Support Grants are that:

- the scheme is purely discretionary; a customer does not have a statutory right to an award;
- No cash awards will be made. Awards will be made by way of a voucher system;
- the amount that can be paid out by a council in any financial year will be determined by the amount of funding received from the government. Once the fund has been exhausted for the respective financial year, there will be no further awards.

4. The Policy

4.1. Purpose

- 4.2. The main aim of the scheme will be to support vulnerable people, experiencing financial difficulties. The support will be given for food, goods or services in a crisis situation or where there is exceptional financial pressure on an individual or families.
- 4.3. Each case will be treated strictly on its merits and all customers will receive equal and fair treatment within a transparent process taking full account of the Council's responsibilities under all relevant government legislation, for example the Human Rights Act and Equality Act 2010.

- 4.4. The Benefits Service is committed to working with the local voluntary sector, social landlords and other stakeholders in the City to maximise entitlement to all available state benefits, charitable funds and grants, this will be reflected in the administration of the Community Support Grant Scheme. The Benefit Service works closely with a money management and welfare benefits advice service to provide budgeting and income maximisation advice.
- 4.5. This scheme is not intended to replicate or take over the responsibility of statutory agencies.
- 4.6. Customers will be referred to other relevant departments if applicable, such as Housing, Adult Social Care or Children's Social Care. In addition, details of any other sources of funding will be provided to the applicant where appropriate.
- 4.7. Policy objectives**
- 4.8. Decisions under the scheme must be made in accordance with the principles of good decision making and decision makers should act fairly, reasonably and consistently.
- 4.9. The Council will consider making a Community Support Grant to all customers who meet the qualifying criteria as specified within the scheme. The Service will treat all applications on their individual merits, and will seek through the operation of this policy to:
- alleviate poverty;
 - support vulnerable young people in the transition to adult life;
 - safeguard residents in their own homes;
 - helping those who are trying to help themselves;
 - keep families together;
 - support the vulnerable in the local community;
 - helping people through personal and difficult events.

5. Claiming a Community Support Grant

- 5.1. The service will be available between the hours of 9.00am and 4.30pm on Mondays, Wednesdays and Thursdays, 10.00am to 4.30pm on Tuesdays, and 9.00am to 4.00pm on Fridays.

In the case of an out of hour's emergency the Council's Emergency Duty Team can be contacted:

- If a child is at risk of abuse, harm or neglect, contact the out of hours Emergency Duty Team on 024 7683 3800 or contact the Police on 0845 113 5000
 - If an adult is at risk of abuse , harm or danger to themselves or others , contact the Emergency Duty Team on 024 7683 3800 or contact the Police on 0845 113 5000
 - If you are homeless or think you are at risk of being homeless call 0500 834333
- 5.2. There are two types of situations that will be considered when assessing applications. Where a person is:
- in crisis where **urgent immediate** support is needed; or

- in need of support due to financial hardship where the need is not immediate

6. In Crisis

6.1. A crisis is defined as:

- There is a severe risk to the health and safety of the applicant or an immediate family member as a result of having no financial funds available to meet daily living expenses.
- An event of great or sudden misfortune such as major flooding, gas explosion or a house fire.

6.2. The following must apply:

- The applicant must be a resident of Coventry or be able to demonstrate a link to the City. This is to avoid people claiming fraudulently across the country but consideration will be given to those fleeing domestic violence or resettling to the City.
- The applicant must be in immediate need where, due to a crisis, there is a severe risk to the health and safety of the applicant or an immediate family member or dependent.
- The need cannot be met from another source.

7. Claiming in a Crisis

7.1. Eligibility criteria

To be eligible for a crisis award all of the following conditions must be satisfied. Applicants must:

- must be able to provide a Coventry address
- be aged 16 or over;
- be without sufficient resources to meet their immediate short-term needs or those of their family;
- not be an excluded person (see 2.5);
- not be a person subject to immigration control; or
- have demonstrated that the need cannot be met by another source.

7.2. How to apply

An application for a Crisis Grant can be made:

- by telephone; or
- on line via the Council's web site.

7.3. Application made by Customer:

- Customer completes and submits CSGS application form, either on-line or by telephone.
- Via phone a Council Officer will complete the application with the customer and establish initial eligibility.

- Once all information to support an application has been received a decision will be made on the same day.
- The applicant will be contacted and informed of the decision, together with details of the review process.

7.4. If successful:

- The applicant will be able to collect the relevant crisis award at a pre arranged time from the Council House

Recipients must provide proof of identity and a signature to confirm receipt of their award.

7.5. Application made by Service Provider

The Council will also consider applications submitted by Advice/Support Providers who on behalf of individuals routinely provide support and guidance for their clients. Such applications must be made with the individual's explicit consent. These applications will usually be made on line.

The Council will take into consideration any information provided by key service providers in support of their clients' applications.

7.6. Forms of Support

Awards will only be made for the provision of:

- Food (voucher)
- Nappies (voucher)
- Heating (payment of pre-payment meter)
- Other forms of support in exceptional circumstances. (e.g. travel)

7.7. Award Values

The value and period of the award will be determined by the individual need, although such awards should not routinely exceed 14 days.

Heating awards will vary dependant on the individual situation but will only cover the period up to the next benefit payment.

Customers will only receive a maximum of two awards in any one financial year. In exceptional circumstances, a further application may be considered, for example expenses arising out of disaster. Customers making repeat applications for crisis awards will be signposted to relevant budgeting advice.

Once the fund has been exhausted for the respective financial year, there will be no further awards.

7.8. Exclusions

The following groups are generally excluded for Crisis Support except in exceptional circumstances, for example expenses arising out of disaster:

- people in hospital and care homes (independent or local authority);
- prisoners and people lawfully detained;
- members of a religious order who are fully maintained by the order;
- people in education who are not entitled to Income Support, Income Based Job Seekers Allowance or Income Related Employment Support Allowance;
- people who have made 2 applications to the CSGS within the current financial year
- a 'person from abroad' (i.e. who fails or would fail the habitual residence test for the purpose of Income Support, Pension Credit, Income-based Job Seekers Allowance or Income Related Employment Support Allowance)
- people subject to certain disallowances or sanctions to their Job Seekers Allowance, Employment Support Allowance, Income Support or Pension Credit.

8. Support Grant

A Support Grant will be considered for vulnerable people in financial crisis, for a range of expenses including household equipment. The award is intended to support a return to, or allow a person to remain in the community, or to ease exceptional pressure on families.

Customers will be referred to other relevant departments if applicable, such as Housing, Adult Social Care or Children's Social Care. In addition, details of any other sources of funding will be provided to the applicant where appropriate.

The following must apply:

An applicant must be:

- a resident of Coventry. This is to avoid people claiming fraudulently across the country but consideration will be given to those fleeing domestic violence or resettling to the City.
- a person in receipt of, or be expected to receive, Income Support, Income Based Jobseekers Allowance, Income Related Employment Support Allowance or any type of Pension Credit (currently known as "passported" benefits)

It must be established for all awards, that the need cannot be met from another source.

Claiming a Support Grant

8.1. Eligibility Criteria

Applicants may receive a Support Grant if they are:

- a) receiving Income Support, Income Based Jobseekers Allowance, Income Related Employment Support Allowance or any type of Pension Credit;

AND

- b) leaving accommodation in which they received significant and substantial care and supervision and expect to be discharged within 6 weeks and be expected to receive one of the benefits indicated above.

Not only must the customer be leaving such an establishment, but also establishing themselves in the community. Both the time spent in the accommodation and the level of individual care and supervision provided will be taken into consideration when making a decision.

OR

- c) To help the applicant (or family member/carer) to remain living in the community where there is a high risk of the person needing to enter residential accommodation.

A Support Grant may also be made if this will help a customer to stay in the community rather than enter accommodation to receive care. One of the factors considered is how immediate the likelihood is of going into such accommodation, and whether the type of item or service asked for would prevent this happening. Some examples are:

A Community Support Grant may help to:

- improve an applicant's existing living conditions
- enable them to move to accommodation which is more suitable
- move nearer to someone who can offer them support

OR

- d) To help the applicant (or family member/carer) to set up home as part of a planned resettlement programme (following an unsettled way of life).

CSGs are intended primarily to help people live as independent a life as possible in Coventry.

A CSG may be awarded to applicants who:

- have been living in the community in accommodation which does not provide a sufficient level of care or supervision to be treated as institutional or residential care
- are being housed in permanent accommodation (or temporary accommodation which will lead to permanent accommodation) as a part of a planned programme of resettlement

People who have been without a settled way of life may have been:

- using a night shelter
- staying in a hostel
- sleeping on the streets or in a make-shift shelter on the streets
- using an emergency winter shelter
- using a temporary supported lodging scheme
- staying in temporary accommodation provided by the Home Office pending a decision on their application for asylum in this country
- using a combination of these

Planned programmes of resettlement may be run by Local Authorities, voluntary organisations, housing associations and registered charities. The

applicants intended address must be based within the city of Coventry to be considered.

OR

e) If this will help with costs to ease exceptional pressures for a customer, or/and their family. Some examples of situations that may give rise to exceptional pressure are:

- there is, or has been, a breakdown of relationships within the family, (including domestic violence)
- domestic upheaval because of unforeseen circumstances such as house fire, flooding or other disaster.

OR

f) To assist with travel expenses to visit a relative who is terminally ill or a relative's funeral or to visit a child who is living with another parent pending a court decision.

The above is not an exhaustive list.

8.2. How to Apply

An application for a Support Grant can be made:

- by telephone or;
- on line via the Council's web site

8.3. Application made by customer

- Customer completes and submits CSGS application form, either on-line, by telephone to Coventry Direct or by post.
- If application is made by telephone, the Coventry Direct Officer will complete the application with the customer and establish initial eligibility. The application will then be passed to the Benefits Service.
- Once the application is received by the Benefits Service they will assess the application and if the application is incomplete or further supporting evidence is required the team will call or write to the relevant services or the customer for the necessary information.
- Once all relevant information has been collected, the Benefits Service will aim to write to the customer with details of the decision and details of the review process within 14 days.
- If successful, awards will be provided in line with the customers needs.

8.4. Application made by Service Provider

For service providers the following process will be followed:

- Customer contacts the service provider asking for assistance. Service providers complete their internal assessments and identifies that client may be eligible for Community Support Grant.
- Service provider supports client to complete Community Support Grant application and submits this to Coventry City Council's Benefits Service.
- Once the application is received by the Benefits Service they will assess the application and if the application is incomplete or further supporting evidence is required the team will call or write to the relevant services or the customer for the necessary information.
- Once all relevant information has been collected, the Benefits Service will aim to write to the customer with details of the decision and details of the review process within 14 days.
- If successful, awards will be provided in line with the customers needs.

8.5. Supporting Information

The Benefits Service may request any reasonable evidence in support of an application for a CSG. Such requests will normally be made in writing although if an urgent application is being considered (such as a customer potentially being made homeless), this will be requested by phone. The customer will be asked to provide the evidence within 5 working days of a request being made although this will be extended in appropriate circumstances.

The Benefits Service reserves the right to verify any information or evidence provided by the customer in appropriate circumstances. Any such request will be essential to the decision making process. If information is sourced from a support worker either the evidence will be scanned in or notes made against the client's record for transparency purposes. If the customer is unable to or does not provide the required evidence, the Benefits Service will still consider the application and will take into account any other available information.

The Benefits Service will seek to maximise the customer's income by checking the availability of state benefits and other sources of financial assistance that may be available to the customer upon application.

Information provided will be used to process applications for Community Support Grants and this information may be shared with other council departments in order to check information, protect public funds and to identify any other help the applicant may be entitled to.

The information provided may be shared with other organisations that handle public funds and for cross system and cross authority comparison for the detection and prevention of crime as allowed by law.

8.6. Forms of support

Awards will be made for the provision of:

- Furniture

- Furnishings
- Utility connection charges
- Removal or storage charges
- Additional items as necessary (health/age/disability) including:
 - o White goods
 - o Household goods
 - o Travel – in certain emergency situations

8.7. Award values

Award values will be at the discretion of the Council but will be based on standard prices for items required including the cost of delivery and installation.

Savings will be considered as funds available to the customer to meet their immediate needs.

Once the fund has been exhausted for the respective financial year, there will be no further awards.

8.8. Deciding a Community Support Grant

The Benefit Service will consider the full circumstances before deciding whether or not to award a CSG. In deciding whether to award a CSG, the Benefit Service will take into account the following as applicable to the application:

- Proximity of essential services relied upon by the customer and their partner to their home;
- The exceptional nature of the customer and their family's circumstances;
- Any reasons which make it necessary or especially desirable for the claimant to occupy the dwelling they currently reside in the view of the assessor;
- Will the payment of a CSG keep the family together, will it support a young person in the transition to adult life, or will it assist in the safeguarding of a vulnerable adult or child;
- The financial, medical and social circumstances of the customer and their household, if they are relevant to the CSGS request;
- The income and essential expenditure of the customer and their household will be taken into account when considering the customers income. When considering the customers expenditure consideration will be given as to whether or not expenditure is considered as above the basic living requirements. If expenses seem high, the CSGS assessor will make enquiries with the customer to clarify the details;
- Any savings and investments held by the customer and their household, which could be used to help their financial situation;
- Whether other family members external to the household help in any way towards the customers financial expenditure;
- Whether the customer and their household could reduce expenditure on non-essential items;
- Whether the customer and their household are entitled to other welfare benefits but are not claiming them;
- Whether the customer and their household are taking long-term action to help their problems in meeting their housing costs;

- Whether a CSG would prevent homelessness;
- Whether a CSG would help the customer being able to access or maintain employment, education or training;
- Whether a CSG would prevent a move that would have detrimental effects on the customer and their household, for example children's schooling, health, support networks or employment;
- Whether the customer is fleeing domestic abuse;
- Whether the customer is a care leaver;
- Whether the customer or other household member is subject to Social Services intervention;
- Whether the customer or other member of their household is undertaking care duties for relatives in the area;
- Whether the customer is a returning ex-offender who is having difficulty in finding suitable accommodation;
- Whether the customer is a former member of the armed forces who is having difficulty in finding suitable accommodation;
- Any steps taken by the customer to help themselves;
- Financial advice they have sought to alleviate their situation, such as from Citizens Advice Bureau or Welfare Rights.
- The level of funding that remains

The CSGS assessor will record the reasons as to why a decision to award or refuse an application has been made taking into account each individual's Human Rights.

9. Method of award

- 9.1. The Benefits Service will decide the most appropriate person to pay based upon the circumstances of each case.
- 9.2. Depending on individual circumstances, awards may be payable to:
 - The customer;
 - Their partner;
 - An appointee;
 - Any third party to whom it might be most appropriate to make payment i.e. directly to the supplier of goods or services.
- 9.3. The Benefits Service will pay a CSG usually in the form of a voucher or whatever other method is most appropriate.

10. Notification

- 10.1. If a customer's application is unsuccessful, the Benefits Service will set out the reasons why this decision was made and explain the right of review. Notifications will include details of where a claimant may seek further assistance (such as the Citizens Advice Bureau). Where the application is successful, the Benefits Section will advise:
 - The amount of CSG awarded;
 - How, when and to whom the award will be paid;
 - The right to request a review and how further assistance can be obtained;

11. Reviews

If a customer is unsatisfied with a decision they can request a reconsideration of the decision as set out below:

- 11.1. A customer (or their appointee or agent) who disagrees with a CSGS decision may challenge the decision. Customers can ask for a review if they can demonstrate there has been a factual error based on the decision made or has new evidence which has come to light which was not provided with the original application. In either circumstance, the customer must provide the relevant details. Such review requests must be made in writing to the Council within one calendar month of the written CSGS decision being issued to the customer.
- 11.2. When a request is made, the Council will conduct a review of the decision and contact the customer in writing within 10 working days of the review request being received to advise whether the decision will be amended, and if so, details of the award. All reviews will be considered by a senior officer not involved in the original decision.
- 11.3. If the customer remains dissatisfied, the customer has the right to register a formal complaint through the Council's Complaint Procedure or to contact the Local Government Ombudsman to investigate a claim of maladministration.

12. Monitoring arrangements and managing the Community Support Grant fund

- 12.1. The Benefits Service will undertake monitoring of the number, amount and period of CSGS awards in relation to the available CSGS budget. The purpose is to ensure the CSGS has sufficient funds to meet demands on the CSGS budget throughout the financial year. Once the fund has been exhausted for the respective financial year, there will be no further awards.
- 12.2. The Benefits Service will also monitor cases where a CSGS request has been refused to ensure decisions are being made fairly and consistently. The Council is subject to the general equality duty. This means that steps will be taken to monitor implementation of this policy to ensure no one is subject to disproportionate adverse treatment because they had a protected characteristic. The general equality duty requires that the Council has due regard to the need to:
 - Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
 - Take steps to meet the needs of persons who share relevant protected characteristic that are different from the needs of persons who do not share it
 - Foster good relations.

13. Publicity

- 13.1. The Community Support Grant Scheme will be publicised on the Council's website and the Benefit Service will ensure that all relevant stakeholders and partnership organisations are aware of the scheme.

14. Fraud

- 14.1. Coventry City Council is committed to the fight against fraud in all its forms. A customer who tries to fraudulently claim a CSG by falsely declaring their circumstances, providing a false statement or evidence in support of their application, may have committed an offence under the Fraud Act 2006. Where it is alleged, or the authority suspects that such a fraud may have been committed, the matter will be investigated and if fraud is found to have occurred, action will be taken including if appropriate criminal proceedings.

15. Accessibility

- 15.1. Hard copies or alternative versions of any document can be made available where necessary to meet an individual's needs. Please contact Coventry City Council, Council House, Earl Street, Coventry, CV1 5RR or telephone the Council directly on 0500 834 333.

Version Control

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C Storey	15/11/12
C Storey	22/11/12
T Savill	28/11/12

Equality and Consultation Analysis Template

Guidance for completion

- Equality analysis is a way of considering the effect on different groups protected from discrimination by the Equality Act 2010, during the Council's decision making processes.
- These 'protected groups' are those defined by race, age, gender, disability, sexual orientation, gender reassignment, religion or belief, pregnancy, maternity or breastfeeding.
- Please remember to consider children and young people as a specific group that you may need to consider the impact on, and engage with during this analysis.
- Equality analysis will help you consider whether the decision you want to take:
 - will have unintended consequences for some groups; and
 - if the service or policy will be fully effective for all target groups.
- The Council also has a statutory duty to consult.
- This equality and consultation analysis template will require you to demonstrate how equality information and the findings from consultation with protected groups and others, has been used to understand the actual or potential effect of your service or policy on the protected groups and to inform decisions taken.
- The template should summarise key issues arising from information that has been collected, analysed and included in other key documents e.g. Needs Analysis, Baseline Reports etc.
- This form should be completed on an ongoing basis at each stage of any formal decision making process. Failure to comply with this will put the Council (and specifically the elected member or officer making the decision) at risk of judicial review.
- For further help and support please contact Helen Shankster on 7683 4371 (consultation advice), Sheila Bates on 7683 1432 (CLYP consultation advice) or Jaspal Mann on 7683 3112 (equalities advice).

Context

Name of analysis	Community Support Grant Scheme
Officer completing analysis	Clare Storey
Date	September 2012

1. Briefly describe the area of work this analysis relates to:

The Community Support Grant Scheme is a new service that will be delivered by Coventry City Council to provide financial assistance to individuals and families experiencing exceptional financial pressure. Individuals and families will be able to apply for assistance with living expenses in crisis situations and to enable individuals or families to re-establish themselves or to remain in the community, for example, help with the costs of disability related equipment for those on low incomes or help with the costs of resettling prisoners.

This is a new service to be delivered by the City Council. Previously this provision formed part of the Social Fund which was administered by Department for Work and Pensions (DWP). Central Government decided to localise this type of support from April 2013. Whilst there will be no associated duties or legislative requirements for local authorities, and the funding will not be ring fenced, it is largely expected that the funds will be used to help those who are financially most vulnerable.

Scoping the analysis

2. Who are the key stakeholders, both existing and potential, that could be impacted by this work?

The key stakeholders are the applicants and award recipients themselves. The 2011/12 data supplied by the DWP tells us that crisis loans for living expenses are predominantly accessed by young, single males. Single females and single males are the predominant recipients of community care grants. It is likely that there are other potential applicants who've not previously accessed through the national DWP scheme.

Coventry		
2011/2012 (Full Year) Awards & applications rounded to nearest 10	Crisis Loan Living Expenses	Community Care Grants
Summary		
Number of Applications received	11,240	3,530
Total expenditure	£446,400	£813,300
Number of Awards	8,390	1,600
Lone Parent Status		
Lone Parent	20%	31%
Not a Lone Parent	66%	45%
Unknown	14%	25%
Age of youngest child		
0-5	19%	26%
6-8	3%	4%
9-12	2%	4%
13-16	2%	4%
No children 16 or under	74%	62%

Age of recipient		
Under 18	2%	0%
18 to 24	34%	23%
25 to 34	31%	26%
35 to 44	20%	23%
45 to 54	10%	15%
55 to 64	2%	8%
65 to 69	0%	2%
70 to 79	0%	2%
80 to 89	0%	1%
90 and over	0%	0%
Unknown	0%	0%

Household type		
Couple	8%	12%
Single Female	36%	47%
Single Male	56%	41%

Percentages may not sum to 100% due to rounding

There are also a high number of professionals who support individuals to apply for both crisis support and community support grants. These can include internal staff such as social workers and support workers, internal and external money advisors etc. General advice agencies are also key stakeholders because they support applications and can signpost applicants to the available provision. Community Support Grants will form part of wider system of financial support and advice provided throughout the city.

3. From the list above, which of these constitute protected groups?

It is likely that applicants will include all of the protected groups and the new scheme will need to ensure that equality monitoring is carried out correctly in order to analyse how it affects the protected groups in the future.

The current system of grants and loans are of particular importance to people who are covered by equality legislation. This may be due to:

- Having characteristics that make them more or less likely to take up either a Community Care Grant or a Crisis Loan
- Take up and differential outcomes

Local data provided on applicants has only been broken down on the basis of gender, age, lone parent status and household type.

4. Which of the key stakeholders (including representatives of protected groups) will need to be kept informed, consulted or actively involved in this area of work?

Key Stakeholder	Type of Involvement*	Method(s) used
Applicants	Information	Web, JCP, advice agencies.

Professionals	Information	Web, JCP, other advice agencies and verbal and written briefings.
Advice Agencies	Consultation and Involvement	Regular email and physical meeting to an established stakeholder group capable of representing users.

* *Information, Consultation or Involvement*

5. Which, if any, parts of the general equality duty is the service relevant to? Please mark with an 'X'.

- Eliminate discrimination, harassment and victimisation.**
- Advance equality of opportunity between people who share relevant protected characteristics and those who do not.
- Foster good relations between people who share relevant protected characteristics and those who do not.

6. What information is available to be used as part of this analysis?

Experiences have been shared through the stakeholder group that both supports individuals to make applications and represents their interests as users.

The national equality impact assessment on the proposal to localise this form of financial assistance drew the following conclusions:

Gender

Crisis Loans

In 2009/10 58% of final decisions for Crisis Loans were made to single males, 34% made in respect to single females and 8% made in respect to couples. The success rates were the same for single males and females (76%) and 74% for a couple. The majority of applications are made by unemployed recipient¹ and the award rate is a reflection of the profile of customers who currently claim JSA as 28% of the JSA caseload are female without children². In the current system there are no differences between male and female success rates and no indication this would change if a similar assessment of eligibility is applied in a locally-delivered system.

Table 1. Crisis Loan final decisions by gender

Category	Number	% of total
Couple	292,960	8%
Single Female	1,182,720	34%
Single Male	2,018,430	58%
Total	3,494,110	100%

Table 2. Crisis Loan award success rates based on final decisions by gender

Category	Number	Success rate
Couple	217,720	74%
Single Female	902,330	76%
Single Male	1,537,740	76%
Total	2,657,790	76%

Community Care Grants

In 2009/10 49% of Community Care Grant final decisions made in respect to single females, 36% made in respect to single males and 15% made in respect to couples. The success rates for single females were slightly higher (49%) than single males (42%) but lower than couples (53%). Single females who are more likely to be caring for children are advantaged by the current system. During the assessment stage a higher number of women than men are seen as having sufficient needs to be awarded a Community Care Grant. There is no evidence to suggest that this will change under a locally-delivered system using similar criteria.

Table 3. Community Care Grant final decisions by gender

¹ Social Fund Annual Report <http://www.dwp.gov.uk/docs/2010-annual-report-social-fund.pdf>

² Using DWP data from May 2010 and DWP online tab tool http://83.244.183.180/100pc/dla/tabtool_dla.html

Category	Number	% of total
Couple	92,540	15%
Single Female	311,590	49%
Single Male	228,090	36%
Total	632,220	100%

Table 4. Community Care Grant final awards and success rates based on final decisions by gender

Category	Number	Success rate
Couple	49,440	53%
Single Female	151,550	49%
Single Male	96,450	42%
Total	297,440	47%

Age

Crisis Loans

In 2009/10 a small proportion of Crisis Loans final decisions were made in respect of customers under 18 (3%) and over 45 (13%). The largest proportion (37%) of final decisions were made in respect of customers between 18 to 24 years old. Customers 65 and over also have lower success rates. Given the relative total numbers of people in the younger and older population brackets, younger people are currently more likely to apply than older people. We do not have sufficient information to understand why older people are less likely to apply and be awarded a crisis loan. However, the provision of a locally-delivered service may promote a more equal spread of applications across the age ranges. A locally-delivered system would be better able to identify the most vulnerable people in the area in part because of other related services already being provided and offer appropriate assistance accordingly.

Table 5. Crisis loan final decisions by age

Age band	Number	% of total
Under 18	89,110	3%
18 to 24	1,283,090	37%
25 to 34	1,007,410	29%
35 to 44	655,930	19%
45 to 49	216,170	6%
50 to 54	129,410	4%
55 to 59	75,090	2%
60 to 64	23,700	1%
65 to 69	8,150	0%
70 to 79	5,280	0%
80 to 89	730	0%
90 and over	40	0%
Total	3,494,110	100%

Table 6. Crisis Loan award and success rates based on final decisions by age

Age band	Number	Success rate
Under 18	67,110	75%
18 to 24	942,990	73%
25 to 34	773,410	77%
35 to 44	515,070	79%
45 to 49	170,720	79%
50 to 54	102,200	79%
55 to 59	59,170	79%
60 to 64	17,710	75%
65 to 69	5,600	69%
70 to 79	3,370	64%
80 to 89	430	59%
90 and over	20	55%
Total	2,657,790	76%

Community Care Grants

In 2009/10 the lowest proportion of final decisions were made in respect of those below the age of 18 and over the age of 45, because they are less likely to apply. However, success rates are higher for those customers aged 45 and over, and applications by older people are more likely to be successful as they may be more likely to meet the criteria as set out in Directions. Provision through a locally-delivered service may have an impact on the application rates from older people. A locally-delivered system would be better able to identify the most vulnerable people in the area in part because of other related services already being provided and offer appropriate assistance accordingly.

Table 7. Community Care Grants final decisions by age

Age band	Number	% of total
Under 18	8,490	1%
18 to 24	152,250	24%
25 to 34	167,460	26%
35 to 44	133,970	21%
45 to 49	50,760	8%
50 to 54	36,570	6%
55 to 59	27,020	4%
60 to 64	21,490	3%
65 to 69	13,730	2%
70 to 79	15,600	2%
80 to 89	4,390	1%
90 and over	490	0%
Total	632,220	100%

Table 8. Community Care Grants final award and success rates based on final decisions by age

Age band	Number	Success rate
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Under 18	3,700	44%
18 to 24	57,530	38%
25 to 34	73,970	44%
35 to 44	66,800	50%
45 to 49	25,990	51%
50 to 54	19,500	53%
55 to 59	14,990	55%
60 to 64	12,810	60%
65 to 69	8,420	61%
70 to 79	10,260	66%
80 to 89	3,130	71%
90 and over	350	70%
Total	297,440	47%

Disability

Crisis Loans

The definition of disability used in the tables below is based on whether a benefit recipient has a disability marker on the administrative datasets which is added by advisers when a customer states they have a disability.

In 2009/2010 31% of Crisis Loan final decisions were made in respect of disabled people and this represents an increase of 11 percentage points on the previous year. We do not have sufficient information to understand if this is proportionate to the total benefit caseload, but it is broadly proportionate to the JSA caseload. Overall success rates are very similar for disabled customers (76%) compared to non disabled customers (77%). There have been increases in the number of disabled customers accessing Crisis Loans. We do not have adequate information to understand the reasons why, although it is likely to be a result of increasing ESA claimants being eligible for Crisis Loans. There is no evidence to suggest that this will change in a locally-delivered system. A locally-delivered system would be better able to identify the most vulnerable people in the area in part because of other related services already being provided and offer appropriate assistance accordingly.

Table 9. Crisis Loan final decisions by disability

Disability status	Number	% of total
Not disabled	2,334,300	66%
Disabled	1,096,270	31%
Not considered	5,650	0%
Unknown	76,690	2%
All	3,512,920	100%

Table 10. Crisis Loan final awards and success rates based on final decisions by disability

Disability status	Number	Success rate
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Not disabled	1,766,750	76%
Disabled	844,360	77%
Not considered	4,260	75%
Unknown	54,460	71%
All	2,669,830	76%

Community Care Grants

In 2009/10 33% of Community Care Grant final decisions were made in respect of disabled people and this represents an increase of 12 percentage points on the previous year; the increase is probably due to the introduction of Employment and Support Allowance where the income related part is a qualifying benefit for Community Care Grants. Overall success rates are higher for disabled customers (48%) than for non-disabled customers (43%). Disabled customers are currently well served by the Community Care Grant system and there is no evidence to suggest that this will change in a locally-delivered system. A locally-delivered system would be better able to identify the most vulnerable people in the area in

part because of other related services already being provided and offer appropriate assistance accordingly.

Table 11. Community Care Grants final decisions by disability

Disability status	Number	% of total
Not disabled	358,890	57%
Disabled	210,620	33%
Not considered	4,850	1%
Unknown	59,560	9%
All	633,930	100%

Table 12. Community Care Grants final awards and success rates based on final decisions by disability

Disability status	Number	Success rate
Not disabled	155,980	43%
Disabled	101,540	48%
Not considered	3,120	64%
Unknown	37,190	62%
All	297,830	47%

Ethnicity

Crisis Loans

In 2009/10 79% of Crisis Loan final decisions are made in respect of white customers with some ethnic groups receiving less than 1% of the final decisions and this remains consistent with previous years. Preliminary analysis suggests that this is proportionate to

the general JSA caseload – these claimants are the highest users of Crisis Loans. Overall success rates are slightly higher for white customers than other groups. We do not currently know why there are marginally different success rates for customers from some different ethnic groups. A locally-delivered system would be better able to identify the most vulnerable people in the area in part because of other related services already being provided and offer appropriate assistance accordingly.

Table 13. Crisis Loan final decisions by ethnicity

Ethnic group	Number	% of total
White	2,777,560	79%
Mixed	69,020	2%
Asian or Asian British: Indian	19,790	1%
Asian or Asian British: Pakistani	31,230	1%
Asian or Asian British: Bangladeshi	9,740	0%
Asian or Asian British: Other Asian	9,830	0%
Black or Black British: Black Caribbean	78,920	2%
Black or Black British: Black African	61,830	2%
Black or Black British: Other Black	21,270	1%
Chinese or Other Ethnic Group: Chinese	1,040	0%
Chinese or Other Ethnic Group: Other Ethnic Group	30,050	1%
Prefer not to say	178,790	5%
Unknown	223,840	6%
All	3,512,920	100%

Table 14. Crisis Loan awards and success rates based on final decisions by ethnicity

Ethnic group	Number	Success rate
White	2,130,500	77%
Mixed	51,460	75%
Asian or Asian British: Indian	14,090	71%
Asian or Asian British: Pakistani	21,240	68%
Asian or Asian British: Bangladeshi	6,200	64%
Asian or Asian British: Other Asian	6,920	70%
Black or Black British: Black Caribbean	58,310	74%
Black or Black British: Black African	44,000	71%
Black or Black British: Other Black	15,580	73%
Chinese or Other Ethnic Group: Chinese	710	68%
Chinese or Other Ethnic Group: Other Ethnic Group	21,090	70%
Prefer not to say	134,080	75%
Unknown	165,640	74%
All	2,669,830	76%

Community Care Grants

In 2009/10 65% Community Care Grant final decisions were made in respect of white customers with some ethnic groups receiving less than 1% of the final decisions and this remains consistent with previous years. Preliminary analysis suggests that this is proportionate to the general JSA caseload, although there is a higher number in the unknown ethnic group which may impact on our assumptions. However, there is a higher number of prefer not to say or unknown responses in this data set. Overall success rates are slightly higher for all ethnic minority customers (average of 46%) than white customers (average of 44%) and overall success rates have decreased at the same rate for ethnic minority and white customers from 2008/09 figures. Customers from ethnic groups are currently well served by the Community Care Grant system and there is no evidence to suggest that this will change in a locally-delivered system. A locally-

delivered system would be better able to identify the most vulnerable people in the area in part because of other related services already being provided and offer appropriate assistance accordingly.

Table 15. Community Care Grant final decisions by ethnicity

Ethnic group	Number	% of total
White	413,490	65%
Mixed	10,650	2%
Asian or Asian British: Indian	3,080	0%
Asian or Asian British: Pakistani	6,970	1%
Asian or Asian British: Bangladeshi	2,260	0%
Asian or Asian British: Other Asian	2,270	0%
Black or Black British: Black Caribbean	14,030	2%
Black or Black British: Black African	15,010	2%
Black or Black British: Other Black	3,760	1%
Chinese or Other Ethnic Group: Chinese	480	0%
Chinese or Other Ethnic Group: Other Ethnic Group	8,710	1%
Prefer not to say	32,830	5%
Unknown	120,400	19%
All	633,930	100%

Table 16. Community Care Grant final awards and success rates based on final decisions by ethnicity

Ethnic group	Number	Success rate
White	180,470	44%
Mixed	4,680	44%
Asian or Asian British: Indian	1,340	43%
Asian or Asian British: Pakistani	3,100	44%
Asian or Asian British: Bangladeshi	1,000	44%
Asian or Asian British: Other Asian	1,070	47%
Black or Black British: Black Caribbean	5,940	42%
Black or Black British: Black African	6,900	46%
Black or Black British: Other Black	1,670	44%
Chinese or Other Ethnic Group: Chinese	280	58%
Chinese or Other Ethnic Group: Other Ethnic Group	3,900	45%
Prefer not to say	15,250	46%
Unknown	72,240	60%
All	297,830	47%

Sexual orientation

The DWP does not hold information on its administrative systems on the sexual orientation of claimants. The Government does not envisage an adverse impact on these grounds.

Religion or belief

The DWP does not hold information on its administrative systems on the religion or beliefs of claimants. The Government does not envisage an adverse impact on these grounds.

Marriage and Civil Partnership

The DWP does not hold information on its administrative systems on the civil partnership status of claimants. The Government does not envisage an adverse impact on these grounds.

Pregnancy and maternity

The DWP only holds information on pregnancy and maternity on its administrative systems where it is the primary reason for incapacity. It cannot therefore be used to accurately assess the equality impacts. The Government does not envisage an adverse impact on these grounds.

7. What are the information gaps?

The information provided is limited, refers to a national picture and does not specify use by all the protected groups. There is no data provided to understand how many individuals are making repeat applications to the Social Fund, or what proportion of applications come from vulnerable customers.

It is not currently known why some groups use it and others don't, this information, if collected, would help to shape future delivery of the localised scheme.

Data analysis

8. Please summarise below the key issues that your data is telling you.

The majority of applications are from single childless males, aged under 35. There are less applications from lone parents and pensioners than would be expected given the higher likelihood of these groups to be experiencing deprivation.

We know that applicants are confused about which fund they should be applying for. They also find the application form confusing and repetitive. The majority of applicants require help to fill out their application form.

Applicants often have unsettled lives and were coping with poor physical health, disability or mental illness.

The average shortfall between awards and need is £600. In these circumstances people bought second-hand goods, took up borrowing, did without an item (e.g. floor covering) or saved up the outstanding amount.

To make best use of the Social Fund applicants must have at least basic knowledge of the financial assistance available to them, however the majority of applicants do not have this, personal advisors are best placed to provide this knowledge to applicants.

Community Care Grants were often the first port of call for applicants and there were few alternatives for most applicants. Given the reliance of applicants on the scheme it is clear that there would be a negative equality impact if the scheme was removed.

Generating and evaluating options

9. What are the different options being proposed to stakeholders?

The Council has significant flexibility in designing a local policy of discretionary assistance and this presents an opportunity to rationalise existing funding streams and establish a single corporate approach to the assessment of financial need. There is also the opportunity to explore collaborative working arrangements with partners in the third sector.

However, the Council needs to establish this new local provision within a challenging timescale and from 1 April 2013 some of Coventry's most vulnerable residents will be looking to the Council to meet exceptional needs that were previously addressed by central government. There is therefore the need for a pragmatic approach to service delivery in the short term and the creation of the Council's local policy takes account of the need to have a functional provision in place from 1 April which has the resilience to meet expected demand. The Council can then focus more confidently on years two and beyond to establish a more sophisticated delivery model which fully utilises collaborative working.

There are a range of options available to the Council given that there are no legal requirements attached to the fund and nor is the funding ring fenced. However, due to the poor quality of the data from the existing scheme and the significant changes facing the scheme it is not possible to generate sophisticated options. Instead the preferred option is for the Council to run the scheme in-house as a pilot for the first year, during which the scheme will be constantly evaluated in order to inform a longer term model that can be implemented from the second year.

The following options have been discounted:

9.1 No provision

There is no statutory duty for local authorities to make any provision.

Given the current demand levels for financial assistance in the form of interest-free Crisis Loans or Community Care Grants in Coventry it would be irresponsible not to provide some form of provision. The full impact of Welfare Reforms will begin in April 2013 and this is likely to increase demand for this type of support, though this is an unknown quantity and therefore demand is difficult to forecast.

There is a strong likelihood that removing this source of money may exacerbate levels of financial exclusion they are experiencing through resorting to alternative sources of credit such as pay day loans, doorstep lending, illegal money lenders etc.

This option has been discounted due to the Council's priority to work with partners to reduce financial exclusion and provide improved access to sustainable money and debt advice and improved access to financial services.

9.2 Replicate the existing DWP system

The Social Fund was introduced over two decades ago as part of the Fowler reforms of the Social Security system. Since then welfare delivery has changed significantly. The DWP cite that the main drivers for the change are that currently decision making is too remote (at regional DWP office level), the scheme is expensive to administer, open to abuse and does not lead to improved outcomes for citizens as it does not link with local authority duties and responsibilities to broadly similar groups.

The existing DWP system provides cash payments for Crisis Loans and analysis of the increased demand has shown that it is being driven by young single people on Jobseekers Allowance, many of them still living at home, rather than reflecting a more general trend across all the benefit client groups. There is no discernable evidence to suggest that the increased demand from this group is linked to an increase in need, as it predates the recessionary rise in youth unemployment.

Cash payments are essentially a bi-product of awards being linked to a wider cash-based benefits system rather than a deliberate and preferred method of provision.

In 2010, the Department of Work and Pensions commissioned research into customer experiences³. There was customer acknowledgement that the current system was open to abuse or misuse by some applicants.

The current scheme has been criticised by both the National Audit Office and the Public Accounts Committee because it is application based and as such may not target support on those in greatest need. Reliance on self-referral is a clear risk in the current scheme and one that cannot be quantified. Another criticism was that there is no mechanism for verifying claims or ensuring that the awards have been spent in the way that they were intended.

The feasibility of moving the Social Fund system towards commercial models was assessed by KPMG in 2008 who concluded that the only commercially viable model would include deduction from benefit or tax credits or the bad debt risk would simply be too high. Based on this review DWP would not expect, or welcome local authorities following this model.

For the reasons outlined above it is not recommended to replicate DWP's existing scheme.

9.3 Therefore the recommended proposal is as follows:

The service is delivered by Coventry City Council. Customer access, assessment and provision of goods/services are delivered in house.

Applicants for Crisis Grants must be residents of Coventry, applicants for Community Support Grants must be residents of Coventry and be in receipt of a passported benefit. This will help prevent people claiming fraudulently across the country but there will be exemptions in place for those fleeing domestic violence, experiencing homelessness or resettling to the City.

Payments will not be provided as loans as these exacerbate debt and, as a local authority, we are unable to replicate the current system of debiting repayments from benefits. Therefore crisis *loans* will be provided as *Crisis Grants*.

This is a safety net payment and will not be used to replace other obligations. For example, this scheme will not pay people subject to certain disallowances or sanctions to their benefits as DWP is responsible for providing Hardship Payments to them. Any expense which the Council has a statutory duty must be met through the relevant allocated funds for this duty.

Cash will not be provided, instead vouchers for good and services are provided where an assessed need is determined in order to prevent abuse or misuse of the system and to ensure that the awards have been spent in the way that they were intended.

Residents will not ordinarily be permitted to make more than 2 claims a year for the same expenses. Repeat applications will only be considered in exceptional circumstances. Repeat applicants will be required to engage with money management advice services in order to address the underlying cause of their financial hardship. Adminstrating the service locally offers opportunities for collaborative working, to ensure that people are assessed and signposted to the right support that enables them to prevent further instances of financial hardship.

³ www.research.dwp.gov.uk/asd/asd5/rports20092010/rrep625.pdf Researcher: Ashfa Slater

Food and/or utility payments are available for Crisis Grants where there is a risk to the health and safety of the applicant and/or their family.

Customers are required to come to the City Centre in office hours to collect their voucher. Out of hours queries will be dealt with by the existing Emergency Duty Team.

Community Support Grants are available to assist with people moving out of institutional or residential care, helping people to stay in the community, or where there is exceptional financial pressure on an individual or families.

For those who require bespoke and adapted items there may be some potential for linking the new service with other existing support such as the Disabled Facilities Grant which funds adaptations to the home, to provide a more holistic package of support at the point of need.

Rent in advance will not be provided separately through this scheme because this would duplicate existing provision within the local authority. Instead customers will be routed through the appropriate routes to ensure that expert support is provided and that all available options are explored.

Income and savings will be taken into account when determining whether to provide an applicant with financial support.

Though the scheme will not fully replicate the DWP's scheme, it is acknowledged that the funding allocation will not be enough to expand the eligibility of the previous scheme and to increase customer expectations. Therefore it is recommended that the current list of excluded persons is maintained in the local scheme. For example, this would mean that persons with No Recourse to Public Funds in the UK would not be eligible for support through this scheme.

Recognising that welfare changes will increasingly impact on low income and nonworking households over the duration of this policy there is a need to ensure the fund is flexible enough to meet changing needs.

There is a finite budget for the scheme and skilled consideration is needed to ensure the budget is allocated fairly, based on need and is not over nor under-spent at year end.

Eligibility Criteria

Crisis Grant

Not enough money to pay for utilities and/or food and a Coventry resident

Support Grant

In receipt of Income Support, income based JSA, income related ESA, or any type of Pension credit, a Coventry resident

and leaving accommodation in which they received significant and substantial care and supervision and expect to be discharged within 6 weeks and be expected to receive one of the benefits indicated

or To help the applicant (or family member/carer) to remain living in the community where there is a high risk of the person needing to enter residential accommodation

or To help the applicant (or family member/carer) to set up home as part of a planned resettlement programme (following an unsettled way of life)

or if this will help with costs to ease exceptional pressures for a customer, or/and their family

or To assist with travel expenses to visit a relative who is terminally ill or a relative's funeral or to visit a child who is living with another parent pending a court decision.

10. How will the options impact on protected groups or those experiencing deprivation?

Option 1 irresponsibly exacerbates levels of financial exclusion for the reasons outlined above.

Option 2 would maintain the status quo and does not address issues of self referral and would not target support to those in greatest need.

Option 3 would improve the existing system because it addresses issues of relying on self-referral and ensuring claims can be verified and allocated to the need they were intended for. This will ensure that the funding is used for its intended purposes and can therefore support a greater number of people. Support would still be available, but would be limited to certain items. Replacing cash with vouchers is designed to support those experiencing deprivation so that they do not inappropriately use any cash provided to them. Additionally, advice would be provided through the scheme to support those experiencing deprivation to manage their money in the most effective way and to understand what help is available to them. This option could have a negative impact on those experiencing deprivation or with disabilities that make travelling difficult as vouchers would have to be collected from the City Centre.

The protected groups that are more likely to be able to access the scheme remain to be young, single males as this is the group that is least likely to have access to other income.

Due to limited publicity of the scheme there is a risk that particular ethnic groups will not be able to access the scheme due to language barriers.

Whilst the eligibility criteria for Crisis Grants remains wide, the eligibility criteria for Support Grants rests on applicants claiming or expecting to claim certain benefits. Given the various welfare reforms that are taking place the City is experiencing a downward trend of various benefit caseloads. This means that for groups like lone parents who are 98% female and moving off Income Support and not onto Employment and Support Allowance or young adults who are set to become entitled to less benefits they would be less able to access the scheme.

Females are more likely to be out of work and not claiming benefits than males which would also prevent them from accessing the scheme. However it is not clear what proportion of this group would require this type of financial assistance.

It is also not clear where benefits are being claimed on behalf of a household, how much the gender of the main applicant distorts the equality statistics of the gender/s of those eligible for the benefit.

Former looked after children, or care leavers, are not excluded from the scheme but depending on their circumstances they may be referred to Children's Services in order to access the leaving care core offer which is designed to help establish themselves in the community.

Asylum seekers and refugees with No Recourse to Public Funds will be excluded from the scheme.

11. Please detail how you could mitigate any negative impacts.

The negative impacts (mainly access, collection of provision (if necessary), and willingness to apply for the fund) can be mitigated by a series of measures.

Access could be mitigated by ensuring that all advice agencies have knowledge of the scheme and can support customers to apply for it. They can then submit a claim via phone, online or through an advice agency. The Advice Services Review is recommending the provision of telephone access points across the city, potentially in libraries, and this will enable more people to apply for the scheme without an impact on personal finances.

Collection of provision (where it is not feasible to be organised remotely for delivery to the applicant's place of residence) could be mitigated by entering into a partnership arrangement with advice agencies, which are located throughout the city, in the areas evidenced by data that are regarded to be in the highest need of such provision.

It is not considered necessary to reimburse travel costs incurred to collect the voucher in every case as Coventry is a compact urban area where travel costs are less relevant. By excluding travel costs funds can be targeted more effectively on the areas of greatest need. Arrangements may be considered in exceptional circumstances on a case by case basis.

To effectively encourage take up by the groups who are reluctant to apply for the scheme, perhaps because they view it as demeaning, a publicity campaign could be a mitigating action. This may be best delivered through trusted professionals and advice agencies because the advice may be more positively received when given by someone with whom the individual has developed a relationship. Though there may be groups of people who don't use these agencies but do need to use the scheme.

The eligibility criteria in relations to benefits will need to be reviewed regularly to ensure that it isn't precluding certain protected groups from being able to access the scheme unfairly.

The scheme will work to reduce the risk of repeat crisis situations by ensuring and encouraging customers to access budgeting and money management advice.

Those with No Recourse to Public Funds will not be eligible for the scheme, however where known, officers will signpost them to available support, for example the foodbank.

12. Identify which contractors or service users would be negatively affected by the options

From year 2 it is likely that options for contractors to provide certain goods or advice will increase as management information will be available to inform potential contracting arrangements.

Given the mitigation plans it is not anticipated that any service users or particular group of service users would be negatively affected by the options proposed. Service users may perceive a negative effect because the scheme will not provide cash and they will no longer have choice over how they deal with their crisis situation. Some service users, if they chose not to engage with the information and advice provided, may instead chose to use high cost lenders in order to fund what they determine is necessary but is not a food or utility related cost.

Formal consultation

13. Who took part in the consultation? *Please also specify representatives of any protected groups.*

WM Housing
Coventry Jesus Centre
Wood End Advice Centre
Terrence Higgins Trust

Coventry CAB
CWDA
Coventry Foyer
Staffordshire and West Midlands Probation Trust
Coventry City Council and CSWP Job Shop
Coventry Partnership
Coventry Law Centre
Coventry Cyrenians
Foleshill 396
DWP
Coventry City Council Commissioning Teams
Coventry City Council Audit & Risk Team
Emmaus
Trussell Trust – Foodbank
Coventry Refugee and Migrant Centre
Coventry City Council Community Services
Coventry City Council Children, Learning and Young People
Coventry City Council Revenues and Benefits Service
Coventry City Council Youth Offending Service
Shaftesbury Partnership

14. What were the key findings of the consultation?

All those consulted had sight of a draft policy document and many of their suggestions have been replicated in the final policy document (see section 17). A full summary of the comments received can be found at the end of this document in Appendix 1.

A minority of suggestions are not reflected in the final policy documents. Firstly, that cash should be provided instead of vouchers. Stakeholders who promote this view do so because they feel it will better equip people with the necessary budgeting skills to prevent repeat applications and they will be able to make cash go further than vouchers. However the majority of stakeholders felt that moving away from cash was a positive thing as it would remove the illegitimate usage. Secondly stakeholders were keen to replicate the external review service that currently exists in the DWP scheme. Unfortunately no funding is transferring for this provision and therefore the City Council will offer an internal review of decisions as requested. There are no identified equality implications as a result of this.

15. Are there any gaps in the consultation?

No

16. Following the consultation, what additional equality issues have emerged?

Whether Disability Living Allowance (specifically the mobility component) can be taken into account as income when deciding whether to award a discretionary fund – clarification will be sought from Benefit and Legal experts.

What definition of vulnerability is being used throughout the policy and during the decision making process. It had been kept deliberately broad in order to use the fund flexibly to support those living in deprivation whatever the cause may be. The policy does clearly set out what circumstances will be considered to be eligible to receive support.

17. Which of the options have changed following consultation and equality analysis, and how?

Clear eligibility to reflect the distinct nature and very limited parameters of this funding stream, specific wording around residency requirements for victims fleeing domestic violence, residency requirements for those resettling from institutions outside of Coventry (Rehab, Prison etc), redemption life of vouchers, the recognition of the Council's duty to those leaving the Armed Forces, recognising that a single person facing exceptional circumstances could qualify for a grant and identifying clear referral routes to other services.

Equality impact of final option

18. Please confirm below which option has been chosen for implementation.

Option 3

19. Please indicate which of the following best describes the equality impact of this analysis.

- There will be no equality impact if the proposed option is implemented.
- There will be **positive equality impact** if the proposed option is implemented.
- There will be **negative equality impact** if the preferred option is implemented, but this can be objectively justified.
Please state clearly what this justification is and what steps will be taken to ameliorate the negative impact.

The specific groups that have been identified as potentially experiencing adverse affects are women (due to them being more likely to be out of work and not claiming benefits, and therefore ineligible for Support Grants) and asylum seekers and refugees (due to them being most likely to have no recourse to public funds and therefore ineligible for any support).

These impacts will be addressed by regularly reviewing the eligibility criteria in relation to benefits to ensure that they aren't precluding certain protected groups from being able to access the scheme unfairly. Those with No Recourse to Public Funds will not be eligible for the scheme, however where known, officers will signpost them to available support, for example the foodbank.

The scheme will work to reduce the risk of repeat crisis situations by ensuring and encouraging customers to access budgeting and money management advice. This, together with the initial intervention, means that it is therefore expected that this scheme will have a positive impact on deprivation.

20. What will be the impact on the workforce following implementation of the final option? *Please make reference to relevant equality groups (with protected characteristics under the Equality Act).*

The impact on the workforce will be the creation of a number of posts to administer the scheme. Recruitment will be in line with existing Council policies and therefore should be no negative equality impact.

Formal decision-making process

Please detail below the committees, boards or panels that have considered this analysis

Name	Date	Chair	Decision taken
Project Board	14/12/12	Chris West	
Health, Social Care and Welfare Reform Scrutiny Board (5)	12/12/12	Cllr Welsh	
Cabinet	08/01/13	Cllr Mutton	
Council	15/01/13	Cllr Sawdon	

Approval

This equality analysis has been completed by:

Officer

Clare Storey

Service Manager

Glenda Cowley

Note: Failure to comply with duties on equalities and consultation will put the Council (and specifically the elected member or officer making the decision) at risk of judicial review

Director

Chris West

Elected Member

Cllr Duggins

Date

Monitoring and review

This section should be completed 6-12 months after implementation

- a) Please summarise below the most up to date monitoring information for the newly implemented service, by reference to relevant protected groups.

[Click here and type]

b) What have been the actual equality impacts on service users following implementation?

Analyse current data relating to the service and think about the impact on key protected groups: race, sex, disability, age, sexual orientation, religion or belief, pregnancy or maternity, gender reassignment.

It may help to answer the following questions: Since implementation

- Have there been any areas of low or high take-up by different groups of people?
- Has the newly implemented service affect different groups disproportionately?
- Is the new service disadvantaging people from a particular group?
- Is any part of the new service discriminating unlawfully?

[Click **here** and type]

c) What have been the actual equality impacts on the workforce since implementation?

[Click **here** and type]

**Equality Analysis and Consultation Template
August 2012 · Version 2.0.2**

The latest version of this template can be found at:
<http://beacon.coventry.gov.uk/equalityanddiversity/>
Please ensure you are using the latest version of the template.

<u>Organisation</u>	<u>Comment</u>	<u>Response</u>
Coventry Citizens Advice Bureau (CAB) Cyrenians	How does LA define 'vulnerable'?	Vulnerability is based on the categories outlined.
CAB Cyrenians Terrence Higgins Trust (THT)	Why vouchers and not cash? Limits choice due to circumstances. Limits development of budgeting skills People can get more with cash than vouchers	In order to improve the DWP scheme it has been decided, in consultation with stakeholders, that removing cash will ensure that the fund can effectively focus on those in severe hardship.
CAB	If advances are to be paid on Universal Credit will this have to be done before applying for a CSG?	Yes - the policy states that other options are to be exhausted first and that it will not substitute for specific existing provisions, including DWP provision.
CAB Coventry Law Centre Cyrenians	How is a severe risk to health and safety defined? Does it have to be life threatening? Will council staff be sufficiently trained to understand level of medical risk?	The DGA team will not be involved with assessing medical risk. If supporting evidence is required from social workers then the team will liaise with them. If an applicant is in one of the circumstances outlined by the policy, has access to no other form of financial help and their circumstances can be verified by a support worker then they are facing a risk to their health and safety.
CAB	Further clarity is required on the definition of a local connection, is this: an address, a residency or a link?	Clarification was given at the stakeholder events on 15th August and 7th November 2012 - a residency is preferable but for those who are homeless or fleeing domestic violence the address of their temporary accommodation, friend or relative or support organisation will be accepted.
CAB	What about those who are facing a crisis away from Coventry but are Coventry residents?	They should apply to the local authority in which they are experiencing the crisis.
CAB	Will the explanation of the review process be available in different formats and languages?	Yes, on request. This is outlined in existing policy.
CAB	Eligibility criteria should be an exhaustive list so people know who is eligible.	This has been kept deliberately flexible given the discretionary nature of the fund. The list for excluded persons is an exhaustive list.
CAB	If supporting evidence is required that will cost the customer money, e.g. medical evidence, how will this cost be met?	Supporting evidence that would incur a cost for the customer will not ordinarily be requested.

<u>Organisation</u>	<u>Comment</u>	<u>Response</u>
CAB	If the decisions made are based on information sources directly from relevant services, and the customer is kept out of the loop, how will they be able to effectively challenge a negative decision? This process needs to be transparent.	Notes will be entered on the clients record regarding any conversations with support workers.
CAB	What is the implication for decision making of the reference to "level of indebtedness"? Will debt make you more or less likely to get a grant?	The Council is making reference here to its priority to promote financial inclusion.
CAB	Who is "The Council" with reference to reviews of decisions. Will present case law re crisis loans and CCGs apply? In which cash why are factual error and new evidence the only planks for review? This is not a re-judgement but a reconsideration.	We understand that current case law will not apply as the law will have been repealed and this is a new local discretionary scheme. We are focusing on making the right initial decision and not using resources from the fund to support a costly rejudgement process.
CAB	Will there be use of broadcast media for publicity? Equalities issues around knowledge and access.	No. Scheme will only be communicated through referral partners.
CAB	Fraud section should include recognition of ID fraud.	This will be recognised as fraud.
Strategic Commissioner & Coordinator (Substance Abuse)	Explicit reference to staying at a residential rehabilitation unit included?	No. They will be covered if their 'intended' address is Coventry.
Strategic Commissioner & Coordinator (Substance Abuse)	If additional needs are identified could they be referred to the floating support service we commission?	Yes - looking to refer if additional needs are identified.
Strategic Commissioner & Coordinator (Substance Abuse)	Align awards to objectives to recovery from drug/alcohol addiction	No, not possible to expand criteria as demand is likely to exceed resource. They will be able to access support to stay in community.
Recovery Partnership	Need to ensure 'legitimate uses' are still available under local provision. To support this funding may be better access by a professional/key worker to ensure legitimate application.	Yes. Happy to support this. Where details of an application can be verified it will be easier for officers to approve.

Organisation	Comment	Response
Swanswell	Need exists for furnishing new property to basis standards i.e. a bed, something to cook with and somewhere to sit are vital in helping people move away from chaotic lives. 3 groups of concern - those moving from chaotic lives to recovery, prison leaver and people escaping domestic violence.	Reflected in existing policy
Cyrenians Coventry Law Centre	People who have already made two crisis support applications are not generally to be eligible for a these. This is a drop from the current DWP ceiling of three crisis loans, which in itself could be considered arbitrary. Given the general atmosphere of hardship and rises in real poverty locally, would it be possible to reconsider this? Presumably a fairly stringent assessment process could still be out in place without a ceiling.	Additional applications will be considered in exceptional circumstances but generally is someone requires 2 or more awards in a year then this is an indicator that they need more holistic support. This is being treated as a fund of last resort that should signpost to relevant services in order to prevent multiple applications and reliance on the fund.
Cyrenians	Are there plans to include people with any career background other than military as a group highlighted for consideration for support?	No. This is a reflection of the Council's duty under the Covenant - applications will be considered on a persons circumstances rather the career background.
Coventry Law Centre	Under the current wording for the exceptional pressures criteria as single person would not be able to qualify as it states on page 9 3.1 e) that "a customer and their family", if this could be changed to customer, or/and their family. This would mean that a single person facing exceptional circumstances could qualify for a grant where in the current policy they would not.	Yes - altered policy as suggested
Coventry Law Centre	On page 11 bullet point 6 states that all income will be taken into account including DLA. Under legislation it is our understanding that the mobility component of DLA cannot be taken into account. This is under Social Security Contributions and Benefits Act 1992 Section 73 (14). "(14) A payment to or in respect of any person which is attributable to his entitlement to the mobility component, and the right to receive such a payment, shall (except in prescribed circumstances and for prescribed purposes) be disregarded in applying any enactment or instrument under which regard is to be had to a person's means."	Seeking advice on this

<u>Organisation</u>	<u>Comment</u>	<u>Response</u>
Coventry Law Centre	Contradictory between people in education not being eligible as they're not eligible to claim certain benefits but that full time students are excluded except in very limited circumstances.	This is a reference to the difference between Crisis Grant and Support Grant eligibility, and allows flexibility in case a student does have a disaster or a house fire and needs support.
Coventry Law Centre	One of the policy objectives is stated to be to alleviate poverty - unsure that this type of grant will achieve this objective. It also states to help those who are trying to help themselves - this would be difficult to achieve and seems judgemental.	Acknowledged. Will look to review policy objectives on an ongoing basis.
CAB	Will the criteria change throughout the year to manage the fund?	If it was outside the policy would have to seek member approval to do this.
THT	Will the CSG scheme pay for rent in advance?	No, covered by DHPs or DWP Budgeting Advances.
All	Should reviews not be carried out by an external party?	Unable to afford. Will look at expected scale of reviews [dependent on DWP providing current volume data] and look at what options there are available for third parties to be involved in reviews.
Coventry Refugee and Migrant Centre	Is the residency test defined by a length of time?	No
Jesus Centre Job Shop	How will organisations that promote independence but don't provide substantial levels of care support their clients to apply for the fund?	Covered in the category 'establishing themselves in the community'.



To
Cabinet

Date: 8th January 2012

Subject

Health, Social Care and Welfare Reform Scrutiny Board (5) consideration of the report relating to the introduction of a Community Support Grants Policy.

1 Purpose of the Note

- 1.1 To inform Cabinet of the Health, Social Care and Welfare Reform Scrutiny Board (5)'s recommendation and issues raised following their consideration of the report of the Director of Finance Legal Services detailing the Community Support Grants Policy on 12th December 2012.

2 Recommendations

- 2.1 The Scrutiny Board recommended that Cabinet support the policy and proposals outlined in the report.

Cabinet are asked to note the issues raised by the Scrutiny Board:

- i) That the policy should be kept under review following its implementation
- ii) That the Scrutiny Board's Welfare Reform Sub Group would continue to work with officers and other key stakeholders around the wider implications of Welfare Reform changes to the City and the local response to them.

3 Information/Background

- 3.1 The Scrutiny Board considered the report outlining the proposed introduction of a Community Support Grants scheme at their December meeting. The Board held a full discussion with officers about both the proposals being made and aspects of the crisis loans and community care grants delivered by the Department of Work and Pensions which the new scheme will replace.
- 3.2 The discussion included the following...
- The discretionary nature of the policy and the importance of fairness and consistency in its application.
 - The relative costs of the administration of the grants compared to the total amount of grant.
 - The impact of the Government reduction in resources available for this support.
 - Potential arrangements for supporting families with emergency support for fuel bills.
 - Issues related to the policy not including cash payments.

- The ability of the policy to be flexible in particular circumstances, for example when women are fleeing domestic violence.
- How officers would manage the Council's responsibilities in circumstances whereby the budget became overspent.
- The ability of officers to tweak the scheme in the event of not all aspects of it being right first time.

3.3 Whilst the Board was supportive of the proposals outlined in the report being implemented, they were mindful that this is only a part of the wider changes to the welfare support available in the City and referred this issue to their Sub Group which will continue to work with officers supporting them in the implementation of the new policy.

Briefing Note Author:

Peter Barnett
Health Development Service Manager
Community Services Directorate
Tel: 02476 831145

18th December 2012.



Public report Cabinet Report

Cabinet
Council

8 January 2013
15 January 2013

Name of Cabinet Member:

Cabinet Member (Strategic Finance and Resources) – Councillor Duggins

Director Approving Submission of the report:

Director of Finance and Legal Services

Ward(s) affected:

City-wide

Title:

Technical changes to council tax (supplementary)

Is this a key decision?

No

Although this matter may affect all wards, the impact is not expected to be significant.

Executive Summary:

The Local Government Finance Bill 2012 received Royal Assent on 31 October 2012 and makes provision for a number of technical changes to Council Tax to take effect from 1 April 2013.

At a meeting on 10 July 2012 (whilst the bill was still in draft form) the Council's Cabinet approved a number of recommendations in respect of these technical changes, including the application of an immediate 100 per cent council tax charge for unfurnished empty properties. This change was projected to increase Council revenue by up to £1.5 million per annum. Now that the final bill has received Royal Assent, the contents make it necessary for these changes to be approved by Council.

The application of the charge would also result in an increase in the number of council tax bills generated, many of which would be for relatively small amounts. This would result in increased administration costs to the Council and potentially affect collection rates.

The Government has now confirmed that Councils will have discretion to apply a discount of between zero and 100 per cent for empty properties and Councils may determine the period for which such a discount will apply.

The Council proposes to establish a standard 100 per cent discount for a period of up to two weeks for empty properties. This will allow landlords a short period to arrange new tenancies and reduce administration costs to the Council. This would reduce the projected additional revenue to the Council by approximately £120,000.

Recommendations:

Cabinet is requested to:

- 1) Recommend that Council approves the implementation of technical changes to Council Tax for second homes and empty properties from April 2013 as approved by Cabinet on 10 July 2012.
- 2) Recommend that Council approves the adoption of a 100 per cent discount for a period of up to two weeks prior to the levy of a full Council Tax charge on unfurnished empty properties

Council is requested to:

- 1) Approve the implementation of technical changes to Council Tax for second homes and empty properties from April 2013 as approved by Cabinet on 10 July 2012
- 2) Approve the adoption of a 100 per cent discount for a period of up to two weeks prior to the levy of a full Council Tax charge on unfurnished empty properties.

List of Appendices included:

Cabinet Report - Technical Changes to Council Tax, 10 July 2012 (Appendix 1)
<http://moderngov.coventry.gov.uk/Data/Cabinet/201207101400/Agenda/Document%205.pdf>

Useful background papers:

Council Tax Information Letter 2012

Other Useful Documents:

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?

No

Will this report go to Council?

Yes – 15th January 2012

Report title:

Technical changes to council tax (supplementary)

1. Context (or background)

- 1.1 The Local Government Finance Bill 2012 received Royal Assent on 31 October 2012 and makes provision for a number of technical changes to Council Tax to take effect from 1 April 2013.
- 1.2 At a meeting on 10 July 2012 (whilst the bill was still in draft form), the Council's Cabinet approved a number of recommendations in respect of these technical changes, including the application of a 100 per cent council tax charge with immediate effect when a property becomes empty and unfurnished. Now that the final bill has received Royal Assent, the contents make it necessary for these changes to be approved by Council.
- 1.3 Currently an unfurnished empty home is subject to a class C council tax exemption for a period of up to six months. It is estimated that the application of an immediate 100 per cent charge could generate up to £1.5 million in additional revenue for the Council.
- 1.4 The application of an immediate 100 per cent charge for empty properties would specifically impact on local landlords as their properties attract a full charge between lettings.
- 1.5 Often the period between lettings is short and applying a full charge immediately would generate additional council tax bills, often for relatively small amounts, which would increase the cost of collection and potentially impact on collection rates.
- 1.6 To address these issues the Government has confirmed that Billing Authorities will have complete discretion over the level of discount to apply to empty homes and the period for which the discount should apply.

2. Options considered and recommended proposal

- 2.1 The Council will have discretion to apply a discount of between zero and 100 per cent for empty homes and the Council may determine the period for which such a discount should apply.
- 2.2 The Council proposes to establish a default discount period of up to two weeks when a property becomes empty during which a 100 per cent discount would be applied. This would provide landlords with a short grace period to arrange new tenants and would reduce the number of demand notices generated for small amounts.
- 2.3 The Council would retain the discretion to extend the period of the discount in exceptional circumstances.
- 2.4 The application of an initial two-week 100 per cent discount for empty properties would reduce the projected additional revenue to the Council by approximately £120,000. However, there would also be savings to the Council in terms of printing and postage and a reduced requirement to recover unpaid small amounts.

3. Results of consultation undertaken

No consultation has been undertaken in respect of this proposal.

4. Timetable for implementing this decision

4.1 Council tax technical changes take effect from 1 April 2013.

5. Comments from Director of Finance and Legal Services

5.1 Financial implications

As indicated previously, the financial impact on the Council of this change has been estimated at c£120,000. The impact of this will form part of the 8th January Council Tax-Base Report to Cabinet and will be taken account of within the final 2013/14 Budget Setting Report. There are indications that some Registered Social Landlords may claim exemptions as charities which, if granted, would impact on the projected revenue figure. No formal claims had been received at the time this report was prepared.

5.2 Legal Implications

The Local Government Finance Bill received Royal Assent on 31 October 2012 and makes provision for a number of technical changes to Council Tax to take effect from 1 April 2013.

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)?

It will contribute to bringing empty properties back into use and will be an additional source of income.

6.2 How is risk being managed?

Not applicable.

6.3 What is the impact on the organisation?

It will mean that more bills will be issued potentially to those who have not had Council Tax to pay previously.

6.4 Equalities / EIA

The Council Tax service is entitled to hold very limited information. With regard to empty properties this would usually be the owner name(s) and a forwarding address. There is no Equalities Monitoring data available in relation to Council Tax payers; specific information is not held detailing an owner's ethnic background, religion etc. There is a Disabled Reduction Scheme but this can only apply to occupied properties; the information held would be of no use in respect of the forthcoming changes.

As such, there is no evidence available to determine the impact on different groups when these changes are made.

Class A - owners of empty properties undergoing repairs will no longer be exempt and a Council Tax charge will be payable immediately. There is no data available of persons who currently benefit from this exemption

Class C - owners of empty properties currently receive up to 6 months exemption from payment. This will end and, after 2 weeks, full Council Tax will be payable. There is no detailed profile of customers who benefit from this exemption.

Class L - from 1 April mortgagees/lenders will become liable for payment of Council Tax. Unlike Classes A & C there will be no adverse financial impact on individual customers.

Second Homes - owners of furnished empty properties currently receive a 10% discount on the Council Tax payable. Limited information is held on the Council Tax records so it is not possible to provide a profile of who currently benefits from this reduction

Empty Homes Premium - again, a profile is not available of the customers who own properties that have been empty for longer than 2 years who will be liable for an increase of 50% on the Council Tax payable

In summary the legislation relates to the nature of a dwelling. If the property met prescribed criteria then the reductions applied regardless of who owned the property. Anyone whose property qualified would receive the reduction in their Council Tax bill. In the same way, the removal of these exemptions/discounts applies regardless of personal circumstances.

6.5 Implications for (or impact on) the environment

None

6.6 Implications for partner organisations?

The implementation of a two week 100 per cent discount for empty properties would positively impact on partners in the social housing sector.

Report author(s):**Name and job title:**

Helen Harding
 Assistant Director Revenues and Benefits

Directorate:

Finance and Legal Services

Tel and email contact:

Contributor/approver name	Title	Directorate or organisation	Date doc sent out	Date response received or approved
Contributors:				
Doug Skinner	Operational Manager	Finance and Legal Services	10-12-12	11-12-12
Jan Evans	Head of Revenues	Finance and Legal Services	10-12-12	11-12-12
Barrie Strain	Performance and Policy Manager	Finance and Legal Services	10-12-12	11-12-12
Phil Baggott	Lead Accountant	Finance and Legal Services	10-12-12	11-12-12
Jaspal Mann	Equality & Community Policy Officer	Chief Executives	10-12-12	11-12-12
Names of approvers: (officers and members)				
Paul Jennings	Finance Manager	Finance and Legal Services	10-12-12	11-12-12
Claire Campbell	HR Manager	Customer and Workforce Services	10-12-12	11-12-12
John Scarborough	Corporate Governance & Litigation Manager	Finance and legal service	10-12-12	11-12-12
Chris West	Director of Finance and Legal Services	Finance and legal service	10-12-12	11-12-12
Councillor Duggins	Cabinet Member (Strategic Finance and Resources)		10-12-12	11-12-12

This report is published on the council's website:
www.coventry.gov.uk/meetings

Cabinet

10 July 2012

Name of Cabinet Member:

Cabinet Member (Strategic Finance and Resources) – Councillor Duggins

Director Approving Submission of the report:

Director of Finance and Legal Services

Ward(s) affected:

City-wide

Title:

Technical changes to council tax

Is this a key decision?

No

Executive Summary:

The Department for Communities and Local Government (DCLG) published the *Technical reforms of council tax* consultation on 31 October 2011. The consultation sought views on a number of proposed changes to the council tax system which included giving Councils greater discretion over the reliefs to apply for second homes and empty properties. The consultation also invited views on whether the establishment of an empty homes premium would help to reduce the numbers of unoccupied properties.

The DCLG has now published a *summary of responses* document confirming the intention to legislate for a number of changes.

This report confirms the changes which DCLG intend to implement and the potential additional revenue that the Council could generate by implementing the changes. The report recommends that the changes are implemented, to maximum effect, from April 2013.

Recommendations:

Cabinet is requested to:

- 1) Approve the implementation of technical changes to council tax for second homes and empty properties from April 2013.

List of Appendices included:

Other useful background papers:

Technical reforms of council tax consultation – Department for Communities and Local Government (DCLG)

<http://www.communities.gov.uk/publications/localgovernment/technicalreformcounciltax>

Summary of responses report - DCLG

<http://www.info4local.gov.uk/documents/publications/2152686>

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?

No

Will this report go to Council?

No

Report title:

Technical changes to council tax

1. Context (or background)

- 1.1 The Department for Communities and Local Government (DCLG) published the *Technical reforms of council tax* consultation on 31 October 2011.
- 1.2 The consultation sought views on a number of proposed changes to the council tax system, including proposals to give billing authorities (BA's) greater discretion over the reliefs from council tax available in respect of second homes and empty properties. The consultation also invited views on whether BA's should have the power to levy a council tax premium on empty homes.
- 1.3 Coventry's responses to the specific questions raised were included in a report to Council on 6 December 2011 and the proposed responses were approved.
- 1.4 The DCLG has now published the *Summary of Responses Report*. This indicates that Coventry's views were shared by most other BA's.

2. Options considered and recommended proposal

- 2.1 The DCLG has now published the *Summary of Responses Report* which confirms the Government's intentions to legislate for the following changes.

Second Homes

- 2.2 The government has confirmed its intention to allow BAs to levy up to the level of full Council tax on 2nd homes (in Coventry, a discount of 10 per cent is currently granted). At any one time there are in the region of 740 Coventry properties receiving this discount. If the 10 per cent discount was to be removed then potential additional council tax revenue would be approximately **£74k**.

Uninhabitable empty homes

- 2.3 The government has confirmed its' intention to abolish the current Class A exemption that applies to properties undergoing repairs. Currently this can be granted as long as qualifying circumstances prevail for up to a maximum period of 12 months. The proposal is to replace this with a discount (discretionary between zero per cent and 100 per cent) and the maximum period that this can be applied for remains 12 months. There are approximately 190 properties in this category and potential revenue if a 0 per cent discount was applied is **£189,000**.

Unfurnished empty homes

- 2.4 A 6 month exemption (Class C) has been available where a property is vacant (unoccupied and substantially unfurnished). The proposal to abolish and replace with discounts was welcomed by BA's. As such the government has confirmed the intention to abolish this and empower BA's to give discounts (zero per cent up to 100 per cent). With approximately 1,500 properties in this category at any one time potential additional council tax revenue if the discount was set at zero per cent is **£1.5 million**.

Repossessions

- 2.5 Repossessed properties are currently exempt from council tax liability. The consultation proposed that mortgagees who are in possession of an empty dwelling should be liable for the council tax charge. This exemption class is to be abolished and Council tax will be payable by mortgagees. Indicative additional revenue for this category is **£58k**.

Empty homes premium

- 2.6 The government consulted on a proposal to apply a premium to properties that had been empty for a long period of time. Coventry's response was that this would encourage occupation of properties left empty. The government has confirmed that the maximum premium to be applied after a property is empty is 50 per cent of normal council tax liability. This means that properties within this category would pay 150 per cent of full Council Tax. It is difficult to provide potential revenue figures for this change as it is anticipated that many such properties would become occupied rather than incur this charge. Currently, there are 545 properties that have been empty for longer than two years.

Payment by instalments

- 2.7 The Government has confirmed that council tax payers should be able to pay their liability over 12 months rather than the current standard 10 months. BAs have responded that this would have a negative impact on cash flow and potentially collection rates. Despite these concerns the Government has confirmed that this change will be implemented.

Solar panels

- 2.8 It has been confirmed that there will be no liability for Non-Domestic Rates in respect of solar panels installed on domestic properties.

Annexes to dwellings

- 2.9 The government consultation on treatment of annexes related to whether they should be treated as separate dwelling. A further broader review of this area is to be carried out.

Impact

- 2.10 The examples below illustrate the potential impact of the technical changes on local residents:

Mrs G inherits property from father after his death. Probate granted and property transferred into her name. However property can't be sold and remains on market. Property emptied of furniture to obtain 6 months Class C which is worth a reduction of £500. *Following changes any vacant properties will attract a charge immediately ownership transfers; no 6 month period of grace.*

Mr T has to move out of a property for a month following fire damage. Currently, an exemption can be applied but this could potentially be removed. *Council tax would still be payable on properties currently deemed uninhabitable because of requirement for structural repairs/adaptations.*

Miss J finds seasonal work abroad for 6 months and does not want to rent out her property for this short period of time. Currently she could put furniture into storage and obtain an

exemption. For many periods where a home is left empty for short periods (economic/family reasons) a full Council tax charge will remain payable.

Recommendation

2.11 It is recommended that the Council implement the proposed changes and apply the maximum charge in respect of:

- Second homes
- Uninhabitable homes
- Unfurnished empty homes
- Repossessed homes
- Long term empty homes properties

2.12 It is estimated that these changes would result in additional revenue totalling £1.8 million per annum, not including the empty homes premium.

2.13 In addition to technical changes to council tax, the Government is abolishing council tax benefit and localising support for council tax payments. In so doing, the DCLG are cutting funding for local schemes by 10 per cent. Coventry is therefore expected to receive an annual grant of approximately £27 million towards a scheme which currently costs £30 million per annum. A separate report is being presented to Cabinet on 10 July 2012 requesting permission to consult on a draft local scheme. The Council intends to consult on the option of using the additional revenue from council tax technical changes to offset some of the estimated £3 million reduction in funding for a local council tax support scheme.

3. Results of consultation undertaken

4. Timetable for implementing this decision

4.1 Changes to apply from 1 April 2013.

5. Comments from Director of Finance and Legal Services

5.1 Financial implications

Indicative additional revenue if all discounts/exemptions are removed and the maximum Council tax levied is £1.82m. This figure excludes revenue from any long-term empty premium levied.

5.2 Legal Implications

There are no legal implications at this stage arising from this report.

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)?

In addition to the clear benefits of increasing revenue to the Council, there are potentially significant benefits to residents and the local economy in incentivising owners to bring properties back into use at the earliest opportunity.

6.2 How is risk being managed?

Not applicable.

6.3 What is the impact on the organisation?

6.4 Equalities / EIA

6.5 Implications for (or impact on) the environment

None

6.6 Implications for partner organisations?

While generating additional revenues for the Council to assist in achieving the Council's corporate objectives there is the potential for many customers who currently benefit from the current arrangements to be financially disadvantaged once the changes are made. Landlords/owners have voiced concerns about the extra liability they will incur. In Coventry, Whitefriars as the biggest social landlord would be particularly affected e.g. -with 200 properties in class C at any one time, additional annual liability would be in the region of £200k.

Report author(s):

Name and job title:

Helen Harding
Assistant Director Revenues and Benefits

Directorate:

Finance and Legal Services

Tel and email contact:

Contributor/approver name	Title	Directorate or organisation	Date doc sent out	Date response received or approved
Contributors:				
Doug Skinner	Operational Manager	Finance and Legal Services	01/06/2012	01/06/2012
Jan Evans	Head of Revenues	Finance and Legal Services	01/06/2012	01/06/2012
Barrie Strain	Performance and Policy Manager	Finance and Legal Services	01/06/2012	01/06/2012
Phil Baggott	Lead Accountant	Finance and Legal Services	01/06/2012	01/06/2012

Other members				
Names of approvers: (officers and members)				
Paul Jennings	Finance Manager	Finance and Legal Services	01/06/2012	
Claire Campbell	HR Manager	Customer and Workforce Services	01/06/2012	12/06/2012
Clarissa Evans	Commercial Team Manager	Finance and legal service	01/06/2012	
Chris West	Director of Finance and Legal Services	Finance and legal service	01/06/2012	18/06/2012
Councillor Duggins	Cabinet Member (Strategic Finance and Resources)		18/06/2012	18/06/2012

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A separate report is submitted in the private part of the agenda in respect of this item, as it contains details of financial information required to be kept private in accordance with Schedule 12A of the Local Government Act 1972. The grounds for privacy are that it refers to the identity, financial and business affairs of an organisation and the amount of expenditure proposed to be incurred by the Council under a particular contract for the supply of goods or services.

Cabinet
Council

8th January 2013
15th January 2013

Name of Cabinet Member:

Cabinet Member (City Development) - Councillor Kelly

Director Approving Submission of the report:

City Services & Development

Ward(s) affected:

St Michaels

Title: Shelton Square - Investment Acquisition

Is this a key decision?

Yes

The decision will result in a capital expenditure of more than £500K

Executive Summary:

To assist with the Councils objective of securing a retail development in the city centre, an opportunity has arisen to acquire income producing properties in the City Centre South area.

This acquisition would enable an intermediary property interest to be removed from the development area providing greater control around the delivery of the future development at a cost which would be less than if it had to be acquired using Compulsory Purchase Powers (CPO) in the future.

The financial details of the proposed acquisition of the 7 retail units in Shelton Square / City Arcade are outlined within the private report which accompanies this public report.

Recommendations:

Cabinet is requested to recommend that Council:

- 1) Approve the acquisition of the leasehold interest in 1-11 Shelton Square and 1a City Arcade.
- 2) Delegate authority to the Director of City Services & Development and Director of Finance and Legal services, in consultation with Cabinet member (City Development) to complete all the necessary legal documents in connection with the purchase.

Council is requested to:

- 1) Approve the acquisition of the leasehold interest in 1-11 Shelton Square and 1a City Arcade.
- 2) Delegate authority to the Director of City Services & Development and Director of Finance and Legal services, in consultation with Cabinet member (City Development) to complete all the necessary legal documents in connection with the purchase.

List of Appendices included:

Appendix A – Location Plan

Other useful background papers:

None

If there are none, say so.

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 15th January 2013

Report title:

1. Context (or background)

- 1.1 An opportunity has been presented to the Council to make a strategic property acquisition in Coventry's city centre. The income producing, leasehold investment is a known as 1-11 Shelton Square and 1a City Arcade.
- 1.2 In 2009 and 2010 Cabinet agreed that the location for future retail development in the city centre would be focused on the City Centre South area culminating in an outline planning consent for a development being obtained in 2012. The Shelton Square properties fall within the area covered by the planning consent and would be required to deliver the proposed retail scheme.
- 1.3 The properties are being sold by a liquidator on behalf of a property company in administration and a quick decision regarding the purchase is required if the Council wishes to secure them.
- 1.4 Former directors of the property company in liquidation are also in negotiations with the liquidator with a view to buying back the asset.

2. Options considered and recommended proposal

- 2.1 The seven adjoining retail investment properties predominantly front onto the southern side of Shelton Square (See Appendix A), with two of the retail units having frontages onto City Arcade. The City Centre South outline planning consent shows the retail units are located within the area identified for a future anchor store and is therefore a key site required in the current scheme.
- 2.2 The retail investment properties comprise ground floor sales area with first floor ancillary storage. Betfred bookmakers, occupies two adjoining units with the five other tenants having single units. The other tenants are Greggs Plc, H&T Pawnbrokers, Warren James jewellers and two local traders Pawelek Polish Delicatessen and Alan Tyndall trading as Antics a model shop. The signing of new leases to both Greggs and Alan Tyndall would be a condition of the purchase.
- 2.3 Details outlining the length of tenancy's and the rents received from the occupiers are held within paragraph 5.1, financial implication section of your private report.
- 2.4 *Option 1 : Coventry City Council to acquire via prudential borrowing*

The Council already owns the Freehold of the land on which the shops in Shelton Square were built but doesn't currently own the buildings or the right to receive the rent paid by the tenants of the shops.

The Council also owns adjoining and surrounding properties both in Shelton Square, City Arcade and Market Way.

The Council's purchase of the shops, subject to existing and new leases, would:-

- Assist with the land assembly required to deliver the future retail led development of this area.

- Reduce the development risk for a future development partner by removing an intermediate landlord thus providing the Council with a direct legal relationship with the current tenants. This will provide greater control of the interest and enable direct negotiations with the tenants around future development issues, especially managing obtaining vacant possession.
- Reduces uncertainty around the future need for and potential costs required to purchase the asset using CPO powers, helping to control the potential additional cost and delay this would add.
- In the meantime, ahead of any development, the property would produce a return on the capital investment, based on current rental levels of approximately 11%, which easily covers the cost of the prudential borrowing proposed to be used in the purchase.
- The main risk to the Council in the short term would be that one or more of the current tenants cease trading and the unit cannot be re-let at the same rental level, thus reducing income. This has however been considered and the provisional purchase price negotiated reflects this possibility.

2.5 Option 2 : Aviva Acquires

Our current city centre south partner, Aviva, could look to purchase the asset themselves as they already hold the head lease interest in the premises. Aviva have already indicated that they have no investment appetite to purchase further assets in Coventry's city centre ahead of the proposed development.

2.6 Option 3 : A third party acquires the asset and the Council acquires it via CPO in the future when required.

Although the Council is currently the preferred purchaser, a stronger offer could be received by the liquidator and therefore the asset could be sold to a third party. Even at a purchase price slightly above the current proposed purchase price, a third party would be looking at an attractive return on their money invested. The third party may also perceive some benefit from securing a future negotiating position when a development partner looks to buy in the properties later or at frustrating the scheme through the CPO process.

2.7 Preferred Option

Option 1 - The Council to make the purchase, securing control of the asset, reducing development risk and increasing the deliverability of the city centre development area, as well as securing short term income.

3. Results of consultation undertaken

- 3.1 No specific consultation has been undertaken regarding the purchase of the investment but the development plans for the city centre have been widely consulted.

4. Timetable for implementing this decision

- 4.1 The liquidator has confirmed that exchange of contracts is required to take place immediately following approval at Council, with completion of the purchase 14 days thereafter.

5. Comments from Director of Finance and Legal Services

5.1 Financial implications

The proposed purchase is a commercially sensitive transaction as such the details of the financial implications are presented within your private report.

5.2 Legal implications

The Council will acquire the leasehold interest under section 120 of the Local Government Act 1972 which enables the Council to acquire property by agreement if it's for the benefit, improvement and development of the area.

6. Other implications

Any other specific 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)?

Initially the investment acquisition is to be seen as a financial transaction however if it helps to deliver a redevelopment of the city centre this would help to make Coventry a more attractive and enjoyable place to be encouraging a more active and vibrant city centre, improving the environment providing a more energy efficient development.

6.2 How is risk being managed?

The purchase is being led by City Centre and Development Division of City Services & Development Directorate, working together with Legal and Financial services to manage the risks with the acquisition.

Financial credit checks of the 4 main tenants who occupy 5 of the 7 units, Greggs PLC, Betfred Bookmakers, H&T Pawnbrokers and Warren James Jewellers, all indicate they have strong financial reserves. The other two tenants' are local independent traders and the greater risk of failure has been considered and reflected in the purchase price.

Investment property assets will be managed pro-actively as part of the wider portfolio to maximise the occupancy levels.

6.3 What is the impact on the organisation?

It exposes the Council to financial risk which has been considered in your private report.

6.4 Equalities / EIA

No equality impact assessment has been carried out as the recommendations do not constitute a change in service or policy.

6.5 Implications for (or impact on) the environment

The initial investment purchase does not change the environment. If this ultimately leads to the development of part of the city centre the impact of these changes will be considered at the time but should provide opportunities for significant environmental improvements.

6.6 Implications for partner organisations?

The initial investment purchase does not affect any partner organisation. If this ultimately leads to the development of part of the city centre, the impact of these changes on any parties will be considered then.

Report author(s):

Name and job title:

Paul Beesley
Team Leader, Property Development

Directorate:

City Services & Development

Tel and email contact:

024 76831377
paul.beesley@coventry.gov.uk

Enquiries should be directed to the above person.

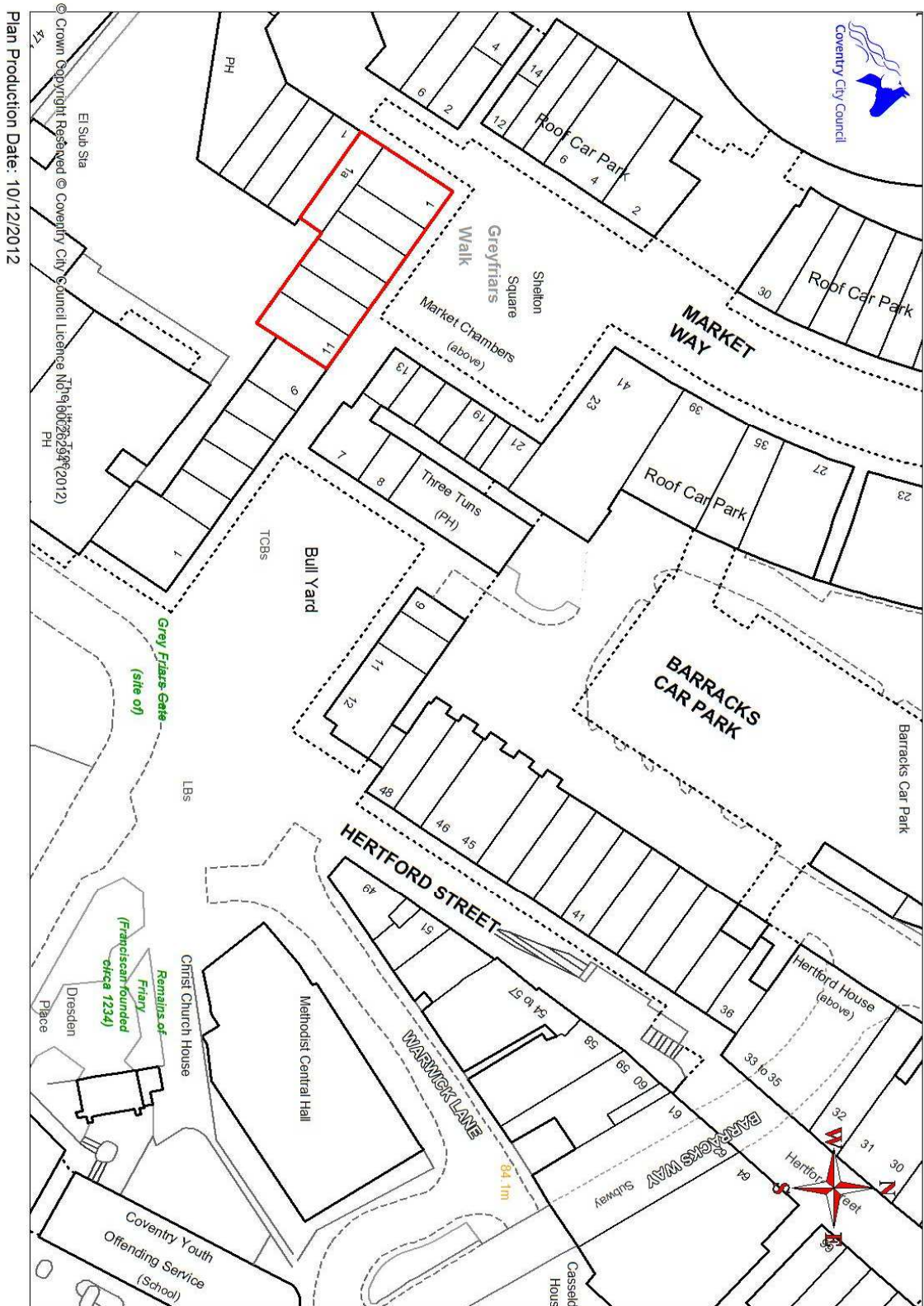
Contributor/approver name	Title	Directorate or organisation	Date doc sent out	Date response received or approved
Contributors:				
David Cockroft	Assistant Director City Centre & Development	City Services & Development	10/12/2012	10/12/2013
David Iles	Media & Communications		10/12/2012	
Other members				
Names of approvers for submission: (officers and members)				
Finance: Phil Helm		Finance & legal	10/12/2012	10/12/2013
Legal: Clarissa Evans	Commercial Team Manager	Finance & legal	10/12/2012	10/12/2013
Director: Martin Yardley	Director	City Services & Development	10/12/2012	
Members: Name				
Cllr Lynnette Kelly	Cabinet Member (City Development)		10/12/2012	

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Appendix A – Location Plan

Shelton Square, Investment Acquisition.





Public report

Council

15th January 2013

Name of Cabinet Member:

Not Applicable

Director Approving Submission of the report:

Director of Customer and Workforce Services

Ward(s) affected:

Not Applicable

Title:

Appointment to Outside Body – Local Enterprise Partnership: Local Transport Body

Is this a key decision?

No

Executive Summary:

This report seeks approval for the appointment of a deputy representative to the City Council's Lead Member, Councillor Kelly, on the Coventry and Warwickshire Local Enterprise Partnership: Local Transport Body.

Recommendations:

That the City Council appoints Councillor J. Mutton as the deputy representative of the City Council on the Coventry and Warwickshire Local Enterprise Partnership: Local Transport Body.

List of Appendices included:

None

Useful background papers:

Minutes from the meeting of the City Council held on 4th December 2012.

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?

No

Will this report go to Council?

Yes – 15th January 2013

Report title: Appointment to Outside Body

1. Context (or background)

- 1.1 The Coventry and Warwickshire Local Enterprise Partnership: Local Transport Body has been established to deal with devolved Government funding for the 2015-2019 period for Major Transport Schemes.
- 1.2 Membership proposals for the Body require that an Elected Member from Coventry City Council be appointed to represent it on the Local Transport Body. It is also necessary to identify a deputy in the event that the representative cannot attend meetings of the Body.
- 1.3 The Body will start meeting as soon as all representatives are identified.
- 1.4 At the meeting of the Council on 4th December 2012, Councillor Kelly was appointed as the City Council's Lead representative.
- 1.5 The Council is now required to appoint a deputy representative to the Lead Member.

1. Options considered and recommended proposal

- 2.1 It is proposed that Councillor J. Mutton be appointed as deputy representative of the City Council on the Coventry and Warwickshire Local Enterprise Partnership: Local Transport Body.

3. Results of consultation undertaken

- 3.1 Not applicable

4. Timetable for implementing this decision

- 4.1 The appointment will take effect from the date of the Council Meeting.

5. Comments from Director of Finance and Legal Services

- 5.1 Financial implications

Not applicable

- 5.2 Legal implications

Not applicable

6. Other implications

Not applicable

Report author(s):

Name and job title:

Michelle Salmon, Governance Services Officer

Directorate:

Customer and Workforce Services Directorate

Tel and email contact:

02476 833065

Michelle.salmon@coventry.gov.uk

Enquiries should be directed to the above person.

Contributor/approver name	Title	Directorate or organisation	Date doc sent out	Date response received or approved
Contributors:				
Helen Abraham	Assistant Director (Democratic Services)	Customer and Workforce Services	19/12/12	19/12/12
Names of approvers: (Officers and Elected Members)				
John Scarborough	Corporate Governance & Litigation Manager	Finance and Legal Services	19/12/12	07/01/13
Bev Messinger	Director of Customer and Workforce Services	Customer and Workforce Services	19/12/12	02/01/13
Councillor Mutton	Leader of the Council		19/12/12	19/12/12

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